

Debt Collection

25 CFR Part 513

SECTIONS

SUBPART A-- GENERAL PROVISIONS

- 513.1 -- What definitions apply to the regulations in this part?
- 513.2 What is the Commission's authority to issue these regulations?
- 513.3 What happens to delinquent debts owed to the Commission?
- 513.4 What notice will the Commission give to a debtor of the Commission's intent to collect debts?
- 513.5 What is the Commission's policy on interest, penalty charges, and administrative costs?
- 513.6 What are the requirements for offset review?
- 513.7 What is the Commission's policy on revoking a debtor's ability to engage in Indian gaming for failure to pay a debt?

SUBPART B-- ADMINISTRATIVE AND TAX REFUND OFFSET

- 513.20 What debts can the Commission Refer to Treasury for collection by administrative and tax refund offset?
- 513.21 What notice will a debtor be given of the Commission's intent to collect a debt through administration and tax refund offset?

SUBPART C-- SALARY OFFSET

- 513.30 When may the Commission use salary offset to collect debts?
- 513.31 What notice will the Commission, as the creditor agency, give a debtor that salary offset will occur?
- 513.33 Will the Commission issue a certification when the Commission is the creditor agency?
- 513.32 What are the hearing procedures when the Commission is the creditor agency?
- 513.34 What opportunity is there for a voluntary repayment agreement when the Commission is the creditor agency?
- 513.35 What special review is available when the Commission is the creditor agency?
- 513.36 Under what conditions will the Commission refund amounts collected by salary offset?
- 513.37 What will the Commission do as the paying agency?

SUBPART D-- ADMINISTRATIVE WAGE GARNISHMENT

- 513.40 How will the Commission handle debt collection through administrative wage garnishment?

Authority: 31 U.S.C. 3711, 3716-3718, 3720A, 3720D; 5 U.S.C. 5514; 25 U.S.C. 2713(a)(1).

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§513.1 – WHAT REGULATIONS APPLY TO THE REGULATIONS IN THIS PART?

As used in this part:

(a) Administrative offset means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a State government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

(c) Chairman means the Chairman of the Commission, or his or her designee.

(d) Commission means the National Indian Gaming Commission.

(e) Creditor agency means a Federal agency that is owed a debt.

(f) Day means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

(g) Debt and claim are synonymous and interchangeable. They refer to, among other things, fines, fees, and penalties that a Federal agency has determined are due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716 and subpart B of this part, the terms "debt" and "claims" include money, funds, or property owed to a State, the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) Debtor means a person, contractor, Tribe, or other entity that owes a debt to the Commission.

(i) Delinquent debt means a debt that has not been paid within the time limit prescribed by the applicable Act, law, or contract.

(j) Disposable pay means the part of an employee's pay that remains after deductions that must be withheld by law have been made (other than deductions to execute garnishment orders for child support and/or alimony, in accordance with 5 CFR part 581, and for commercial garnishment of federal employees' pay, in accordance with 5 CFR part 582). "Pay" includes current basic pay, special pay, incentive pay, retired pay, and retainer pay.

(k) Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(l) DOJ means the U.S. Department of Justice.

(m) FCCS means the Federal Claims Collection Standards, which are published at 31 CFR parts 900-904.

(n) FMS means the Federal Management Service, a bureau of the U.S. Department of the Treasury.

(o) Paying agency means the agency that makes payment to an individual who owes a debt to the United States.

(p) Payroll office means the office in an agency that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

(q) Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, tribe, or other entity that owes a debt to the United States, excluding the United States.

(r) Salary offset means a payroll procedure to collect debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without the employee's consent.

(s) Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt.

§ 513.2 WHAT IS THE COMMISSIONS AUTHORITY TO ISSUE THESE REGULATIONS?

(a) The Commission has authority to issue these regulations under 25 U.S.C. 2713(a)(1) of the Indian Gaming Regulatory Act. The Commission is issuing the regulations in this part under the authority of: The FCCS, the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716-3718, and 3720A. In addition, the salary offset provisions are issued in conformity with 5 U.S.C. 5514 and its implementing regulations published at 5 CFR part 550, subpart K.

(b) The Commission hereby adopts the provisions of the FCCS (31 CFR parts 900-904). The Commission's regulations supplement the FCCS as necessary.

§513.3 WHAT HAPPENS TO DILEQUENT DEBTS OWED TO THE COMMISSION?

(a) The Commission will collect debts in accordance with these regulations in this part.

(b) The Commission will transfer to the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(c) The Commission may transfer any past due, legally enforceable nontax debt that has been delinquent for fewer than 180 days to the Department of Treasury for collection in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

§513.4 WHAT NOTICE WILL THE COMMISSION GIVE TO A DEBTOR OF THE COMMISSION'S INTENT TO COLLECT DEBTS?

(a) When the Chairman determines that a debt is owed to the Commission, the Chairman will send a written notice (Notice), also known as a demand letter. The Notice will be sent by facsimile or mail to the most current address known to the Commission. The Notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) The methods of offset that may be employed;

(3) The debtor's opportunity to inspect and copy agency records related to the debt;

(4) The debtor's opportunity to enter into a written agreement with the Commission to repay the debt;

(5) The Commission's policy concerning interest, penalty charges, and administrative costs, as set out in § 513.5, including a statement that such assessments must be made against the debtor unless excused in accordance with the FCCS and this part;

(6) The date by which payment should be made to avoid late charges and enforced collection;

(7) The name, address, and telephone number of a contact person or office at the Commission that is available to discuss the debt; and

(8) The debtor's opportunity for review.

(b) A debtor whose debt arises from a notice of violation and/or civil fine assessment that has become a final order and that was subject to the Commission's appeal procedures at 25 CFR part 577 may not re-litigate matters that were the subject of the final order.

§513.5 WHAT IS THE COMMISSION'S POLICY ON INTEREST, PENALTY CHARGES, AND ADMINISTRATIVE COSTS?

(a) Interest.

(1) The Commission will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Commission will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717.

(b) Penalties. The Commission will assess a penalty charge of 6 percent a year on any portion of a delinquent debt.

(c) Administrative costs. The Commission will assess charges to cover administrative costs incurred as a result of the debtor's failure to pay a debt before it becomes delinquent. Administrative costs include the cost of providing a copy of the file to the debtor and costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Commission.

(d) Interest, penalties, and administrative costs will continue to accrue throughout any appeal process.

(e) Allocation of payments. A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(f) Additional authority. The Commission may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(g) Waiver. (1) Regardless of the amount of the debt, the Chairman may decide to waive collection of all or part of the accrued interest, penalty charges, or administrative costs if collection of these charges would be against equity and good conscience or not in the Commission's best interest.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, when charges have been collected before the waiver decision, they will not be refunded. The Chairman's decision whether to waive collection of these charges is final and not subject to further review.

§ 513.6 WHAT ARE THE REQUIREMENTS FOR OFFSET REVIEW?

(a) The Commission will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Commission determines that the question of indebtedness cannot be resolved by review of the documentary evidence.

(b) Unless otherwise required by law, an oral hearing is not required to be a formal evidentiary hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(c) When an oral hearing is not required, the Commission will review the request for reconsideration based on the written record.

§513.7 WHAT IS THE COMMISSION'S POLICY ON REVOKING A DEBTOR'S ABILITY TO ENGAGE IN INDIAN GAMING FOR FAILURE TO PAY A DEBT?

The Chairman of the Commission may revoke a debtor's ability to operate, manage, or otherwise participate in the operation of an Indian gaming facility if the debtor inexcusably or willfully fails to pay a debt. The revocation of ability to engage in gaming may last only as long as the debtor's indebtedness.

§513.20 WHAT DEBTS CAN THE COMMISSION REFER TO TREASURY FOR COLLECTION BY ADMINISTRATIVE AND TAX REFUND OFFSET?

(a) The Commission may refer any past due, legally enforceable nonjudgmental debt of a person to the Treasury for administrative and tax refund offset if the debt:

(1) Has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(2) Is at least \$ 25.00 or another amount established by Treasury.

(b) Debts reduced to judgment may be referred to Treasury for tax refund offset at any time.

§ 513.21 WHAT NOTICE WILL A DEBTOR BE GIVEN OF THE COMMISSIONER'S INTENT TO COLLECT A DEBT THROUGH ADMINISTRATIVE AND TAX REFUND OFFSET?

(a) The Commission will give the debtor written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the debtor's last known address as determined by the Commission.

(b) The notice will state the amount of the debt and notify the debtor that:

(1) The debt is past due and, unless repaid within 60 days after the date of the notice, the Commission will refer the debt to Treasury for administrative and tax refund offset;

(2) The debtor has 60 calendar days to present evidence that all or part of the debt is not past-due or legally enforceable; and

(3) The debtor has an opportunity to make a written agreement to repay the debt.

§ 513.30 WHEN MAY THE COMMISSION USE SALARY OFFSET TO COLLECT DEBTS?

- (a) The Commission collects debts owed by employees to the Federal Government by means of salary offset under the authority of: 5 U.S.C. 5514; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR 285.7; and this subpart. Salary offset is applicable when the Commission is attempting to collect a debt owed by an individual employed by the Commission or another agency.
- (b) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the Federal Claims Collection Standards.
- (c) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d) and 31 U.S.C. 3716.
- (d) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly prohibited by another statute.
- (e) This subpart's regulations covering notice, hearing, written responses, and final decisions do not apply to:
 - (1) Any routine intra-agency adjustment in pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to \$ 50 or less. However, at the time of any adjustment, or as soon thereafter as possible, the Commission's payroll agency will provide the employee with a written notice of the nature and amount of the adjustment and a contact point for appealing the adjustment.
 - (2) Any negative adjustment to pay that arises from the debtor's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four or fewer pay periods. However, at the time of the adjustment, the Commission's payroll agent will provide in the debtor's earnings statement a clear statement informing the debtor of the previous overpayment.
- (f) An employee's involuntary payment of all or any of the debt through salary offset will not be construed as a waiver of any rights that the employee may have under the law, unless there are statutory or contractual provisions to the contrary.

§ 513.31 WHAT NOTICE WILL THE COMMISSION, AS THE CREDITOR AGENCY, GIVE A DEBTOR THAT SALARY OFFSET WILL OCCUR?

- (a) Deductions from a debtor's salary will not be made unless the Commission sends the debtor a written Notice of Intent at least 30 calendar days before the salary offset is initiated.
- (b) The Notice of Intent will include the following:
 - (1) Notice that the Commission has reviewed the records relating to the debt and has determined that the employee owes the debt;
 - (2) Notice that, after a 30-day period, the Commission will begin to collect the debt by deductions from the employee's current disposable pay account and the date on which deductions from salary will start;
 - (3) The amount of the debt and the facts giving rise to it;
 - (4) The frequency and the amount of the intended deduction stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of the disposable pay, and the intention to continue the deductions until the debt and all accumulated interest are paid in full or resolved;
 - (5) The name, address, and telephone number of the person to whom the debtor may propose a written alternative schedule for voluntary repayment in lieu of salary offset. The debtor must include a justification for the alternative schedule in the proposal;
 - (6) The Commission's policy concerning interest, penalties, and administrative costs, set out at § 513.5, and a statement that assessments will be made unless excused in accordance with the FCCS;
 - (7) Notice of the employee's right to inspect and copy all Commission records pertaining to the debt and the name, address, and telephone number of the Commission employee to whom requests for access must be made;
 - (8) Notice of the employee's opportunity to a hearing conducted by an individual who does not work for the Commission on the Commission's determination of the existence or amount of the debt and the terms of the repayment schedule;
 - (9) Notice that filing a request for a hearing on or before the 15th calendar day following the debtor's receiving the Notice of Intent will stay collection proceedings and that a final decision will be issued at the earliest practical date, but not later than 60 days after the filing of the petition for hearing, unless the employee requests, and a hearing official grants, a delay in proceedings;
 - (10) An explanation of the effect of submitting knowingly false or frivolous statements; and
 - (11) Notice that amounts paid on or deducted from debts that are later waived or found not to be owed will be promptly refunded to the employee.

§ 513.33 WILL THE COMMISSION ISSUE A CERTIFICATION WHEN THE COMMISSION IS THE CREDITOR AGENCY?

Yes. Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514, the Commission will submit a certification to Treasury or to a paying agency in the form prescribed by the paying agency.

§ 513.32 WHAT ARE THE HEARING PROCEDURES WHEN THE COMMISSION IS THE CREDITOR AGENCY?

- (a) To request a hearing, the debtor must file, within 15 days of receiving the Commission's notice of intent to offset, a written petition signed by the debtor and addressed to the Commission stating why the debtor believes the Commission's determination of the existence or amount of the debt is in error. The Commission may waive the 15-day time limit for filing a request for hearing if the employee shows that the delay was due to circumstances beyond his or her control or because the employee did not receive notice of the 15-day time limit. A debtor who has previously obtained a hearing to contest a debt that arose from a notice of violation or proposed civil fine assessment matters under 25 CFR part 577 may not re-litigate matters that were at issue in that hearing.
- (b) Regardless of whether the debtor is a Commission employee, the Commission will provide a prompt and appropriate hearing before a hearing official who is not from the Commission.
- (c) The hearing will be conducted according to the FCCS review requirements at 31 CFR 901.3(e).
- (d) Unless the employee requests, and a hearing official grants, a delay in proceedings, within 60 days after the petition for hearing the hearing official will issue a written decision on:
 - (1) The determination of the creditor agency concerning the existence or amount of the debt; and
 - (2) The repayment schedule, if a schedule was not established by written agreement between the employee and the creditor agency.
- (e) If the hearing official determines that a debt may not be collected by salary offset but the Commission has determined that the debt is valid, the Commission may seek collection of the debt through other means in accordance with applicable law and regulations.
- (f) The form of hearings, written responses, and final decisions will be according to the Commission's review requirements at § 513.7. Written decisions regarding salary offset that are provided after a request for hearing must state: The facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions as to the employee's or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

§ 513.34 WHAT OPPORTUNITY IS THERE FOR A VOLUNTARY REPAYMENT AGREEMENT WHEN THE COMMISSION IS THE CREDITOR AGENCY?

- (a) In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to the Commission. A proposal must be received by the Commission within 15 calendar days after the employee is sent the Notice of Intent.
- (b) The Commission will notify the employee whether, within the Commission's discretion, the proposed repayment schedule is acceptable.
- (c) If the proposed repayment schedule is unacceptable, the employee will have 15 calendar days from the date the notice of the decision is received in which to file a request for a hearing.
- (d) If the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by the Commission, the agreement will be put in writing and signed by the employee and the Commission.

§ 513.35 WHAT SPECIAL REVIEW IS AVAILABLE WHEN THE COMMISSION IS THE CREDITOR AGENCY?

- (a)
 - (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Commission of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.
 - (2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payment results in extreme financial hardship to the employee, spouse, or dependents. The statement must indicate:
 - (i) Income from all sources;
 - (ii) Assets;
 - (iii) Liabilities;
 - (iv) Number of dependents;
 - (v) Expenses for food, housing, clothing, and transportation;
 - (vi) Medical expenses; and
 - (vii) Exceptional expenses, if any.
- (b) The Commission will evaluate the statement and documentation and determine whether the current offset or repayment schedule imposes extreme financial hardship on the employee. The Commission will notify the employee in writing within 30 calendar days of its determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, the Commission will provide a new certification to the paying agency.

§ 513.36 UNDER WHAT CONDITIONS WILL THE COMMISSION REFUND AMOUNTS COLLECTED BY SALARY OFFSET?

- (a) As the creditor agency, the Commission will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:
 - (1) The Commission determines that the debt is not owed; or
 - (2) An administrative or judicial order directs the Commission to make a refund.
- (b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 513.37 WHAT WILL THE COMMISSION DO AS THE PAYING AGENCY?

- (a) When the Commission receives a certification from a creditor agency that has complied with the Office of Personnel Management's requirements set out at 5 CFR 550.1109, the Commission will send the employee a written notice of salary offset.
 - (b) If the Commission receives an incomplete certification from a creditor agency, the Commission will return the certification with notice that the procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and a properly certified claim submitted before the Commission will take action to collect the debt from the employee's current pay account.
 - (c) Notice to a debtor will include:
 - (1) The Commission's receipt of a certification from a creditor agency;
 - (2) The amount of the debt and the deductions to be made, which may be stated as a percentage of disposable pay; and
 - (3) The date and pay period when the salary offset will begin.
 - (d) The Commission will provide a copy of the notice of salary offset to a creditor agency.
 - (e) The Commission will coordinate salary deductions under this subpart as appropriate.
 - (f) The Commission's payroll officer will determine the amount of the debtor's disposable pay and will implement the salary offset.
 - (g) The Commission may use the following types of salary debt collection:
 - (1) Lump sum offset. If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump sum offset.
 - (2) Installment deductions. The amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. If possible, installment payments will liquidate the debt in three years or less.
 - (3) Deductions from final check. A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, in order to liquidate the debt, whether the employee is leaving voluntarily or involuntarily.
 - (4) Deductions from other sources. If an employee subject to salary offset is leaving the Commission and the balance of the debt cannot be liquidated by offset of the final salary check, then the Commission may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards.
 - (h) When two or more creditor agencies are seeking salary offsets, the Commission's payroll office may, in its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.
 - (i) The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

§ 513.40 HOW WILL THE COMMISSION HANDLE DEBT COLLECTION THROUGH ADMINISTRATIVE WAGE GARNISHMENT?

This part adopts all the provisions of the administrative wage garnishment regulations contained in 31 CFR 285.11, promulgated by Treasury, which allow Federal agencies to collect debts from a debtor's non-Federal pay by means of administrative wage garnishment authorized by 31 U.S.C. 3720D, and in 5 CFR parts 581 and 582, promulgated by the Office of Personnel Management, which provides for garnishment orders for child support and/or alimony and commercial garnishment of federal employees' pay.