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PART 11—CLAIMS

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§ 11.1 General application.

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(a) *Application of Debt Collection Standards* . The provisions of 31 CFR parts 285, 900–904, as amended by the Secretary of the Treasury and the Attorney General,

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are applicable to debts and debt procedures within the jurisdiction of the Department of Homeland Security.

(b) *Authority.* The Chief Financial Officer of the Department of Homeland Security is delegated authority to administer this subpart and to redelegate authority under this subpart.

(c) *Application to DHS.* This subpart provides procedures for the collection of DHS debts, and for collection of other debts owed to the United States when a request for offset of a DHS payment is received by the DHS from another federal agency. This subpart applies to all of DHS, including all of its components. It applies to the DHS when collecting a DHS debt, to persons who owe DHS debts, and to Federal agencies requesting offset of a payment issued by the DHS as a payment agency (including salary payments to DHS employees).

(d) *Exclusions.* This subpart does not apply to debt arising from taxation under the Internal Revenue Act of 1986, as amended, or to any debt excepted from the FCCS, 31 CFR parts 900 through 904.

(e) *Non-exclusive procedure or remedy.* Nothing in this subpart precludes collection or disposition of any debt under statutes and regulations other than those described in this subpart. To the extent that the provisions of laws or other regulations apply, including the remission or mitigation of fines, penalties, forfeitures and debts arising under the tariff laws of the United States, DHS components are authorized to collect debts under those laws and regulations. DHS components and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

(f) *Additional policies and procedures.* DHS components may, but are not required to, promulgate additional policies and procedures consistent with this subpart and other applicable Federal law, policies, and procedures.

(g) *Duplication not required.* Nothing in this subpart requires DHS to duplicate notices or administrative proceedings required by contract, this subpart, or other laws or regulations.

(h) *No private rights created.* This subpart does not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of any DHS component to comply with any of the provisions of this subpart or 31 CFR parts 285, 900–904 be a defense to the collection of any debt or enforcement of any other law.

§ 11.2 Definitions.

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In addition to the definitions provided in 31 CFR parts 285, 900–904, as used in this subpart:

(a) *Department of Homeland Security* or *DHS* means the United States Department of Homeland Security and includes the Secretary and any DHS entity which reports directly or indirectly to the Secretary.

(b) *DHS debt* means a debt owed to DHS by a person.

(c) *Secretary* means the Secretary of Homeland Security.

§ 11.3 Demand for payment.

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(a) *Notice requirements.* Generally, before DHS starts the collection actions described in this subpart, DHS sends a written notice to the debtor under 31 CFR 901.2. The notice provided under this section includes notice of any and all actions DHS may take to offset the debt, including any notices required under 31 CFR parts 285, 900–904.

(b) *Exceptions to notice requirements.* DHS may omit from any notice to a debtor any provision that is not legally required given the collection remedies to be applied to a particular debt.

§ 11.4 Collection by administrative offset.

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(a) *General Provisions for Offset.* DHS will collect debts by administrative offset pursuant to 31 CFR parts 900–904.

(b) *Centralized Offset through the Treasury Offset Program.* DHS adopts the provisions of 31 CFR 901.3.

(c) *Non-centralized Offset for DHS Debts.* When centralized offset is not available or appropriate, DHS may collect delinquent DHS debts through non-centralized offset. In these cases, DHS may offset a payment internally or make a request directly to a Federal payment agency to offset a payment owed to the debtor. Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, DHS will provide the debtor with the due process set forth in 31 CFR 901.3(b)(4) and the notice requirements of 31 CFR 901.2 (unless the due process and notice requirements are not required under that part). DHS will provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that DHS has fully complied with its regulations concerning administrative offset.

(d) *Hearing Procedures for Federal Employees* —(1) *Request for a hearing.* A Federal employee who has received a notice that his or her DHS debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in section 11.4(c). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (d)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, DHS should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* DHS must obtain the services of a hearing official who is not under the supervision or control of the Secretary. The DHS Chief Financial Officer will coordinate DHS efforts to obtain the services of a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official informs the employee of the form of the hearing to be provided. For oral hearings, the notice sets forth the date, time and location of the hearing. For paper hearings, the notice provides the employee the date by which he or she should submit written arguments to the designated hearing official. The hearing official gives the employee reasonable time to submit documentation in support of the employee's position. The hearing official schedules a new hearing date if requested by both parties. The hearing official gives both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official conducts an oral hearing if he or she determines the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

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

(ii) Informal meetings with an interview of the employee by the hearing official; or

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

(6) *Paper hearing.* If the hearing official determines an oral hearing is not necessary, he or she makes the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee waives the right to a hearing, and salary offset may be initiated. Further, the employee is deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If a DHS representative does not appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* DHS has the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may

present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official maintains a summary record of any hearing provided by this subpart. Witnesses testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official issues a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing but not later than 60 days after the date on which the request for hearing was received by DHS. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, DHS waives penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision includes:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision is final.

(f) *Waiver not precluded.* Nothing in this subpart precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary offset process* —(1) *Determination of disposable pay.* The Chief Financial Officer consults with the appropriate DHS payroll office to determine the amount of a DHS employee's disposable pay and will implement salary offset when requested to do so by a DHS component or another federal agency. If the debtor is not employed by DHS, the agency employing the debtor will determine the amount of the employee's disposable pay and implement salary offset upon request.

(2) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally is collected in one lump sum payment; or

(ii) Installment deductions are made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(3) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum

deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which DHS requested salary offset, the payment agency must certify the total amount of its collection and notify DHS and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such retirement payments that the debtor owes a debt, the amount of the debt, and that DHS has complied with the provisions of this section. DHS must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, DHS may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, is administratively offset to collect the debt. Generally, DHS will collect such monies through the Treasury Offset Program as described in this section.

(3) When an employee transfers to another agency, DHS should resume collection with the employee's new payment agency in order to continue salary offset.

§ 11.5 Administrative wage garnishment.

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DHS may collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D under the procedures established in 31 CFR 285.11.

§ 11.6 Reporting debts.

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DHS will report delinquent debts to credit bureaus and other automated databases in accordance with 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A-129, "Policies for Federal Credit Programs and Non-tax Receivables," which may be found at <http://www.fms.treas.gov/debt> . At least sixty (60) days prior to reporting a delinquent debt to a consumer reporting agency, DHS sends a notice to the debtor in accordance with 6 CFR 11.3. DHS may authorize the Treasury Department's Financial Management Service to report to credit bureaus those delinquent debts that have been transferred to the Financial Management Service for administrative offset.

§ 11.7 Private collection agencies.

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DHS will transfer delinquent DHS debts to the Treasury Department's Financial Management Service to obtain debt collection services provided by private

collection agencies.

§ 11.8 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

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The authority to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to DHS is delegated to the Chief Financial Officer.

§ 11.9 Collection in installments.

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DHS may accept payment of a DHS debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and policies and procedures adopted by the Chief Financial Officer (CFO). The CFO will consult the Office of General Counsel regarding a legally enforceable written agreement from the debtor.

§ 11.10 Interest, penalty charges, and administrative costs.

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(a) *Assessment and notice.* DHS shall assess interest, penalties and administrative costs on DHS debts in accordance with 31 U.S.C. 3717 and 31 CFR 901.9. Administrative costs of processing and handling a delinquent debt shall be determined by DHS.

(b) *Waiver of interest, penalties, and administrative costs.* DHS may waive interest, penalties, and administrative costs, or any portion thereof, under the criteria in the FCCS, or when it determines the collection of these charges would be against equity and good conscience or not in the best interests of the United States. The authority to waive interest, penalties and administrative costs is delegated to the Chief Financial Officer. The DHS Chief Financial Officer shall issue written guidance on maintaining records of waivers.

(c) *Accrual during suspension of debt collection.* Interest and related charges will not accrue during the period a hearing official does not render a timely decision.

§ 11.11 Compromise.

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DHS may compromise a debt in accordance with the provisions of 31 CFR part 902. The Chief Financial Officer is authorized to compromise debts owed to DHS. No debt over \$10,000 may be compromised without the concurrence of the Office of the General Counsel.

§ 11.12 Suspending or terminating collection activity.

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DHS will suspend or terminate collection activity, or discharge indebtedness, in accordance with 31 CFR part 903. The Chief Financial Officer is delegated authority to suspend or terminate collection activity, or to discharge indebtedness regarding debts owed to DHS, but for any such action involving a debt over \$10,000, the Chief Financial Officer must obtain the concurrence of the Office of the General Counsel. The Chief Financial Officer is authorized to act on behalf of the Secretary in selling a debt, and in determining whether or not it is in the best interests of the United States to do so.

§ 11.13 Referrals to the Department of Justice.

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Referrals of debts to the Department of Justice for collection will be by the General Counsel.

§ 11.14 Receipt of offset requests by other Federal agencies.

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Other Federal agencies send non-centralized offset requests to DHS at: U.S. Department of Homeland Security, Attn: Chief Financial Officer, Mail Stop 0200, Washington, DC 20528-0200. Those agencies must comply with 31 CFR 901.3 when forwarding the requests to DHS. DHS does not review the merits of the creditor agency's determination with regard to the existence or the amount of the debt. When two or more agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, DHS may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously. For the purposes of this section, debts owed to DHS generally take precedence over debts owed to other agencies, but DHS may pay a debt to another agency prior to collecting for DHS. DHS determines the order of debt collection based upon the best interests of the United States.

§ 11.15 Applying the debt against DHS payments.

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(a) *Notice to the Debtor.* DHS sends a written notice to the debtor indicating a certified debt claim was received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the estimated date the offset will begin (if more than one payment), and the amount of the deduction(s). For employees, DHS generally begins deductions from pay at the next officially established pay interval. Deductions continue until DHS knows the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. If a DHS employee retires or resigns, or if his or her employment ends before collection of the debt is complete, DHS continues to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by DHS. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m). If the employee is separated

from DHS before the debt is paid in full, DHS will certify to the creditor agency the total amount of its collection. If DHS is aware the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, DHS provides written notice to the agency making such retirement payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in section 11.4.

(b) *Notice to the debtor.* DHS provides to the debtor a copy of any notices sent to the creditor agency under this subpart.

(c) *Transfer of employee debtor to another Federal agency.* If an employee debtor transfers to another Federal agency before the debt is paid in full, DHS notifies the creditor agency and provides it a certification of the total amount of its collection on the debt. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

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