

Department of State

§ 213.11

(1) Requesting waiver of erroneous payment of salary, travel, transportation and relocation expenses and allowances;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount of validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under subpart A or other regulations.

§ 213.9 Coordinating offset with another federal agency.

(a) *When AID is owed the debt.* When AID is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until AID provides the agency with a written certification that the debtor owes AID a debt (including the amount and basis of the debt and the due date of payment) and that AID has complied with these regulations.

(b) *When another agency is owed the debt.* AID may use salary offset against one of its employees 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 basis of the debt and the due date of payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 213.10 Determination of indebtedness.

(a) In determining that an employee is indebted to AID and that 4 CFR parts 101 through 105 have been satisfied and that salary offset is appropriate, AID will review the debt to make sure that it is valid and past due.

(b) If AID determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until AID is assured that the requirements have been met.

§ 213.11 Notice requirements before offset.

Except as provided in § 213.8, salary offset will not be made unless AID first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary ("Notice of Intent") will state:

(a) That AID has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) AID's intention to collect the debt by salary offset, i.e. by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the salary intent;

(d) An explanation of that late payment, penalties and administrative costs will be charged in accordance with § 213.4, unless excused in accordance with § 213.4(c);

(e) The employee's right to inspect and copy agency records relating to the debt;

(f) The employee's right to enter into a written agreement with AID for a repayment schedule differing from that proposed by AID, so long as the terms of the repayment schedule proposed by the employee are agreeable to AID;

(g) The right to a hearing conducted by a hearing official on AID's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a request for a hearing filed by the employee as prescribed by § 213.12;

(h) That the timely filing of a request for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the request for a hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

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(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an AID official to whom communications should be directed.

§213.12 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a request for a hearing, that is received by AID not later than 30 calendar days from the date of AID's notice described in §213.11 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) AID's proposed offset schedule (including percentage).

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) If the employee files a request for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

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§213.13 Result if employee fails to meet deadlines.

An employee waives the right to a hearing and will have his or her disposable pay offset in accordance with offset schedule set forth in the Notice of Intent if the employee:

(a) Fails to file a petition for a hearing as prescribed in §213.12; or

(b) Is scheduled to appear and fails to appear at the hearing.

§213.14 Hearings.

(a) If an employee timely files a request for a hearing under §213.12 AID shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) AID will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§213.15 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing; and

(d) The amount, frequency, beginning date and duration of the salary offset, if applicable.