

§ 34.17

States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay or ministerial adjustments in pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

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

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

(3) Questioning the amount or 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.

§ 34.17 Coordinating offset with another federal agency.

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

(b) When another agency is owed the debt, STATE may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification 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 as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

22 CFR Ch. I (4-1-03 Edition)

§ 34.18 Notice requirements before offset.

Except as provided in § 34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(a) That STATE has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(b) The intention of STATE to collect the debt 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 intended deductions;

(d) The requirement to assess and collect interest, penalties, and administrative costs, or waiver are in accordance with § 34.4, unless excused in accordance with § 34.4(a)(6);

(e) The employee's right to inspect and copy any STATE records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The opportunity (under terms agreeable to STATE) to enter into a written agreement establishing a repayment schedule of the debt in lieu of offset;

(g) The right to a hearing conducted by an official (administrative law judge or a hearing official not under the control of STATE) with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. the percentage of disposable pay to be deducted each pay period), so long as a request for a hearing is filed by the employee as prescribed in § 34.19;

(h) That the timely filing of a request for hearing within 30 calendar days after receipt of the notice of intent to offset will stay the commencement of collection proceedings;

(i) That the Department will initiate procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

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

(k) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729-3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

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

(m) That the amounts paid on or deducted from 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;

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

(o) The name and address of the STATE official to whom communications should be directed.

[54 FR 13365, Apr. 3, 1989; 54 FR 28416, July 16, 1989]

§ 34.19 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 STATE not later than 30 calendar days from the date of STATE's notice described in § 34.18 if an employee wants a hearing concerning:

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

(2) STATE's proposed offset schedule.

(b) The request must be signed by the employee and should identify and ex-

plain 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) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for hearing later than the required 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).

(e) An employee waives the right to a hearing and will have his or her disposable pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph (a) of this section or fails to appear at the scheduled hearing.

§ 34.20 Hearings.

(a) If an employee timely files a request for a hearing under § 34.19, STATE shall select the time, date, and location of the hearing.

(b) Hearings shall be conducted by a hearing official not under the control or authority of STATE.

(c) Procedure.

(1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.