

(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.

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(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, 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; or

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

(3) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(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.

(6) *Failure to appear.* In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown. Both parties shall

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be given reasonable notice of the time and place of the new hearing.

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§ 34.21 Review of STATE records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy agency records related to the debt must send a letter to the official designated in § 34.18(o) stating his or her intention. The letter must be received by STATE within 30 calendar days after receipt of the notice of intent to offset.

(b) *STATE's response.* In response to a timely notice submitted by the debtor as described in paragraph (a) of this section, STATE will notify the employee of the location and time when the employee may inspect and copy STATE records related to the debt.

§ 34.22 Written agreement to repay as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to the notice of intent to offset, a written agreement to repay the debt as an alternative to salary offset. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by STATE within 30 calendar days of the notice.

(b) *STATE's response.* STATE will notify the employee whether the proposed written agreement for repayment is acceptable. It is within STATE's discretion to accept a repayment agreement instead of proceeding by offset.

(c) *Procedures.* If the employee and STATE enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the agreement provisions and the procedures of § 34.23 will not apply.

§ 34.23 Procedures for salary offset.

Unless STATE agrees and regulations do not provide otherwise, the following procedures apply:

(a) *Method.* Salary offset will be made by deduction at one or more officially