

§ 34.21

(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.

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

§ 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