

## § 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

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

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

established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

(c) *Types of collection*—(1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

(d) *When deductions may begin.* (1) Salary offset will begin on the date stated in the notice as provided in §34.18, unless a hearing is requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision.

(e) *Additional offset provisions*—(1) *Liquidation from final check.* If employment ends before salary offset is completed, the remaining debt will be liquidated by offset from payment of any nature due the employee from STATE (e.g. final salary payment, lump-sum leave, etc.).

(2) *Offset from other payments.* If the debt cannot be liquidated by offset

from any final check, the remaining debt will be liquidated by offset from later payments of any kind due the former employee from the United States, inclusive of retirement or disability funds pursuant to §34.10 of this regulation.

#### §34.24 Non-waiver of rights by payments.

So long as there are no statutory or contractual provision to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

#### §34.25 Refunds.

(a) STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) STATE is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

### PART 35—PROGRAM FRAUD CIVIL REMEDIES

#### Sec.

- 35.1 General.
- 35.2 Definitions.
- 35.3 Basis for civil penalties and assessments.
- 35.4 Investigation.
- 35.5 Review by the reviewing official.
- 35.6 Prerequisites for issuing a complaint.
- 35.7 Complaint.
- 35.8 Service of complaint.
- 35.9 Answer.
- 35.10 Default upon failure to file an answer.
- 35.11 Referral of complaint and answer to the ALJ.
- 35.12 Notice of hearing.
- 35.13 Parties to the hearing.
- 35.14 Separation of functions.
- 35.15 Ex parte contacts.
- 35.16 Disqualification of reviewing official or ALJ.
- 35.17 Rights of parties.
- 35.18 Authority of the ALJ.
- 35.19 Prehearing conferences.
- 35.20 Disclosure of documents.
- 35.21 Discovery.