

Office of the Secretary, Education

§ 32.9

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary:

(1) Notifies the employee whether the employee may elect an oral hearing; and

(2) Provides the hearing official with a copy of all records on which the determination of the overpayment and any involuntary repayment schedule are based.

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 7 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) Where an employee requests an oral hearing, the hearing official notifies the Secretary and the employee of the date, time, and location of the hearing. However:

(1) The employee subsequently may elect to have the hearing based only on the written submissions by notifying the hearing official and the Secretary at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause when the employee notifies the hearing official before the date of the hearing; and

(2) The request for a hearing of an employee who fails to appear at the oral hearing must be dismissed and the Secretary's decision affirmed.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.7 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The Secretary and the employee, through their representatives, and by reference to the documentation submitted, explain their case. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant.

(b) The hearing official shall:

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person whose representation creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing where to do so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call—

(1) If the employee is located in a city outside the Washington, DC Metropolitan area;

(2) At the request of the employee; or

(3) At the discretion of the hearing official.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.8 Pre-offset hearing on the written submissions.

If a hearing is to be held on the written submissions, the hearing official reviews the records and responses submitted by the Secretary and the employee under § 32.6.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.9 Written decision.

(a) The hearing official issues a written decision stating the facts supporting the nature and origin of the debt and the hearing official's analysis, findings and conclusions as to the amount of the debt and the repayment schedule within 60 days of filing of the employee's request for a pre-offset hearing, unless the employee requests, and the hearing official grants, a delay in the proceedings.

(b) The hearing official decides whether the Secretary's determination of the existence and the amount of the overpayment or the extreme financial hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing official, considering the record as a whole, is