

starts. This petition shall be filed directly with the accounting or finance office of the DOT creditor operating element which shall make appropriate hearing arrangements consistent with law and regulations. The DOT creditor operating element shall provide an explanation of the rights of the employee. If a hearing is provided, the following issues shall be heard:

(1) The determination of the DOT creditor operating element concerning the existence and amount of the debt; and

(2) The terms of the repayment schedule, if not previously established by written agreement between the employee and the DOT creditor operating element. (See §92.21(c) regarding copy of written decision by hearing officer describing method and amount of salary offset).

**§92.9 Exceptions to notice, hearing, written response, and final decision.**

(a) *Exceptions.* The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in §92.9(b).

(b) *Simplified procedures to be followed.* In the event that a retroactive deduction from pay or allowances is required to recover an insufficiency of deductions arising through normal processing delays, and those insufficient deductions did not occur in more than four pay periods, rather than following the specific procedures required by 5 U.S.C. 5514(a)(2), and set forth in §92.11 through §92.17 of this part, the DOT creditor operating element shall issue in advance of the collection a simplified notice to the employee that:

(1) Because of the employee's election for changes in voluntary payroll deduction, corresponding deductions shall be imposed on the employee's salary to cover the period between the effective date of the election and the first regular withholding. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future pay will be reduced to permit the DOT creditor operating element to recover any excess pay or allowances received by the employee. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer.

(c) *Limitation on exceptions.* The exceptions described in paragraph (a) of this section shall not include a recovery required to be made for any reason other than routine processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively recovered is less than four pay periods. If normal processing delays exceed four pay periods, then the full procedures prescribed under 5 U.S.C. 5514 and §§92.11 through 92.17 of this part will be extended to the employee.

[53 FR 4171, Feb. 12, 1988, as amended at 53 FR 51279, Dec. 21, 1988]

**§92.11 Demand for payment.**

(a) The DOT creditor operating element shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal (see also §92.21(a)). Other information may also indicate that additional written demands are unnecessary.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the indebtedness;

(2) The amount of the claim;

(3) The date by which payment is to be made;

(4) The debtor's liability for interest, penalties and administrative charges in accordance with 31 U.S.C. 3717 and §92.35 of this part, if payment is not received within 30 days of the due date (see §92.35 for details regarding interest, penalties and administrative costs);

(5) The intent of the agency to collect by salary offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor:

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(i) Has not made payment by the payment due date;

(ii) Has not requested a review of the claim within the agency as set out in paragraph (b)(8) of this section; or

(iii) Has not made an arrangement for payment by the payment due date;

(6) The possible submission of claims to a collection agency or referral to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR part 105.

(7) The right of the debtor to inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the inspection and copying of these records shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which he or she intends to inspect and copy the records involved.

(8) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or in part, the debtor shall respond to the demand by making a request in writing for a review of the claim within the agency by the payment due date stated in the demand. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion shall be paid by the due date. The DOT creditor operating element shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the DOT operating element either sustains or amends its determination, it shall notify the debtor of its intent to collect by salary offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(9) The right of the debtor to offer to make a written agreement to repay the amount of the claim (see § 92.23). The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the DOT creditor operating element will analyze the debtor's financial condi-

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tion. Depending on its evaluation of the financial strength of the debtor, the DOT operating element may agree to a written installment repayment schedule with the debtor. The debtor shall execute a confession of judgment note which specifies all of the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest, penalties and administrative charges shall be provided in the note (see § 92.35). The debtor shall be provided with a written explanation of the consequences of signing a confession of judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of evidence of these facts shall be maintained in the agency's file on the debtor.

(10) The right to an oral hearing or a hearing based on written submissions conducted by an administrative law judge or by a hearing official not under the control of the head of the Department in accordance with § 92.13 of this part.

(11) The consequences of any knowingly false statements, representations, or evidence provided by the employee, which may include:

(i) Disciplinary procedures under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002, or any other applicable statute; or,

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729, *et seq.*, or any other applicable statute.

(12) Proceedings under any other statutory authority for the collection of claims of the DOT operating element.

(13) The fact that 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.

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(14) The name, address, and telephone number of the accounting or finance officer who may be contacted if the employee wishes to review the records or to obtain information.

### § 92.13 Request for hearing.

(a) The employee shall be advised in the notification that a hearing may be requested by filing a written petition within 15 calendar days of receipt of the notification, addressed to the chief of the paying agency's accounting or finance office.

(b) The petition shall state the grounds upon which the employee disputes the proposed collection of the alleged debt. The petition shall identify and explain with reasonable specificity the facts, evidence which, and witnesses who the employee believes support his or her position.

(c) The timely filing of a petition for hearing shall stay any further collection proceedings. A decision by the administrative law judge or other hearing official (see § 92.5(j)) will be issued at the earliest practical date, but no later than 60 days after the filing of a petition for hearing, unless a delay is granted at the request of the employee.

### § 92.15 Request for hearing after time expires.

The Department may accept late requests for a hearing if the employee can show that delay in requesting a hearing beyond the period provided in the notice described in § 92.11 of this part was caused by circumstances beyond his or her control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it) or because of new information.

### § 92.17 Form of hearings and written decisions.

(a) Hearings shall consist of informal conferences before an administrative law judge or other hearing official (see § 92.5(j)) in which the employee and the DOT creditor operating element are given full opportunity to present evidence, witnesses, and argument. The DOT operating element will maintain a summary record of a hearing provided under these procedures.

(b) Written decisions provided after a request for hearing shall, at a minimum, summarize the evidence alleged to substantiate the nature and origin of the alleged debt; the administrative law judge's or other hearing official's analysis, findings, and conclusions; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

(c) A copy of the administrative law judge's or other hearing official's final decision shall be provided to the employee as well as the chief of the office authorized to collect debts by deduction from salary.

(d) The decision of the administrative law judge or other hearing official shall be final and binding on the parties.

### § 92.19 Obtaining the services of a hearing official.

(a) Where a DOT operating element is the creditor agency, the chief of the appropriate accounting or finance office shall schedule a hearing before an administrative law judge or other hearing official.

(b) If another (non-DOT) agency is the creditor agency, then it is the responsibility of that agency to arrange for a hearing if one is requested.

(c) Agents for the paying agency are designated in appendix A to 5 CFR part 581. (This appendix lists the agents designated to accept legal process for the executive branch, the U.S. Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.)

### § 92.21 Deduction from pay.

(a) After other, less severe collection actions have failed, the DOT operating element (see § 92.5(g)) may implement steps to obtain collection by salary offset. The method and the amount of the salary offset shall be the method and amount stated in the creditor agency's demand letter (see § 92.11) or notice (see § 92.7), or, if applicable, in the decision of an administrative law judge or other hearing official after an employee-requested hearing on the matter. If a DOT operating element is the creditor, the procedures stated in § 92.11 shall be followed.