

§ 1450.22

29 CFR Ch. XII (7-1-04 Edition)

and administrative costs (subpart D of this regulation), a statement that such assessment must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be writing, signed by both the employee and the Director of the Financial Management Staff of FMCS, and documented in agency files (4 CFR 102.11).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by § 1450.22.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) 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 petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

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

(ii) Penalties under the False Claims Act sections 3729-3731 of title 31, U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, U.S.C., or any other applicable statutory authority.

(12) Any other right and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owned to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date and time of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required of FMCS for any adjustment to pay arising out of an employee's election of coverage under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1450.22 Hearing.

(a) *Petition for hearing.* (1) A hearing may be requested by filing a written petition with the Director, Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteen (15) calendar day deadline referred to above, FMCS will nevertheless accept the petition 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 time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a)(3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by FMCS.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of FMCS. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer will be in writing, and will state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

§ 1450.23 Deduction from pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States should be collected in full, in one lump-sum. This will be done when funds are available. However, if funds are unavailable for payment in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval,

collection will normally be made in installments.

(2) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following written consent by the employee to salary offset, waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in § 1450.24.

§ 1450.24 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance on the debt may be made from a final payment of any nature, including but not limited to, final salary payment or lump-sum leave due to the employee as of the date of separation.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1450.11 of this regulation.

§ 1450.25 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1450.26 Refunds.

(a) Refunds shall promptly be made when—

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