

§ 31.3

34 CFR Subtitle A (7-1-04 Edition)

Offset means a deduction from the pay of an employee, or a payment due from the Federal retirement account of an employee, to satisfy a debt.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay or lump sum payments for accrued annual leave, and amounts payable from the Federal retirement account of an employee.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

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

§31.3 Pre-offset notice.

(a) At least 65 days before initiating an offset against the pay of an employee, the Secretary sends a written notice to the employee stating—

(1) The nature and amount of the debt;

(2) A demand for payment of the debt;

(3) The manner in which the Secretary charges interest, administrative costs, and penalties on the debt;

(4) The Secretary's intention to collect the debt by offset against—

(i) 15 percent of the employee's current disposable pay; and

(ii) If the debt cannot be satisfied by offset against current disposable pay, a specified amount of severance pay, a lump sum annual leave payment, a final salary check, or payments from the Federal retirement account of the employee;

(5) The amount, frequency, approximate beginning date and duration of the proposed offset;

(6) The employee's opportunity to—

(i) Inspect and copy Department records pertaining to the debt;

(ii) Obtain a pre-offset hearing before a hearing official who is not under the control or supervision of the Secretary regarding the existence or amount of the debt, or the proposed offset schedule; and

(iii) Enter into a written agreement with the Secretary to repay the debt;

(7) The date by which the employee must request an opportunity set forth under paragraph (a)(6) of this section;

(8) The grounds for objecting to collection of the debt by offset;

(9) The applicable hearing procedures and requirements;

(10) That the Secretary grants any request for access to records, for a hearing, or for a satisfactory repayment agreement made by an employee;

(11) That the Secretary does not delay the start of the proposed offset, or suspend an offset already commenced, unless—

(i) An employee makes the request for access to records or for a hearing, or enters into a repayment agreement that is acceptable to the Secretary, before the deadlines described in this part; or

(ii) An employee requests a hearing after the deadlines established in §31.5(a), but submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was prevented from making the request by factors beyond his or her control, until after the deadlines had passed;

(12) That a final decision on the hearing will be issued not later than 60 days after the date on which the employee files a request for a hearing under §31.5, unless a delay in the proceedings is granted at the request of the employee;

(13) That submission by the employee of knowingly false statements, representations or evidence may subject the employee to applicable disciplinary procedures, or civil or criminal penalties; and

(14) That any amounts paid or collected by offset on a debt later determined to be unenforceable or canceled will be refunded to the employee.

(b)(1) In determining whether an employee has requested an opportunity set forth under paragraph (a)(6) of this section in a timely manner, the Secretary relies on—

(i) A legibly dated U.S. Postal Service postmark for the employee's request; or

(ii) A legibly stamped U.S. Postal Service mail receipt for the employee's request.

(2) The Secretary does not rely on either of the following as proof of mailing:

- (i) A private metered postmark.
- (ii) A mail receipt that is not dated by the U.S. Postal Service.

(c) Payment by offset under this part of all or part of a debt does not constitute an acknowledgment of the debt or a waiver of rights available to the employee under this part or other applicable law if the employee has not agreed in writing to the offset.

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

§31.4 Request to inspect and copy documents relating to a debt.

(a) The Secretary makes available for inspection and copying before offset under this part those Department documents that relate to the debt, if the employee—

(1) Files a written request to inspect and copy the documents within 20 days of the date of the pre-offset notice under §31.3, and

(2) Files the request at the address specified in that notice.

(b) A request filed under paragraph (a)(1) of this section must contain—

(1) All information provided to the employee in the pre-offset notice under §31.3 that identifies the employee and the debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections of that identifying information; and

(2) A reasonably specific identification of the documents that the employee wishes to have available for inspection and copying.

(c) The Secretary makes available documents for inspection and copying upon request by the employee. However, the Secretary may initiate an offset before making the requested documents available if the employee fails to request inspection and copying in accordance with this section.

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

§31.5 Request for hearing on the debt or the proposed offset.

(a) *Deadlines.* (1) The Secretary provides a hearing before offset on the existence, amount, or enforceability of the debt described in the pre-offset notice

provided under §31.3, or on the amount or frequency of the offsets as proposed in that notice, if the employee—

(i) Files a request for the hearing within the later of—

(A) 65 days after the date of the pre-offset notice provided under §31.3; or

(B) 15 days after the date on which the Secretary makes available to the employee the relevant, requested documents if the employee had requested an opportunity to inspect and copy documents within 20 days of the date of the pre-offset notice provided under §31.3; and

(ii) Files a request at the address specified in that notice.

(2) The Secretary provides a hearing upon request by the employee. However, if the employee does not submit, within the deadlines in paragraph (a)(1) of this section, a request that meets the requirements of paragraphs (b) and (c) of this section, the Secretary does not delay the start of an offset, or suspend an offset already commenced, unless the employee submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was otherwise prevented from making the request by factors beyond his or her control, until after the deadlines had passed.

(b) *Contents of request for a hearing.* A request for a hearing must contain—

(1) All information provided to the employee in the pre-offset notice under §31.3 that identifies the employee and the particular debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections needed with regard to that identifying information;

(2) An explanation of the reasons why the employee believes that—

(i) The debt as stated in the pre-offset notice is not owing or is not enforceable by offset; or

(ii) The amount of the proposed offset described in the pre-offset notice will cause extreme financial hardship to the employee;

(3) If the employee contends that the amount of the proposed offset will