

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 left with a definite and firm conviction that a mistake was made.

(c) In making the decision, the hearing official is governed by applicable Federal statutes, rules and regulations.

(d) The hearing official decides the issue of extreme financial hardship caused by the involuntary repayment schedule only where the employee has submitted the financial statement and written explanation required under § 32.4(c). Where the hearing official determines that the involuntary repayment schedule creates extreme financial hardship, he or she must establish a schedule that alleviates the financial hardship but may not reduce the involuntary repayment schedule to a deduction of zero percent.

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

§ 32.10 Deductions process.

(a) Debts must be collected in one lump sum where possible. If the employee does not agree to a lump sum that exceeds 15 percent of disposable pay, the debt must be collected in installment deductions at officially established pay intervals in the amount established under:

(1) A voluntary repayment agreement;

(2) An involuntary repayment schedule where no hearing is requested; or

(3) The schedule established under the written hearing decision.

Pt. 33

(b) Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (d) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than \$25 may be accepted only in the most unusual circumstances.

(c) Deductions must begin:

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under §32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under §32.5, after a written decision.

(d) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment and/or lump sum annual leave payment) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate. After the Secretary has complied with the procedures in this part, the Secretary may refer the debt to a paying agency for collection by offset under 5 CFR 550.1108.

(e) Interest, penalties and administrative costs on debts collected under this part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(f) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this part may not be construed as a waiver of any rights which the employee may have under this part or any other provision of law, except as otherwise provided by law.

(g) Amounts paid or deducted pursuant to this part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to re-

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

fund must be promptly refunded to the employee.

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

PART 33—PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

- 33.1 Basis and purpose.
- 33.2 Definitions.
- 33.3 Basis for civil penalties and assessments.
- 33.4 Investigation.
- 33.5 Review by the reviewing official.
- 33.6 Prerequisites for issuing a complaint.
- 33.7 Complaint.
- 33.8 Service of complaint.
- 33.9 Answer.
- 33.10 Default upon failure to file an answer.
- 33.11 Referral of complaint and answer to the ALJ.
- 33.12 Notice of hearing.
- 33.13 Parties to the hearing.
- 33.14 Separation of functions.
- 33.15 Ex parte contacts.
- 33.16 Disqualification of reviewing official or ALJ.
- 33.17 Rights of parties.
- 33.18 Authority of the ALJ.
- 33.19 Prehearing conferences.
- 33.20 Disclosure of documents.
- 33.21 Discovery.
- 33.22 Exchange of witness lists, statements and exhibits.
- 33.23 Subpoenas for attendance at hearing.
- 33.24 Protective order.
- 33.25 Fees.
- 33.26 Form, filing and service of papers.
- 33.27 Computation of time.
- 33.28 Motions.
- 33.29 Sanctions.
- 33.30 The hearing and burden of proof.
- 33.31 Determining the amount of penalties and assessments.
- 33.32 Location of hearing.
- 33.33 Witnesses.
- 33.34 Evidence.
- 33.35 The record.
- 33.36 Post-hearing briefs.
- 33.37 Initial decision.
- 33.38 Reconsideration of initial decision.
- 33.39 Appeal to Department head.
- 33.40 Stays ordered by the Department of Justice.
- 33.41 Stay pending appeal.
- 33.42 Judicial review.
- 33.43 Collection of civil penalties and assessments.
- 33.44 Right to administrative offset.
- 33.45 Deposit in Treasury of United States.
- 33.46 Compromise or settlement.
- 33.47 Limitations.

AUTHORITY: 31 U.S.C. 3801-3812.