

General Services Administration

§ 105-56.010

make a determination on the claim which takes into account that party's position as presented in writing only.

§ 105-56.007 Pre-offset oral hearing.

(a) The Agency, represented by the appropriate program official or a representative of the Office of General Counsel, and the employee, and/or his or her representative, will explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross-examination. Other witnesses may be called to testify when the hearing official determines the testimony to be relevant and not redundant. All witnesses will testify under oath, with the oath having been administered by the hearing official. A written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701-706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(b) The hearing official will—

(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 of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

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

(e) Oral hearings may be conducted by telephone at the request of the employee. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) The hearing official may request written submissions and documentation from the employee and the Agency, in addition to considering evidence offered at the hearing.

§ 105-56.008 Pre-offset paper hearing.

If a hearing is to be held only upon written submissions, the hearing official will issue a decision based upon the record and responses submitted by both the Agency and the employee. See § 105-56.006 of this subpart. If either party, without good cause as determined by the hearing official, does not provide written submissions and documentation requested by the hearing official, the hearing official will make a determination on the claim without reference to such submissions and documentation.

§ 105-56.009 Written decision.

(a) Within 60 days of the employee's filing of a petition for a pre-offset hearing, the hearing official will issue a written decision setting forth—

(1) The facts supporting the nature and origin of the debt;

(2) The hearing official's analysis, findings and conclusions as to the employee's or Agency's grounds;

(3) The amount and validity of the debt; and

(4) The repayment schedule, if applicable.

(b) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 105-56.010 Deductions.

(a) *When deductions may begin.* Deductions may begin upon the issuance of an Agency decision on a request for reconsideration or waiver (except as provided in § 105-56.005(b) of this subpart) or the issuance of a decision in a pre-offset hearing. In no event will deductions begin sooner than thirty days from the date of the notice letter. If the employee filed a petition for hearing with the appropriate program official before the expiration of the period provided for in § 105-56.006 of this subpart, then deductions will begin after the hearing official has provided the employee with a hearing and the final written decision. The appropriate program official will coordinate with the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt will be collected according to the procedures for administrative offset pursuant to § 105-55.011 of this subpart.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump sum unless the employee is able to demonstrate to the program official who signed the notice letter that he or she is financially unable to pay in one lump sum. In these cases, collection will be by installment deductions. Involuntary deductions from pay may not exceed 15 percent of disposable pay.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the appropriate program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the appropriate program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will 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. The installment payment normally will be sufficient in size and frequency to liquidate the debt in three (3) years or less, unless circumstances warrant a longer period. Installment payments of less than \$100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make salary deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) *Non-Salary payments.* The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

(f) *Interest, penalties and administrative costs.* Interest, penalties and administrative costs on debts under this subpart will be assessed according to the provisions of § 105-55.016 of this subpart.

§ 105-56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will 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 there are statutory or contractual provisions to the contrary.

§ 105-56.012 Refunds.

(a) GSA will promptly refund to the employee any amounts offset under these regulations when a debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation), or GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay or withheld from non-salary payments.

(b) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

§ 105-56.013 Coordinating offset with another Federal agency.

GSA participates in the Centralized Salary Offset (CSO) program (*see* subparts B and C of this part). In those instances when CSO cannot be utilized (*i.e.*, when another agency does not participate in the program), the following procedures apply:

(a) *When GSA is the creditor agency.* When GSA is owed a debt by an employee of another agency, GSA will provide the paying agency with a written certification that the debtor owes GSA a debt and that GSA has complied