

## § 20.79

Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

### **§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.**

Following receipt of the notice specified in § 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

### **§ 20.80 Opportunity for repayment.**

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

### **§ 20.81 Review of the obligation.**

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative

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law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtor. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines that:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) An individual debtor requests reconsideration of the debt and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or

(3) In other situations in which the administrative law judge deems an oral hearing appropriate.

Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initiate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor 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).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: The facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any changes in the information to the extent such information differs from that provided in the notification under § 20.78(b).

(Approved by the Office of Management and Budget under control number 1225-0038)

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**§ 20.82 Cooperation with other DOL agencies and Federal agencies.**

(a) Appropriate use should be made of the cooperative efforts of other DOL and Federal agencies in effecting collection by salary offset. Generally, paying agencies should comply with requests from other agencies to initiate salary offset to collect debts owed to the United States, unless the creditor

agency has not complied with applicable regulations or the request would otherwise be contrary to law.

(b) Unless otherwise prohibited by law, a DOL agency may request that the current pay account of a debtor in another DOL or Federal agency be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting a salary offset, the creditor DOL agency must provide the paying DOL agency or other paying Federal agency with written certification stating:

(1) That the debtor owes the creditor agency a debt (including the basis and amount of the debt);

(2) The date on which payment was due;

(3) The date on which the Government's right to collect the debt first accrued; and

(4) Where the paying agency is another federal agency, that the creditor agency's regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and that the creditor agency has followed such regulations to the best of its information and belief.

**§ 20.83 DOL agency as paying agency of the debtor.**

Whenever a salary offset is sought by another DOL or Federal agency from a paying DOL agency, the paying DOL agency should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification as described in § 20.82(b). Where the creditor agency is not another DOL agency, the creditor agency must certify that its regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management and that it, the creditor agency, has followed such regulations to the best of its information and belief. When the creditor agency is not also the paying DOL agency, the creditor agency should also be required to certify that if an administrative or judicial order is issued directing the paying DOL agency to pay a debtor an amount previously paid to the creditor agency, the creditor agency will reimburse the paying DOL agency or pay the debtor directly within 15 days of the date of the order.