

the request for a hearing should be sent;

(l) That the Board will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date the employee receives the notice of debt, unless the employee files a timely request for a hearing;

(m) 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;

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

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3733, or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 102, or any other applicable statutory authority;

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

(p) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed will be promptly refunded to the employee; and

(q) That proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1639.23 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the Board office designated in the notice of intent. See § 1639.22(k).

(1) The request for hearing must be signed by the employee and fully identify and explain with reasonable speci-

ficity all the facts, evidence, and witnesses, if any, that support his or her position.

(2) The request for hearing must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. Timely filing will stay the commencement of collection procedures.

(3) The employee must also specify whether an oral or written hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.* (1) If the employee files a request for a hearing after the expiration of the 15th calendar day period provided for in paragraph (a) of this section, the Board will accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Board's offset schedule, if the employee:

(i) Fails to file a request for a hearing and the failure is not excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified and the hearing official does not determine that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Board records related to the debt.* (1) In accordance with § 1639.22(e), an employee who intends to inspect or copy Board records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

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(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements will be made to send copies of those records to the employee.

(e) *Hearing official.* The Board may request an administrative law judge to conduct the hearing or the Board may obtain a hearing official who is not under the supervision or control of the Executive Director.

(f) *Procedure*—(1) *General.* After the employee requests a hearing, the hearing official will notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice will set forth the date, time, and location of the hearing. If the hearing will be written, the employee will be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record will be closed. This date will give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing, if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Witnesses who testify in oral hearings will do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Record determination.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart.

(g) *Date of decision.* The hearing official will issue a written decision, based upon documentary evidence and information developed at the hearing, as soon as practical after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In that case, the 60 day decision period will be extended by the number of days by which the hearing was postponed.

(h) *Content of decision.* The written decision will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(i) *Failure to appear.* (1) In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing will be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented by the representative(s) of the employee and the documentary documentation submitted by both parties.

(3) At the request of both parties, the hearing official will schedule a new hearing date. Both parties will be given reasonable notice of the time and place of this new hearing.

§ 1639.24 Certification.

(a) The Board will provide a certification to the paying agency in all cases in which:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.