

**§ 5.12 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 office designated in the notice of intent. See § 5.11(a)(8). The request (or petition) for hearing must be received by the designated office on or before the fifteenth (15) calendar day following receipt of the notice. The employee must also specify whether an oral or paper 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.* If the employee files a petition for a hearing after the expiration of the fifteen (15) calendar day period provided for in paragraph (a) of this section, the Department should 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 actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

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

(i) Fails to file a request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines failure to appear was due to circumstances beyond the employee's control (5 U.S.C. 5514).

(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 departmental records related to the debt.* (1) In accordance with 5.11(a)(5), an employee who intends to inspect or copy creditor agency 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 fifteen (15) calendar days after receipt of the notice.

(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 shall be made to send copies of such records to the employee.

(e) *Hearing official.* Unless the Department appoints an administrative law judge to conduct the hearing, the Department must obtain a hearing official who is not under the supervision or control of the Secretary of the Treasury.

(f) *Obtaining the services of a hearing official when the Department is the creditor agency.* (1) When the debtor is not a Department employee, and in the event that the Department cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Department may contact an agent of the paying agency designated in Appendix A to part 581 of title 5, *Code of Federal Regulations* or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Department employee, the Department may contact any agent of another agency designated in Appendix A to part 581 of title 5, *Code of Federal Regulations* or otherwise designated by that agency, to request a hearing official.

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

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(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.*, when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, 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) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (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 such case the sixty (60) day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall 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

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

(j) *Failure to appear.* In the absence of good cause shown (*e.g.*, excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his/her determination based upon the oral testimony presented and the documentary documentation submitted by both parties. At the request of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

### § 5.13 Certification.

(a) The bureau salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(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.

(b) The certification must be in writing and must state:

(1) The employee owes the debt;

(2) The amount and basis of the debt;

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

(4) The Department's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The amount and date of the lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(7) The dates the action(s) was taken and that it was taken pursuant to 5 U.S.C. 5514.