

§ 33.7

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(d) *Written decision.* (1) Date of decision. The hearing officer 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 hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the Departmental Appeals Board so as to not jeopardize the Board's ability to issue a decision within this 60-day period.

(2) *Content of decision.* The written decision shall include:

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

(ii) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

(iii) The terms of any repayment schedule, if applicable.

(e) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, 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 a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

45 CFR Subtitle A (10-1-09 Edition)

§ 33.7 Obtaining the services of a hearing official.

(a)(1) When the Department is the creditor agency, the office designated in § 33.4(a)(10) shall schedule a hearing, if one is requested by an employee, before a hearing official.

(2) When the Department cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in § 33.4(a)(10) may:

(i) When the debtor is not an employee of the Department, contact an agent of the employee's paying agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official; or

(ii) When the debtor is an employee of the Department, contact an agent of any agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official.

(b)(1) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. The Department will provide a hearing official upon the request of a creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) Services rendered to a creditor agency under paragraph (b)(1) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through

other means, such as offset of other Federal payments or litigation.

§ 33.8 Voluntary repayment agreement in lieu of salary offset.

(a)(1) In response to the notice of intent to offset, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request to the Department official designated in the notice of intent to offset. An employee who wishes to repay the debt without salary offset shall also submit a proposed written repayment agreement. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

- (i) Be in writing;
- (ii) Be signed by both the employee and the Department;
- (iii) Specify all the terms of the arrangement for payment; and
- (iv) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount.

(2) Any proposal under paragraph (a)(1) of this section must be received by the Department within 30 days of the date of the notice of intent to offset.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee whether the proposed repayment schedule is acceptable. It is within the Secretary's discretion to accept a proposed alternative repayment schedule, and to set the necessary terms of a voluntary repayment agreement.

(c) No voluntary repayment agreement will be binding on the Secretary unless it is in writing and signed by both the Secretary and the employee.

§ 33.9 Special review.

(a) A Department employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Secretary of the amount of the salary offset or voluntary repayment installments,

based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, e.g., food, housing, clothing, transportation, and medical care, the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (i) Income from all sources;
- (ii) Assets and liabilities;
- (iii) Number of dependents;
- (iv) Food, housing, clothing, transportation, and medical expenses; and
- (v) Exceptional and unusual expenses, if any.

(2) When requesting a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (b)(1) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c)(1) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee.

(2) Within 30 calendar days of the receipt of the request and supporting documents, the Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the Secretary shall provide a new certification to the paying agency.

§ 33.10 Procedures for salary offset.

(a) *Method and source of deductions.* Unless the employee and the Secretary have agreed to an alternative repayment arrangement under § 33.8, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the