

method and time period for requesting a hearing; that the timely request for a hearing will stay the commencement of collection proceedings; and that a final decision will be issued at the earliest practical date, but not later than 60 days after receipt of the hearing request;

(8) The employee's right to request a waiver under 5 U.S.C. 5584 or 5 U.S.C. 5524a, or compromise under 31 U.S.C. 3711;

(9) The making of any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority; and

(10) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee.

(b) *Exception to the advance notice requirement.* Advance notice under paragraph (a) of this section is not required:

(1) Where an adjustment to pay arises out of an employee's election of coverage, or change in coverage, under a Federal benefits program requiring periodic deductions from the employee's pay and the amount to be recovered was accumulated over four pay periods or less;

(2) Where a routine intra-agency adjustment of pay is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of

the adjustment and a point of contact for contesting such adjustment;

(3) Where any adjustment of pay to collect a debt amounting to \$50 or less is made, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment; or

(4) Where an employee consents to withholdings from his or her current pay account.

(c) *Receipt of notice of debt.* The Notice of Debt will be sent by certified mail, return-receipt requested. The date on which the return-receipt is signed is the date on which the employee is deemed to have received the Notice of Debt.

§ 1650.106 Right to inspect and copy records related to the debt.

An employee who desires to inspect or copy Commission records related to the debt must send a request to the official designated in the Notice of Debt. In response, the Commission will notify the employee of the location and time when the employee may inspect and copy the records or send copies of such records to the employee.

§ 1650.107 Voluntary repayment agreements.

(a) In response to a Notice of Debt, an employee may propose a written repayment schedule in lieu of the proposed salary offset. Any proposal under this subsection must be received by the office of the official designated in the notice within 15 calendar days after receipt of the Notice of Debt.

(b) It is within the Commission's discretion to accept or reject a voluntary repayment proposal. The Commission shall send the employee a written decision.

(c) If the Commission decides that the proposed repayment schedule is unacceptable, and that the written proposed repayment schedule was timely received, the employee shall have a further 15 days from the date he or she received the decision on the proposed repayment schedule in which to file a request for a hearing.

§ 1650.108

(d) If the Commission decides that the proposed repayment schedule is acceptable, the agreement shall be put in writing and signed by both the employee and the Commission.

§ 1650.108 Waiver.

The Commission may waive debts, to the extent authorized by 5 U.S.C. 5584, arising out of erroneous payments of pay, when collection would be against equity and good conscience and not in the best interests of the United States, and so long as there is no indication of fraud, fault, or lack of good faith on the part of the employee. Interest, penalties, and administrative costs may also be waived under 31 U.S.C. 3717(h) and 31 CFR 901.9(g), on a case-by-case basis, if collection would be against equity and good conscience and not in the best interests of the United States.

§ 1650.109 Hearing.

(a) *Request for a hearing.* An employee who wants a hearing on the existence of the debt, its amount, or on the proposed offset schedule must send a written request to the official designated in the Notice of Debt. The request for a hearing must be received by the designated office on or before the 15th calendar day following receipt by the employee of the Notice of Debt. The request must be signed by the employee and must contain a brief summary of the facts, evidence, and witnesses, if any, that the employee believes support his or her position. If the employee wants an oral hearing, the request must also explain why the matter cannot be resolved by review of documentary evidence alone (*e.g.*, how an issue of credibility or veracity is involved). Because proof of the existence or amount of a debt rarely requires an evaluation of the credibility of witnesses, oral hearings will only rarely be granted. The timely filing of a request for hearing shall automatically stay the commencement of collection proceedings.

(b) *Failure to timely submit.* If the request for hearing is late, the Commission may still grant the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed

29 CFR Ch. XIV (7–1–10 Edition)

to receive actual notice of the filing deadline.

(c) *Procedure—(1) Hearing official.* The hearing official will be an Administrative Law Judge or an individual who is not under the supervision or control of the Chair.

(2) *Notice.* The hearing official shall notify the employee whether the hearing will be oral or documentary. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 days after the request is received. If the hearing will be conducted by examination of documents, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(3) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, when credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. 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 are given a full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee and, as necessary, others with relevant evidence; or

(iii) Formal written submissions followed by an opportunity for oral presentation. Witnesses who testify in oral hearings shall do so under oath or affirmation.

(4) *Documentary hearing.* If an oral hearing is not necessary, the hearing official shall make the determination based upon a review of the written record.

(d) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Date of decision.* The hearing official shall issue a written decision as