

## Office of the Secretary, USDA

## § 3.78

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

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

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

### § 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

### § 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

### § 3.77 Hearing.

(a) If an employee timely files a petition for a hearing under section 3.75, USDA shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

### § 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines