

Judicial Officer, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Judicial Officer shall submit certification for payment to the Postal Data Center. The Postal Service will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[46 FR 45945, Sept. 16, 1981, as amended at 63 FR 66052, Dec. 1, 1998]

PART 961—RULES OF PRACTICE IN PROCEEDINGS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Sec.

- 961.1 Authority for rules.
- 961.2 Scope of rules.
- 961.3 Definitions.
- 961.4 Employee petition for a hearing.
- 961.5 Effect of filing a petition.
- 961.6 Filing, docketing, and serving documents; computation of time; representation of parties.
- 961.7 Answer to petition.
- 961.8 Hearing Official authority and responsibilities.
- 961.9 Opportunity for oral hearing.
- 961.10 Effect of Hearing Official's decision; motion for reconsideration.
- 961.11 Consequences for failure to comply with rules.
- 961.12 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 5 U.S.C. 5514.

SOURCE: 79 FR 22026, Apr. 21, 2014, unless otherwise noted.

§ 961.1 Authority for rules.

These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 961.2 Scope of rules.

The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514, challenging the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a

creditor Federal agency other than the Postal Service pursuant to an agreement between the Postal Service and that agency. In such cases, all references to Postal Service within these rules shall be construed to refer to the creditor Federal agency involved.

§ 961.3 Definitions.

As used in this part:

(a) *Employee* refers to a current employee of the Postal Service who is alleged to be indebted to the Postal Service; or to an employee of another Federal agency who is alleged to be indebted to that other creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.

(b) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(c) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514.

(d) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the United States Postal Service.

(e) *Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act* refers to the formal written notice required by section 5 of the Debt Collection Act, including the provision of notice of the procedures under this Part, before involuntary collection deductions can be taken from an employee's salary.

(f) *Postmaster/Installation Head* refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to make the initial determination of employee indebtedness and to issue the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

United States Postal Service

§ 961.5

(g) *Recorder* refers to the Recorder, Judicial Officer Department, U.S. Postal Service, located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Recorder's telephone number is (703) 812-1900, and the fax number is (703) 812-1901.

§ 961.4 Employee petition for a hearing.

(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, to challenge the Postal Service's determination of the existence or amount of a debt, or to challenge the involuntary repayment terms proposed by the Postal Service, the employee must file a written petition electronically at <https://uspsjoe.justware.com/justiceweb>, or by mail at Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Blvd., Suite 600, Arlington, VA 22201-3078, on or before the fifteenth (15th) calendar day following the receipt of the Postal Service's "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act." The Hearing Official, in his or her discretion may waive this deadline upon a demonstration of good cause. In the event that the Postal Service initiated involuntary administrative salary offsets without having issued a Notice as required by the Debt Collection Act, the Hearing Official, in his or her discretion, may retain authority to resolve the debt assessment as if a Notice had been issued, and may order the Postal Service to return any improperly offset money.

(b) A sample petition is available through the Judicial Officer Electronic Filing Web site (<https://uspsjoe.justware.com/justiceweb>). The hearing petition shall include the following:

(1) The words, "Petition for Hearing under the Debt Collection Act," prominently captioned at the top of the first page;

(2) The name of the employee, the employee's work address, home address, work telephone number, home telephone number, and email address, if any, or other address and telephone number at which the employee may be contacted during business hours;

(3) A statement of the date on which the employee received the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," and a copy of the Notice;

(4) A statement indicating whether the employee challenges:

(i) The existence of the debt identified in the Notice of Involuntary Administrative Salary Offsets;

(ii) the amount of the debt identified in the Notice; and/or

(iii) the involuntary repayment terms identified by the Postal Service in the Notice. For each challenge, the employee's petition shall indicate the basis of the employee's disagreement. The employee should identify and explain the facts, evidence, and legal arguments which support his or her position;

(5) Copies of all records in the employee's possession which relate to the debt; and

(6) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee, his or her spouse, and dependents, the employee shall identify an alternative offset schedule. As directed by the Hearing Official, the employee shall provide a statement and supporting documents indicating the employee's financial status. This statement should address total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee shall file with the Recorder, any additional information directed by the Hearing Official.

[79 FR 22026, Apr. 21, 2014, as amended at 80 FR 54722, Sept. 11, 2015]

§ 961.5 Effect of filing a petition.

Upon receipt and docketing of the employee's petition for a hearing, further collection activity by the Postal Service must cease, as required by section 5 of the Debt Collection Act until the petition is resolved by the Hearing Official.

§ 961.6

§ 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* After a petition is filed, all documents relating to the Debt Collection Act hearing proceedings must be filed using the electronic filing system unless the Hearing Official permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours (Normal Recorder office business hours are between 8:45 a.m. and 4:45 p.m., Eastern Time). If both parties are participating via the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(b) *Docketing.* The Recorder will maintain a record of Debt Collection Act proceedings and will assign a docket number to each such case. After notification of the docket number, the employee and the Postal Service's representative should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this Part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day. Requests for extensions of time shall be made in writing prior to the date on which the submission is due, state the reason for the extension request, represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so, and indicate whether the opposing party consents to the extension. Requests for extensions of time submitted after the date on which the submission was due shall explain why the moving party was unable to

39 CFR Ch. I (7–1–16 Edition)

request an extension prior to the deadline.

(d) *Representation of parties.* The representative of the Postal Service, as designated by the General Counsel, shall file a notice of appearance as soon as practicable, but no later than the date for filing the answer. If an employee has a representative, he or she also shall file a notice of appearance as soon as practicable, and further transmissions of documents and other communications by and with the employee shall be made through his or her representative.

[79 FR 22026, Apr. 21, 2014, as amended at 80 FR 54722, Sept. 11, 2015]

§ 961.7 Answer to petition.

Within 15 days from the date of receiving the petition, the Postal Service's representative shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's debt claim, and/or the administrative salary offset schedule proposed by the Postal Service for collecting any such claim. The answer shall provide a clear and thorough description of the basis for the Postal Service's determination of the alleged debt, its calculation of the amount of the alleged debt, and/or its proposed offset schedule.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all motions or requests by the parties.

(b) Issuing notices, orders or memoranda to the parties concerning the hearing proceedings.

(c) Conducting telephone conferences with the parties to expedite the proceedings. The Hearing Official will prepare a Memorandum of Telephone Conference, which shall be transmitted to both parties and which serves as the official record of that conference.

(d) After considering the positions of the parties, determining whether an oral hearing (or alternatively, a hearing solely on written submissions) shall be conducted, and setting the place, date, and time for such a hearing.

United States Postal Service

§ 961.12

(e) Administering oaths or affirmations to witnesses.

(f) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded. The Hearing Official in his or her discretion may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record in the case. The weight to be attached to any evidence of record will rest within the discretion of the Hearing Official. Except as the Hearing Official may otherwise order, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the record is closed. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

(h) Granting reasonable time extensions or other relief for good cause shown in the Hearing Official's sole discretion.

(i) Issuing the final decision. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. The Hearing Official will issue the decision as soon as practicable after the close of the record. Collection activity remains stayed until the decision has issued.

§ 961.9 Opportunity for oral hearing.

An oral hearing shall be conducted in the sole discretion of the Hearing Official. An oral hearing may be conducted in-person, by telephone, by video conference, or other appropriate means as directed by the Hearing Official. When the Hearing Official determines that an oral hearing shall not be conducted, the decision shall be based solely on the written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. In the event of an unexcused absence, the hearing may proceed without the participation of the absent party.

§ 961.10 Effect of Hearing Official's decision; motion for reconsideration.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of post-hearing briefs, if any, the Hearing Official shall issue a written decision, which shall include the findings of fact and conclusions of law, relied upon.

(b) The Hearing Official shall send each party a copy of the decision. The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed within 10 days from receipt of the decision and shows good cause for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay a collection action authorized by the Hearing Official's decision.

§ 961.11 Consequences for failure to comply with rules.

(a) The Hearing Official may determine that the employee has abandoned the right to a hearing, and that administrative offset may be initiated if the employee files his or her petition late without good cause; or files a withdrawal of the employee's petition for a hearing.

(b) The Hearing Official may determine that the administrative offset may not be initiated if the Postal Service fails to file the answer or files the answer late without good cause; or files a withdrawal of the debt determination at issue.

(c) If a party fails to comply with these Rules or the Hearing Official's orders, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissing or granting the petition as appropriate.

§ 961.12 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. Ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice

to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

- Sec.
- 962.1 Purpose.
 - 962.2 Definitions.
 - 962.3 Petition for hearing.
 - 962.4 Referral of complaint.
 - 962.5 Scope of hearing; evidentiary standard.
 - 962.6 Notice of hearing.
 - 962.7 Hearing location.
 - 962.8 Rights of parties.
 - 962.9 Responsibilities and authority of presiding officer.
 - 962.10 Prehearing conferences.
 - 962.11 Respondent access to information.
 - 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.
 - 962.13 Subpoenas.
 - 962.14 Enforcement of subpoenas.
 - 962.15 Sanctions.
 - 962.16 Disqualification of reviewing official or presiding official.
 - 962.17 Ex parte communications.
 - 962.18 Post-hearing briefs.
 - 962.19 Transcript of proceedings.
 - 962.20 Initial decision.
 - 962.21 Appeal of initial decision to judicial officer.
 - 962.22 Form and filing of documents.
 - 962.23 Service of notice of hearing, other documents.
 - 962.24 Computation of time.
 - 962.25 Continuances and extensions.
 - 962.26 Settlement.
 - 962.27 Limitations.

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

EFFECTIVE DATE NOTE: At 81 FR 40194, June 21, 2016, the authority citation for part 962 was revised, effective July 21, 2016. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 31 U.S.C. 3801–12; 39 U.S.C. 401; 5 U.S.C. 554.

SOURCE: 52 FR 12904, Apr. 20, 1987, unless otherwise noted.

§962.1 Purpose.

This part establishes the procedures governing the hearing and appeal

rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

§962.2 Definitions.

(a) *Attorney* refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to §273.8 of this title.

(c) *Initial Decision* refers to the written decision which the Presiding Officer is required by §962.20 to render, and includes a revised initial decision issued following a remand.

(d) *Investigating Official* refers to the Inspector General of the United States Postal Service or any designee within the Office of the Inspector General.

(e) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in §962.21 any designee within the Judicial Officer Department.

(f) *Party* refers to the Postal Service or the Respondent.

(g) *Person* refers to any individual, partnership, corporation, association, or private organization.

(h) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(i) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) *Recorder* refers to the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(k) *Representative* refers to an attorney or other advocate.

(l) *Respondent* refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate payable under