

act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

### § 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 days and no more than 45 days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 days after the request for review is received.

(g)(1) *Hearings.* Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least five days before the hearing.

(2) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may

### § 3.70

present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(1)(1) Within no more than 30 days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 days.

(2) The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(3) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*) as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(j) The reviewing officer will promptly distribute copies of the decision to the USDA CFO, the agency CFO (if

### 7 CFR Subtitle A (1-1-16 Edition)

any), the agency debt management officer, the debtor, and the debtor's representative, if any.

#### Subpart G—Federal Salary Offset

AUTHORITY : 5 U.S.C. 5514; 5 CFR part 550, subpart K.

SOURCE: 73 FR 4, Jan. 2, 2008, unless otherwise noted.

#### § 3.70 Scope.

(a) The provisions of this subpart set forth USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current USDA employees and employees of other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) These regulations do not apply to debts owed by FSA county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.

(d) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) These regulations identify the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

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

(2) A routine intra-agency adjustment of pay that is made to correct an