Office of the Secretary of Transportation § 92.9

§ 92.9 Exceptions to notice, hearing, written response, and final decision.

(a) Exceptions. The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in §92.9(b).

(b) Simplified procedures to be followed. In the event that a retroactive deduction from pay or allowances is required to recover an insufficiency of deductions arising through normal processing delays, and those insufficient deductions did not occur in more than four pay periods, rather than following the specific procedures required by 5 U.S.C. 5514(a)(2), and set forth in §§ 92.11 through 92.17 of this part, the DOT creditor operating element shall issue in advance of the collection a simplified notice to the employee that:

(1) Because of the employee’s election for changes in voluntary payroll deduction, corresponding deductions shall be imposed on the employee’s salary to cover the period between the effective date of the election and the first regular withholding. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future pay will be reduced to permit the DOT creditor operating element to recover any excess pay or allowances received by the employee. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer.

(c) Limitation on exceptions. The exceptions described in paragraph (a) of
§ 92.11 Demand for payment.

(a) The DOT creditor operating element shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals.

(b) The initial written demand for payment shall inform the debtor of:

1. The basis for the indebtedness;
2. The amount of the claim;
3. The date by which payment is to be made;
4. The debtor’s liability for interest, penalties and administrative charges in accordance with 31 U.S.C. 3717 and §92.35 of this part, if payment is not received within 30 days of the due date (see §92.35 for details regarding interest, penalties and administrative costs);
5. The intent of the agency to collect by salary offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor:
   (i) Has not made payment by the payment due date;
   (ii) Has not requested a review of the claim within the agency as set out in paragraph (b)(6) of this section;
   (iii) Has not made an arrangement for payment by the payment due date;
6. The possible submission of claims to a collection agency or referral to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR part 105.

(7) The right of the debtor to inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the inspection and copying of these records shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which he or she intends to inspect and copy the records involved.

(8) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or in part, the debtor shall respond to the demand by making a request in writing for a review of the claim within the agency by the payment due date stated in the demand. The debtor’s written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion shall be paid by the due date. The DOT creditor operating element shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the DOT operating element either sustains or amends its determination, it shall notify the debtor of its intent to collect by salary offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(9) The right of the debtor to offer to make a written agreement to repay the amount of the claim (see §92.23). The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the DOT creditor operating element will analyze the debtor’s financial condition. Depending on its evaluation of the financial strength of the debtor, the DOT operating element may agree to a written installment repayment schedule with the debtor. The debtor shall execute a confession of judgment note which specifies all of the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor’s ability to pay. Interest, penalties and administrative charges shall be provided in the