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(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) The employee's right to a prompt refund if amounts paid or deducted by salary offset are later waived or found not owed to the United States, unless otherwise provided by law or contract; and

(m) The specific address to which all correspondence shall be directed regarding the debt.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.34 Employee response.

(a) *Introduction*. An employee must respond to a pre-offset notice, if at all, within 15 calendar days following receipt, in one or more of the ways discussed in § 204.34, Employee response, and § 204.35, Petition for pre-offset hearing. Where applicable, the employee bears the burdens of proof and persuasion.

(b) Responses must be submitted in writing to the program official who signed the pre-offset notice. A timely response will stay the commencement of collection by salary offset, at least until the issuance of a written decision. (See § 204.37, Extensions of time). Failure to submit a timely response will be treated as an admission of indebtedness, and will result in salary offset in accordance with the terms specified in the pre-offset notice.

(c) A response filed after expiration of the 15 day period may be accepted if the employee can show that the delay was due to circumstances beyond his or her control or failure to receive notice of the time limit (unless otherwise aware of it).

(d) *Voluntary repayment agreement*. An employee may request to enter into a voluntary written agreement for repayment of the debt in lieu of offset. It is within the discretion of the program official whether to enter into such an agreement, and if so, upon what terms. Voluntary deductions may exceed 15 percent of the employee's disposable pay. If an agreement is reached, the agreement must be in writing, and must be signed by both the employee and the program official. A signed copy must be sent to the Office of Financial Management. The program official shall notify the employee in writing of its decision not to accept the proposed voluntary repayment schedule before making any deductions from the employee's salary.

(e) *Waiver*. Any request for waiver of the debt must be accompanied by evidence that the waiver is authorized by law.

(f) *Reconsideration*. An employee may request reconsideration of the existence or amount of the debt or the offset schedule as reflected in the pre-offset notice. The request must be accompanied by a detailed narrative and supporting documentation as to why the offset decision is erroneous and/or why the offset schedule imposes an undue hardship.

[58 FR 38520, July 19, 1993, as amended at 76 FR 60372, Sept. 29, 2011]

§ 204.35 Petition for pre-offset hearing.

(a) The employee may petition for a pre-offset hearing. The petition must state with specificity why the employee believes the agency's determination is in error. To the extent that a debt has not been established by judicial or administrative order, a debtor may request a pre-offset hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a pre-offset hearing concerning the payment or other discharge of the debt.

(b) The petition must fully identify and explain, with reasonable specificity, all the facts, evidence and witnesses, if any, that the employee believes support his or her position. The petition must be signed by the employee.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.36 Granting of a pre-offset hearing.

(a) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

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(1) arrange for a hearing official. If the hearing official is an administrative law judge, he or she shall be designated by the Chief Administrative Law Judge as set forth in 17 CFR 200.310(a)(2); and

(2) provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(b) The hearing official shall notify the employee by personal service, by first class, registered or certified mail, or by a reliable commercial courier or overnight delivery service whether the employee is entitled to an oral or ''paper'' (*i.e.*, a review on the written record) hearing. (See 31 CFR 901.3(e).) Within 20 calendar days of receipt of this notice the employee shall provide the hearing official with a full description of all relevant facts, documentary evidence, and witnesses which the employee believes support his or her position. The hearing official may extend the time for the employee to respond to the notice for good cause shown.

(c) If an oral hearing is scheduled, the hearing official shall notify the program official and the employee in writing of the date, time and location of the hearing. The place for the hearing shall be fixed by the hearing official with due regard for the public interest and the convenience and necessity of the parties, the participants, or their representatives.

(d) If the employee is entitled to an oral hearing, but requests to have the hearing based only on the written submissions, the employee must notify the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(e) Failure of the employee to appear at the oral hearing may result in dismissal of the petition and affirmation of the program official's decision.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.37 Extensions of time.

The hearing official may for good cause or in the interests of justice postpone the commencement of the hearing, adjourn a convened hearing for a reasonable period of time or extend or shorten any other time limits prescribed under this section. This extension is not intended to abridge the 30 day initial notice or extend the 60 day decision requirement other than as provided for in 5 CFR 550.1104(d)(10).

§ 204.38 Pre-offset hearing.

(a) The hearing official shall determine the form and content of hearings granted under this section, pursuant to 31 CFR 901.3(e). All oral hearings shall be on the record. Except as otherwise ordered by the hearing official, hearings shall be recorded or transcribed verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to the discretion and approval of the hearing official, and a transcript thereof shall be made.

(b) Oral hearings are informal in nature. The Commission, represented by an attorney from the Office of General Counsel, and accompanied by a program official and the employee, and/or the employee's representative, orally shall explain their respective positions using relevant documentation. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant. The Federal Rules of Evidence serve as a guideline, but are not controlling. The employee bears the burdens of proof and persuasion.

(c) The hearing official shall:

(1) Conduct a fair and impartial hearing;

(2) Preside over the course of the hearing, maintain decorum and avoid delay in the disposition of the hearing; and

(3) Issue a decision in accordance with § 204.39, Written decision, on the basis of the oral hearing and the written record.

(d) Oral hearings are normally open to the public. However, the hearing official may close all or any portion of the hearing at either the request of either party or upon the hearing official's initiative when doing so is in the best interest[s] of the employee or the public.

(e) Oral hearings may be conducted by conference call at the request of the

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