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employee or at the discretion of the hearing official.

(f) *Pre-offset ''paper'' hearing.* If a hearing is to be held only upon written submissions, the hearing official shall issue a decision based solely upon the written record.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54132, Oct. 26, 2001]

§ 204.39 Written decision.

(a) *If pre-offset hearing is held.* Within 60 days of the filing of the employee's petition for a pre-offset hearing, the hearing official will issue a written decision setting forth the basis of his/her findings in accordance with 5 CFR 550.1104(g)(3).

(b) If the employee challenges the pre-offset notice under § 204.34, Employee response and/or § 204.35, Petition for pre-offset hearing, without requesting a hearing or a hearing is denied, the program official must notify the employee of his/her final determination in writing before offset can begin. The agency's execution of a voluntary repayment agreement satisfies this requirement.

§ 204.40 Deductions.

(a) When deductions may begin:

(1) If a pre-offset hearing is held, deductions shall be made in accordance with the hearing official's decision.

(2) If parties execute a voluntary repayment agreement, deductions shall be made in accordance with the terms of that agreement.

(3) If the employee requests a waiver or reconsideration or the program official refuses to accept a proposed alternate repayment schedule, deductions shall be made in accordance with the program official's written decision.

(4) If the employee consents to the terms and conditions set forth in the Commission's Pre-offset Notice or fails to respond in timely fashion to the Pre-offset Notice, or waives his/her right to a hearing without otherwise challenging the terms of the Pre-offset Notice, deductions shall be made in accordance with the terms and conditions set forth therein.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before the debt is fully repaid, the remaining indebtedness will be offset pursuant to 31 U.S.C. 3716 and the FCCS.

(1) To the extent possible, the remaining indebtedness will be liquidated from any final payment due the former employee as of the date of separation (e.g., final salary payment, lump-sum leave, etc.). See § 204.40d(3), Offset deductions from final salary and/or lump-sum leave payment.

(2) Thereafter, the remaining indebtedness will be recovered from later payments of any kind due the former employee from the United States. See the FCCS.

(c) *Method of collection and source of deduction.* The method of collecting debts under these regulations shall be by salary offset. Deductions will be made from the employee's current disposable pay account except as provided for in § 204.34b, Employee response.

(d) *Amount and duration of deductions.* Debts must be collected in one lump sum where possible. If the employee demonstrates financial hardship to the Commission's satisfaction or the amount of the debt exceeds 15 percent of the indebted employee's current disposable pay, collection must be made in installments over a period not greater than the anticipated period of active employment, except as provided in Section 34b, Employee Response.

(1) Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay.

(2) The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payment of less than $100 per pay period will he accepted only in the most unusual circumstances.

(3) Offset deductions from final salary and/or lump-sum leave payment. Such an offset deduction may exceed 15 percent of an employee's final salary and/or lump-sum leave payment pursuant to 31 U.S.C. 3716, 64 CG 907.

(e) Interest, penalties and administrative costs on debts under this part

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