

Office of the Secretary, Education

§ 32.4

Former employee means a former employee of the Department who is entitled to pay from the Department or another agency.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay and/or lump sum payments for accrued annual leave.

Paying agency means a Federal agency currently employing an individual and authorizing the payment of his or her current pay.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

(a) The origin, nature and amount of the overpayment;

(b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay, or a specified amount if the disposable pay is severance pay and/or a lump sum annual leave payment, to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be

made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514, 31 U.S.C. 3716)

§ 32.4 Employee response.

(a) *Voluntary repayment agreement.* Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement approved by the Secretary. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under paragraph (b) of this section.

(b) *Waiver.* An employee seeking a waiver of collection of the debt that is authorized by law must request the waiver in writing to the Secretary within 10 days of receipt of the written notice under § 32.3. The employee must state why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule.* If the employee claims that the amount of the involuntary deduction will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 10 days of receipt of the written notice under

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§ 32.3. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at a hearing under § 32.5. The Secretary notifies the employee, in writing, whether the Secretary will reduce the rate of the involuntary deduction.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.5 Pre-offset hearing—general.

(a) An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing. The pre-offset hearing does not review:

(1) The denial of a waiver of repayment under 5 U.S.C. 5584;

(2) The involuntary repayment schedule or financial hardship caused by the amount of the involuntary deduction from the employee's disposable pay, unless the employee has submitted the financial statement and written explanation required under § 32.4(c); and

(3) The determination under paragraph (b) of this section that the pre-offset hearing is on the written submissions.

(b) Unless the Secretary determines that a matter reviewable under paragraph (a) of this section turns on an issue of credibility or veracity or cannot be resolved by a review of the documentary evidence, the pre-offset hearing is on the written submissions.

(c) A pre-offset hearing is based on the written submissions for overpayments arising from:

(1) A termination of a temporary promotion;

(2) A cash award;

(3) An erroneous salary rate;

(4) Premature granting of a within-grade increase;

(5) A lump sum payment for annual leave;

(6) Unauthorized appointment to a position;

(7) An error on time and attendance records; or

(8) Other circumstances where the Secretary determines that an oral hearing is not required.

(d) The hearing is conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary.

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(e) Formal discovery between the parties is not provided.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.6 Request for a pre-offset hearing.

(a) Except for an employee who has requested a waiver of collection of the debt under § 32.4(b), an employee who wishes a pre-offset hearing must request the hearing within 15 days of receipt of the written notice given under § 32.3. The Secretary waives the 15-day requirement if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice and lack of knowledge of the time limit.

(b) An employee who has requested a waiver under § 32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.

(c) The request for a hearing must:

(1) Be in writing;

(2) State why the employee:

(i) Contests the existence or amount of the overpayment; or

(ii) Claims that the involuntary repayment schedule will cause extreme financial hardship;

(3) Include all documents on which the employee is relying, other than those provided by the Secretary under § 32.3; any document which is a statement of an individual must be in the form of an affidavit; and

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary:

(1) Notifies the employee whether the employee may elect an oral hearing; and

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

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 7 days of receipt of the notice under paragraph (d)(1) of this