

§ 1639.24

5 CFR Ch. VI (1-1-02 Edition)

make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart.

(g) *Date of decision.* The hearing official will issue a written decision, based upon documentary evidence and information developed at the hearing, as soon as practical after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In that case, the 60 day decision period will be extended by the number of days by which the hearing was postponed.

(h) *Content of decision.* The written decision will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

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

(3) The terms of any repayment schedules, if applicable.

(i) *Failure to appear.* (1) In the absence of good cause shown (*e.g.*, excused illness), an employee who fails to appear at a hearing will be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented by the representative(s) of the employee and the documentary documentation submitted by both parties.

(3) At the request of both parties, the hearing official will schedule a new hearing date. Both parties will be given reasonable notice of the time and place of this new hearing.

§ 1639.24 Certification.

(a) The Board will provide a certification to the paying agency in all cases in which:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must include:

(1) A statement that the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Board's right to collect the debt first accrued;

(4) A statement that the Board's regulations have been approved by the Office of Personnel Management under 5 CFR part 550, subpart K;

(5) The amount and date of the collection, if only a one-time offset is required;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the dates of notices and hearings provided to the employee, or, if applicable, the employee's signed consent to salary offset or a signed statement acknowledging receipt of required procedures.

§ 1639.25 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to offset against an employee's salary to recover a debt owed to the Board, an employee may propose to the Board that he or she be allowed to repay the debt through direct payments as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset must submit in writing a proposed agreement to repay the debt. The proposal must admit the existence of the debt and set forth a proposed repayment schedule. The employee's proposal must be received by the official designated in the notice of intent within 15 calendar days after the employee received the notice.

(b) In response to a timely proposal by the debtor, the Executive Director will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is

within the Executive Director's discretion to accept a repayment agreement instead of proceeding by salary offset.

(c) If the Executive Director decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Executive Director decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Executive Director.

§ 1639.26 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement in connection with a debt owed to the Board may, at any time, request that the Board conduct a special review of the amount of the salary offset or voluntary payment, based on materially changed circumstances, such as catastrophic illness, divorce, death, or disability.

(b) To assist the Board in determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee will submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents, indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing, and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee must file an alternative proposed salary offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Executive Director will evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship

on the employee. The Executive Director will notify the employee in writing of his determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Board will provide a new certification to the paying agency.

§ 1639.27 Procedures for salary offset.

(a) The Board will coordinate salary deductions under this subpart.

(b) The Board's payroll office will determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Board's payroll office of certification for the creditor agency.

(d) Types of collection—

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. 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. However, the amount deducted from 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.

(3) *Deductions from final check.* A deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Board, and the balance of the debt cannot be liquidated by offset of the final salary check, the Board may offset any later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II.