

Federal Deposit Insurance Corporation

§ 313.44

(m) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(n) That amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary.

§ 313.42 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the Director. The request must be received by the Director within 30 calendar days after the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and 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 request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

§ 313.43 Failure to timely submit request for hearing.

If the Director does not receive an employee's request for hearing within the 30-day period set forth in § 313.42(a), the employee shall not be entitled to a hearing. However, the Director may accept an untimely request for hearing if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

§ 313.44 Procedure for hearing.

(a) *Obtaining the services of a hearing official.* When the FDIC is the creditor agency and the debtor is an FDIC employee, the FDIC shall designate an administrative law judge or contact any agent of another agency designated in appendix A to 5 CFR part 581 to ar-

range for a hearing official. When the FDIC is the creditor agency and the debtor is not an FDIC employee (*i.e.*, the debtor is employed by another federal agency, also known as the paying agency), and the FDIC cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to a lawful arrangement, the FDIC may contact an agent of the paying agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. The paying agency must cooperate with the FDIC to provide a hearing official, as required by the FCCS.

(b) *Notice and format of hearing.* (1) *Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, where credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee; or

(iii) Formal written submissions followed by an opportunity for oral presentation.

(3) *Documentary hearing.* If the hearing official determines that an oral