

§ 1650.107

29 CFR Ch. XIV (7-1-08 Edition)

this subpart shall be attached to the decision.

§ 1650.107 Oral hearing.

(a) *Right to an oral hearing.* After a decision is issued on an employee's request for reconsideration, or consideration of waiver, compromise, or forgiveness, the employee is entitled to an oral hearing upon request prior to salary or administrative offset, on any issue that raises a significant question as to the credibility or veracity of any individual(s) involved in his or her case. The decision whether such a genuine issue exists will rest solely with the Commission. Further, where a claim has been reduced to judgment, a hearing only on the payment schedule need be given. A hearing shall not be provided, however, where a payment schedule was established by written agreement between the employee and the Commission.

(b) *Request for hearing.* (1) A request for an oral hearing must be made within 30 calendar days from the date of the written decision on reconsideration or consideration of waiver, forgiveness, or compromise decision. Requests made after this time will be accepted where the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit, unless the employee is otherwise aware of it.

(2) A debtor must file a petition for a hearing in writing. The petition must identify and explain with reasonable brevity the facts, evidence, and witnesses that the debtor believes support his or her petition, state the relief requested, and include the signature and address of the petitioner or authorized representative.

(3) The timely filing of a petition for an oral hearing shall automatically stay the commencement of collection action.

(c) *Hearing procedures.* (1) The hearing shall be conducted by a hearing official who is not an employee of EEOC or otherwise under the control or supervision of the Chairman.

(2) A debtor may represent himself or herself or may be represented by another person, including an attorney during any portion of the hearing.

(3) Where possible, the hearing will be held in a Commission office close to the debtor's home or place of work. Hearings may be scheduled so that several cases can be heard at one location. In such cases, the hearings will be scheduled in a location centrally located to all requesting parties.

(4) A record or transcript of the hearing shall not be made.

(5) At the hearing, the employee and the Commission may introduce evidence and may call witnesses. The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. The hearing official may only permit the introduction of evidence that is relevant to the issues being considered. Witnesses shall testify under oath and may be cross-examined. The Commission has the burden of first presenting evidence on the relevant issues. The debtor then has the burden of presenting evidence regarding those issues.

(6) The hearing official shall issue a written opinion stating his or her decision with the rationale supporting the decision as soon as practicable after the hearing, but not later than 60 days after the timely filing of the petition requesting the hearing.

§ 1650.108 Method of collection.

A debt will be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Commission agree in writing to alternate arrangements for repayment.

§ 1650.109 Source of deductions.

Except as provided in §1600.735-513 and §1600.735-514 of this subpart, deductions will be made only from basic pay, special pay, incentive pay, retired pay, retainer pay or in the case of an employee not entitled to basic pay, other authorized pay.

§ 1650.110 Duration of deductions.

Debts will be collected in one lump sum when possible. If the employee is financially unable to pay in one lump sum or the amount of debt exceeds 15 percent of the employee's disposable

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pay for an officially established pay interval, collection by offset will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of active duty or employment of the employee, as the case may be, except as provided in §1600.735-513 and §1600.735-514 of this subpart.

§ 1650.111 Limitation on amount of deductions.

The size and frequency of installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay. The amount deducted for any period, however, 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 payments of less than \$25 will be accepted only in the most unusual circumstances.

§ 1650.112 When deductions may begin.

(a) Deductions to liquidate an employee's debt should be scheduled to begin by the date and in the amount stated in the demand for payment.

(b) If the employee files a timely request for reconsideration or consideration of waiver, compromise or forgiveness, deductions will begin after a final decision is issued on the request.

(c) If the employee fails to submit a timely request for reconsideration or consideration of waiver, compromise, or forgiveness, or request for a hearing, deductions will commence in the next bi-weekly check vouchered for payment after the time limit to make such a request expires.

§ 1650.113 Liquidation of final check.

When the employee retires or resigns or if his or her employment or period of active duty ends before the debt is collected in full, the employee's debt will be automatically deducted from the final payments (e.g., final salary payment, lump-sum leave, etc.) due the employee to the extent necessary to liquidate the debt. If the employee's final pay is not sufficient to permit all deductions to be made, the order of precedence for the deductions will be: retirement and FICA; Medicare; Federal income taxes; health benefits;

group life insurance; indebtedness due to the United States; State income taxes; and voluntary deductions and allotments.

§ 1650.114 Recovery from other payments due a separated employee.

When the debt cannot be liquidated by offset from any final payment due to the employee on the date of separation, the Director of FRMS will attempt to liquidate the debt by administrative offset as authorized under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States. (See 4 CFR 102.3)

§ 1650.115 Interest, penalties, and administrative costs.

When a delinquent debt is collected by salary offset, interest, penalties, and administrative costs on the debt will be assessed, unless waived by the Management Director, or his or her designee, in accordance with 4 CFR 102.13.

§ 1650.116 Non-waiver of rights by payments.

An employee's payment of all or any portion of a debt collected by salary offset will not be construed as a waiver of any right the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 1650.117 Refunds.

Amounts paid, or deducted by salary offset, by an employee for a debt that is waived or otherwise not found owing to the United States will be promptly refunded to the employee. Refunds do not bear interest unless required or permitted by law or contract.

§ 1650.118 Salary offset requests by other agencies.

(a) *Statutory limitation.* Salary offset requests against Commission employees by other agencies may only be accepted within 10 years after the involved debt accrues. Whenever any request barred by this limitation is received in the Commission, the request shall be returned by FRMS to the requesting agency, with a copy of 4 CFR