

§ 1.1928

47 CFR Ch. I (10–1–14 Edition)

regulation are required by the Commission for:

(1) Any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-Commission adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1.1928 Hearing.

(a) *Petition for hearing.* (1) An employee may request a hearing by filing a written petition with the Managing Director of the Commission, or designated official stating why the employee believes the determination of the Commission concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be executed under penalty of perjury by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to paragraph (a) (3) of this section, the Commission will nevertheless accept the petition if the employee can show, in writing, that the delay was due to circumstances beyond his or her

control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a) (3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the Commission and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent him or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Commission.

§ 1.1929 Deduction from employee's pay.

(a) Deduction by salary offset, from an employee's current disposable pay,

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shall be subject to the following conditions:

(1) Ordinarily, debts to the United States will be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) The size of the installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay (*see* the FCCS). However, the installments 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) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions will be pro-rated for a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited to a final salary payment or lump-sum leave due the employee as the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not

be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with §§ 1.1940 and 1.1941.

§ 1.1934 Recovery when the Commission is not creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) Must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the Commission of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the Commission, the creditor agency also must advise the Commission of the action(s) taken under 5