

debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i)(1) Within no more than 30 calendar days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days.

(2) The written decision shall include:

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis and conclusions; and
- (iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(3) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*) as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(j) The reviewing officer will promptly distribute copies of the decision to the USDA Chief Financial Officer (CFO), the USDA agency CFO's, the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 3.70 Scope of this subpart.

(a) The provisions of this subpart set forth USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current USDA employees and other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) These regulations do not apply to debts owed by Farm Service Agency county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.

(d) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) These regulations identify the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency 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 4 pay periods preceding the adjustment and, 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 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.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions shall apply:

(a) *Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

(b) *Debt* means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.