

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

**§ 3.78 Written decision following a hearing.**

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt by other means authorized by this part; and

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

**§ 3.79 Review of USDA records related to the debt.**

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

**§ 3.80 Written agreement to repay debts as alternative to salary offset.**

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(b) *USDA response.* USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

**§ 3.81 Procedures for salary offset: when deductions may begin.**

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

**§ 3.82 Procedures for salary offset: types of collection.**

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.83.

**§ 3.83 Procedures for salary offset: methods of collection.**

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *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 for 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. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions 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.

**§ 3.84 Procedures for salary offset: Imposition of interest, penalties, and administrative costs.**

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

**§ 3.85 Non-waiver of rights.**

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

**§ 3.86 Refunds.**

USDA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed to the United States (unless expressly prohibited by statute or regulation); or

(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

**§ 3.87 Agency regulations.**

USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart