

Agency for International Development

§ 213.17

that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§213.13 Result if employee fails to meet deadlines.

An employee waives the right to a hearing and will have his or her disposable pay offset in accordance with offset schedule set forth in the Notice of Intent if the employee:

- (a) Fails to file a petition for a hearing as prescribed in §213.12; or
- (b) Is scheduled to appear and fails to appear at the hearing.

§213.14 Hearings.

(a) If an employee timely files a request for a hearing under §213.12 AID shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) AID 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.

§213.15 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented 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 of 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; and

(d) The amount, frequency, beginning date and duration of the salary offset, if applicable.

§213.16 Review of agency records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy agency records related to the debt must send a letter to the official designated in §213.11(n) stating his or her intention. The letter must be received by AID within 30 calendar days of the date of the Notice of Intent.

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

§213.17 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, 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 which is received by AID with 30 calendar days of the date of the Notice of Intent.

(b) *AID's response.* AID will notify the employee whether the employee's proposed written agreement for repayment is acceptable. AID may accept a repayment agreement instead of proceeding by offset. In making this determination, AID will balance AID's 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, AID 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.

(c) *Procedures.* If the employee and AID enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the

provisions of the agreement and the procedures of § 213.18 will not apply.

§ 213.18 Procedures for salary offset.

Unless AID agrees otherwise, the procedures for salary offset are as follows:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

(c) *Types.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposal pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(d) *Amount and duration of installment deductions.* (1) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposal pay from which the deduction is made, unless the employee has agreed to a greater amount.

(2) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(3) Installment deductions will be made over a period of not greater than the anticipated period of employment.

(e) *When deductions may begin.* (1) Salary offset will begin as of the date stated in the Notice of Intent, unless a hearing has been requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision provided after the hearing.

(f) *Additional offset provisions—(1) Liquidation from final check.* If employment ends before salary offset is completed,

the remaining debt will be liquidated by offset from subsequent payments of any nature due the employee from AID as of the date of separation (e.g. final salary payment, lump-sum leave, etc).

(2) *Offset from other payments.* If the debt cannot be liquidated by offset from any final check, the remaining debt will be liquidated by offset from later payments of any kind due the former employee from the United States.

§ 213.19 Non-waiver of rights.

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

§ 213.20 Refunds.

(a) AID will refund promptly to the appropriate individual amounts offset under these regulations when:

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

(2) AID is directed by an administrative or judicial order to make a refund.

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

Subpart C—Collection of Debts by Tax Refund Offset

SOURCE: 60 FR 40456, Aug. 9, 1995, unless otherwise noted.

§ 213.21 Purpose.

This subpart establishes procedures for AID to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to AID.

§ 213.22 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due and legally enforceable debt owed to the United States.

(b) A past due legally enforceable debt referable to the IRS is a debt