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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its practices and procedures regulations at 5 CFR Part 1201 by adding a new section to permit suspension of a case for up to 60 days to allow the parties to pursue discovery or settlement.

EFFECTIVE DATE: September 19, 2002.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION: This amendment to the Board's rules of practice and procedure resulted from the successful implementation of a pilot program. In November 1999, the Merit Systems Protection Board (MSPB) established a pilot program to allow appellants and agencies up to 60 days additional time to pursue discovery and settlement efforts in pending initial appeals. The pilot program was initiated, in part, in response to concerns raised by Board practitioners that the 120-day time limit for adjudicating appeals prevented the parties from conducting the discovery they believed necessary to prevail on appeal. The pilot program simplified the process for obtaining a suspension of case processing to accommodate parties before the Board.

Under the pilot program, the presiding judge was authorized to grant a 30-day suspension of case processing to parties who jointly requested the additional time. A second 30-day suspension was granted if the parties agreed that additional time was necessary. Parties were not required to provide evidence and argument to support a joint request for additional time, so long as the request was made early in the proceedings.

The Board believes that the pilot program has been successful in addressing the concerns regarding adequate time to conduct discovery and in facilitating settlement of complex cases.

The Board announced this amendment as an interim rule at 67 FR 3811 (Jan. 28, 2002). The Board received comments from one practitioner and one agency representative. After careful consideration of the comments received, the Board is adopting the interim rule with minor amendments. The comments and the Board's responses are as follows:

1. One commenter suggested that administrative judges be given the discretion to grant belatedly filed requests for extensions.

The substance of this recommendation was already covered by the regulation, which provides, at paragraph (d), for the judge to ''consider'' any requests ''that are filed after the time limit set forth in paragraph (c) of this section.'' We believe that this paragraph provides a sufficiently clear grant of discretion to administrative judges to approve ''belated'' requests.

2. One commenter suggested that the regulations be amended to permit case suspensions for any reason.

This recommendation was not adopted. The reason for granting the request to suspend case processing should have some rational relationship to furthering the interests of the parties (fairness, due process, etc.) in the specific matter before the Board and the Board's effective adjudication of cases, while avoiding the encouragement of frivolous requests for case suspensions.

3. One commenter suggested that the regulations be amended to provide that a request that is not based on the need for additional discovery or the desire to pursue settlement be treated as a request for a continuance or for a dismissal without prejudice to refile the appeal. Under this provision, the request for a dismissal without prejudice would not require the appellant's approval.

This recommendation was not adopted as the Board believes that these procedures should remain separate. Continuances and dismissals without prejudice are already generally provided for by the Board's regulations and case law, and need not be addressed here. The section 1201.28 process is intentionally limited to the two purposes named. The suggestion that dismissals without prejudice not require the appellant's assent runs counter to the Board's policy of avoiding unnecessary impediments to an appellant's pursuit of an appeal.

4. One commenter suggested that the regulations be amended to provide that the 120-day clock begin anew from the termination of the suspension.

This recommendation was not adopted. The procedure established under section 1201.28 is called a ''suspension,'' which means that the adjudication clock is temporarily stopped, not that it is re-set.

5. One commenter stated that the proposed regulations are unnecessary and will cause pointless delays.

Contrary to the view expressed by this commenter, numerous agency representatives and Board practitioners have expressed the view that this procedure has been very helpful. The extent of the favorable reviews is the basis for the Board's decision to institute this procedure as a permanent component of its adjudicatory process.

6. One commenter suggested that the parties should be required to comply with a more formal system for filing a request, including a requirement that both parties file the request, describe settlement efforts, and explain the reasons for the request.

This recommendation was not adopted. The regulation contemplates that the parties will specify that the request is being made for one of the reasons described in the regulation. If the request is made jointly, the administrative judge should not have to second-guess the parties on their need for additional time. If it is made unilaterally, the administrative judge is given discretion to grant or deny the request. He or she can weigh the party's or parties' arguments and rule accordingly. Since there is no requirement that settlement efforts reach any particular point for a suspension to be granted, an outline of settlement efforts would not be helpful.

7. One commenter suggested that the Board establish evidentiary

requirements to support requests for 30-day extensions.

This recommendation was not adopted. The aim of this regulation is to encourage the parties to complete discovery or work amicably to reach a speedy settlement or other resolution of the matter. To require the parties to provide evidence and argument to support a joint request would add another matter for review and undermine this objective.

8. One commenter suggested that the regulations should specify the limit on the amount of time the judge may grant for a unilateral request for extension of time to pursue discovery.

This recommendation was adopted. Changes were made to paragraph (b) to specify a 30-day limit on the amount of time the judge may grant for a unilateral request. For the sake of consistency, similar modifications were made to paragraph (d) regarding untimely requests.

9. One commenter suggested that paragraph (e), the provision governing early termination of the suspension period, is confusing and requires clarification.

The first part of the comment states that a settlement agreement would automatically terminate the suspension. This observation is accurate but not relevant to the provision, which provides for the termination of the suspension only when the administrative judge's extensive involvement in the appeal will be needed. As to the remaining concerns expressed, the point of the regulation is that the case should remain suspended only as long as settlement and/or discovery efforts without the administrative judge's intervention are likely to be helpful in the resolution of the appeal, which for the time being is not being adjudicated. Adjudication would resume if the process no longer serves those ends. If an administrative judge must be extensively involved in the process, then by definition, the matter is no longer suspended, but rather is under active consideration by the administrative judge and has re-entered the adjudication process.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board adopts as final the interim rule published on January 28, 2002 (67 FR 3811), with the following change:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. In § 1201.28, paragraph (d) is revised to read as follows:

§ 1201.28 Case suspension procedures

* * * * *

(d) *Untimely requests.* The judge may consider requests for initial suspensions that are filed after the time limit set forth in paragraph (c) of this section. Such requests for additional time (up to 30 days for initial suspensions and a 30-day extension, as provided in paragraph (a) of this section) may be granted at the discretion of the judge.

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Dated: September 13, 2002.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 02–23771 Filed 9–18–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 37

[Docket No. 02–14]

RIN 1557–AB75

Debt Cancellation Contracts and Debt Suspension Agreements

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adding a new part 37 to its regulations that addresses debt cancellation contracts (DCCs) and debt suspension agreements (DSAs). The purpose of the final rule is to establish standards governing these products in order to ensure that national banks provide such products consistent with safe and sound banking practices and subject to appropriate consumer protections.

EFFECTIVE DATE: This rule is effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Suzette Greco, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210; or Rick Freer, Compliance Specialist, Compliance Division, (202) 874–4862, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

National Banks' Authority to Offer DCCs and DSAs

A DCC is a loan term or a contractual arrangement modifying loan terms linked to a bank's extension of credit, under which the bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. A DSA is a loan term or a contractual arrangement modifying loan terms linked to a bank's extension of credit, under which the bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event.

Under a DCC or a DSA, the customer typically agrees to pay an additional fee to the bank in exchange for the bank's promise to cancel or temporarily suspend the borrower's obligation to repay the loan. The fee may be a lump sum that is payable at the outset of a loan (that may be financed over the term of the loan), or the fee may take the form of a monthly or other periodic charge. The fee compensates the bank for releasing borrowers from loan obligations under the circumstances specified in the DCC or DSA. These arrangements also provide customers a convenient method of extinguishing debt in times of financial or personal hardship, and enable the bank to avoid the time and expense of collecting the balance of the loan from a borrower's estate in the event of the borrower's death or other specified circumstances.[1]

The authority of national banks to offer DCCs and DSAs is well-established.[2] Nearly 40 years ago, in 1963, the OCC concluded that offering DCCs was a lawful exercise of the powers of a national bank in connection with the business of banking.[3] The following year various OCC issuances affirmed that position.[4] As explained by Comptroller James Saxon:

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[1] *See generally,* Joseph L. Moore & James W. Smith, *Debt Cancellation Contracts: A Neglected Asset,* 112 Banking L. J. 918 (1995).

[2] 12 U.S.C. 24(Seventh). *See* Memorandum from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, to John D. Hawke, Jr., Comptroller of the Currency, dated June 25, 2002 (discussing national banks' authority to offer DCCs and DSAs).

[3] *See* Comptroller of the Currency, *The National Banking Review* 264 (Dec. 1963).

[4] *See* Letter from James J. Saxon to the President of a National Bank (Mar. 10, 1964); Letter from James J. Saxon to the President of a National Bank