



POSTAL SERVICE

39 CFR Part 961

Debt Collection Act Petitions Against Current Employees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This amends the rules of practice prescribed by the Judicial Officer for ease of understanding and to reflect current practice.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Postal Service Judicial Officer Department, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

FOR FURTHER INFORMATION CONTACT: Staff Counsel Zahava Colicelli at (708) 812-1927.

SUPPLEMENTARY INFORMATION:

A. Background

The Judicial Officer Department reviewed its rules for Debt Collection Act Petitions and found it necessary to make some revisions for the reader's ease of understanding. Some changes also reflect current practices.

B. Explanation of Changes

Amendments to 39 CFR part 961

The rule is revised for better ease of understanding and to reflect current practices.

List of Subjects in 39 CFR Part 961

Administrative practice and procedure, Claims, Government employees, Wages.

Accordingly, for the reasons stated, the Postal Service revises 39 CFR part 961 to read as follows:

PART 961—DEBT COLLECTION ACT PROCEEDINGS AGAINST CURRENT EMPLOYEES

Sec.

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961.12 (Rule 12) Ex parte communications.

Authority: 39 U.S.C. 204, 401; 5 U.S.C. 5514.

§ 961.1 (Rule 1) Authority for rules in this part.

This part is issued by the Judicial Officer under authority delegated by the Postmaster General.

§ 961.2 (Rule 2) Scope of rules in this part.

This part applies to:

(a) The hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514, and in accordance with the Employee and Labor Relations Manual, sections 450 and 460, challenging the existence, amount, or the repayment schedule of an employee debt to the Postal Service; or

(b) A hearing under section 5 of the Debt Collection Act when the Judicial Officer Department adjudicates a petition for a creditor agency under an agreement between the Postal Service and that agency. In such cases, all references to Postal Service in this part will be construed to refer to the creditor agency.

§ 961.3 (Rule 3) Definitions.

As used in this part:

(a) *Employee*. A current Postal Service employee who is alleged to be indebted to the Postal Service.

(b) *General Counsel*. The General Counsel of the Postal Service or the General Counsel's designee.

(c) *Hearing Official*. (1) An Administrative Law Judge qualified to hear cases under the Administrative Procedure Act;

(2) An Administrative Judge appointed under the Contract Disputes Act of 1978, as amended; or

(3) Any other qualified person who is not under the control or supervision of the Postmaster General and is designated by the Judicial Officer to conduct the hearing.

(d) *Judicial Officer*. The Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(e) *Notice of involuntary administrative salary offset*. The formal written notice required by section 5 of the Debt Collection Act, including the provision of notice of the procedures under this part, before involuntary offset may be taken from an employee's salary.

(f) *Days*. Calendar days.

(g) *Recorder*. The Recorder, Judicial Officer Department, United States Postal Service, located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Recorder's telephone number is (703) 812-1900, and the fax number is (703) 812-1901.

§ 961.4 (Rule 4) Employee petition for a hearing.

(a) If an employee wants to challenge the existence, amount, or repayment schedule of a debt assessed under section 5 of the Debt Collection Act, the employee or their representative must file a written petition electronically at <https://usps-judicialoffice.journaltech.com>, or by mail at Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The petition must be filed on or before the 15th day following the receipt of the Postal Service's notice of involuntary administrative salary offset. The Hearing Official may waive this deadline for good cause timely shown. If the Postal Service initiated involuntary administrative salary offset without issuing a notice as required by the Debt Collection Act, the Hearing Official may retain authority to resolve the debt assessment as if a notice had been issued and may order the Postal Service to return any improperly offset money.

(b) A sample petition is available at the Judicial Officer Electronic Filing website (<https://usps-judicialoffice.journaltech.com>). The petition should include the following:

(1) The words "Petition for Hearing under the Debt Collection Act" at the top of the first page.

(2) The employee's name, work address, home address, primary telephone number, email address, and, if applicable, any other address and telephone number at which the employee may be contacted during normal business hours.

(3) The date on which the employee received the notice of involuntary administrative salary offset.

(4) A copy of the notice of involuntary administrative salary offset.

(5) A statement indicating whether the employee challenges:

(i) The existence of the debt identified in the notice of involuntary administrative salary offset;

(ii) The amount of the debt identified in the notice of involuntary administrative salary offset; and

(iii) The involuntary repayment terms established by the Postal Service in the notice of involuntary administrative salary offset.

(iv) For each challenge, the petition should describe the basis of the employee's disagreement. The employee should identify and explain the facts, evidence, and legal arguments that support the petition.

(6) Copies of all records in the employee's possession that relate to the debt.

(7) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship for either the employee or the employee's spouse or dependents, the employee must propose an alternative offset schedule. The employee must provide a statement and supporting documents showing the employee's financial status. This statement must address total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee must file any additional information directed by the Hearing Official.

§ 961.5 (Rule 5) Effect of filing a petition.

After receipt and docketing of the employee's petition for a hearing, further collection activity by the Postal Service must cease as required by section 5 of the Debt Collection Act until the petition is resolved by the Hearing Official.

§ 961.6 (Rule 6) Filing, docketing, and serving documents; computation of time; representation of parties.

(a) *Filing.* The Judicial Officer Department calculates all filing deadlines in Eastern Time. After a petition is filed, all documents relating to the petition must be filed using the electronic filing system, unless the Hearing Official permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date and time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed. Filings by any other means are considered filed when the Recorder receives a complete

copy of the filing during normal business hours. The Recorder's normal business hours are between 8:45 a.m. and 4:45 p.m., Eastern Time. Documents filed by other means after 4:45 p.m., Eastern Time, or on a Saturday, Sunday, or Federal holiday, will be considered filed on the next business day.

(b) *Docketing.* The Recorder will maintain a record of Debt Collection Act petitions and will assign a docket number to each case. After notification of the docket number, the employee and the Postal Service must refer to the docket number on all further filings.

(c) *Service.* If both parties have access to the electronic filing system, separate service on the opposing party is not required. Otherwise, documents must be served personally, by mail, or by email on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(d) *Time computation.* A filing period excludes the day the period begins, and includes the last day of the period, unless the last day is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Requests for extensions of time must:

- (1) Be made in writing before the date on which the submission is due;
- (2) State the reason for the request;
- (3) Represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so; and
- (4) Indicate whether the opposing party consents to the extension. Requests for extensions of time submitted after the date on which the submission was due must explain why the moving party was unable to request an extension before the deadline.

(e) *Representation of parties.* The Postal Service's representative, as designated by the General Counsel, must file a notice of appearance as soon as practicable, but no later than the date the answer is filed. Employees may represent themselves or be represented by an attorney or other designated person. As applicable, an employee's representative must file a notice of

appearance as soon as practicable. The Postal Service must direct all further communications and documents to the employee's representative. A representative who later withdraws must file a notice that includes the name, mailing address, email address, and telephone number of the person who will assume responsibility for representing the party.

§ 961.7 (Rule 7) Answer to petition.

The Postal Service must file an answer to the petition by the date set out in the docketing notice. The Postal Service must attach all documents that are available and relevant to the Postal Service's debt claim and the proposed administrative salary offset schedule. The answer must include a clear and thorough description of the basis for the alleged debt, a calculation of the amount of the alleged debt, and a proposed offset schedule.

§ 961.8 (Rule 8) Hearing Official's authority and responsibilities.

The Hearing Official's authority includes, but is not limited to:

- (a) Ruling on motions and requests by the parties.
- (b) Issuing notices, orders, and memoranda to the parties concerning the hearing proceedings.
- (c) Conducting telephone conferences with the parties to expedite the proceedings and schedule further proceedings. The Hearing Official will prepare a memorandum of telephone conference, which will be sent to both parties and will serve as the official record of that conference.
- (d) Determining whether the petition will be decided after an oral hearing or on the written record. If an oral hearing is held, the Hearing Official will set the place, date, and time for a hearing.
- (e) Administering oaths and affirmations to witnesses.
- (f) Conducting the hearing in a manner to maintain discipline and decorum while ensuring that relevant, reliable, and probative evidence is elicited on the issues in dispute and

irrelevant, immaterial, or repetitious evidence is excluded. The Hearing Official may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record in the case. The weight to be attached to any evidence will rest within the Hearing Official's discretion. Except as the Hearing Official may otherwise allow, no evidence will be received after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the record is closed. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter at any time within the Hearing Official's discretion.

(h) Granting reasonable time extensions, suspending proceedings, or other relief for good cause shown in the Hearing Official's sole discretion.

(i) Issuing the final decision. The decision will include a determination of the validity and amount of the alleged debt and, where applicable, the repayment schedule. The Hearing Official will issue the decision as soon as practicable after the close of the record. Collection activity remains stayed until the decision is issued.

§ 961.9 (Rule 9) Oral hearing or submission on the written record.

(a) An oral hearing may be held at the sole discretion of the Hearing Official. An oral hearing may be conducted in-person, by telephone, by video conference, or other appropriate means at the discretion of the Hearing Official. The Hearing Official will arrange for the preparation of a transcript of the hearing. That transcript will be the official record of the hearing. In the event of an unexcused absence of one of the parties, the hearing may proceed without the absent party.

(b) If an oral hearing is not held, the record may be supplemented with affidavits or declarations. The Hearing Official's decision will be based on the written submissions. Submission on the written record does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses.

§ 961.10 (Rule 10) Effect of Hearing Official's decision; motion for reconsideration.

(a) After the receipt of written submissions or after the conclusion of the hearing, the Hearing Official will issue a written decision. The decision will include findings of fact and conclusions of law.

(b) The Hearing Official will send each party a copy of the decision. The Hearing Official's decision is the final administrative determination on the employee's debt or repayment schedule, subject to a timely motion for reconsideration.

(c) A motion for reconsideration must be filed within 10 days from receipt of the decision and will be allowed only at the discretion of the Hearing Official. A motion for reconsideration by the employee will not stay any collection action authorized by the Hearing Official's decision.

§ 961.11 (Rule 11) Consequences for failure to comply with rules in this part.

(a) The Hearing Official may determine that the employee has waived their right to a hearing and that administrative offset may be initiated if the employee does not show good cause for failing to file a timely petition.

(b) The Hearing Official may grant a petition, and as appropriate, invalidate a debt if, in the absence of good cause and after failing to comply with an order by the Hearing Official, the Postal Service fails to file a timely answer. If the petition is granted for this reason, the Postal Service will be prohibited from collecting the debt by involuntary administrative salary offset.

(c) If a party fails to comply with this part or the Hearing Official's orders, the Hearing Official may take reasonable and proper action under the circumstances, including dismissing, denying, or granting the petition as appropriate.

§ 961.12 (Rule 12) Ex parte communications.

Except as described in this section, a party may not communicate with a Hearing Official or other member of the Judicial Officer Department without the other party present. Exceptions:

(a) A Hearing Official or other member of the Judicial Officer Department may talk to a party individually to discuss procedural matters.

(b) A Hearing Official may talk to a party individually when a telephone conference or hearing has been scheduled and the other party does not appear.

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