

Prepared by General Accounting & Loan Collection Office.
This is a new procedure.

A8.621

A8.600 Accounting

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A8.621 DELINQUENT FINANCIAL OBLIGATION HEARINGS

1. Purpose

To provide procedures for conducting hearings involving the setoff of a person's delinquent financial obligation against the person's income tax refund or any other sum owed to the person from the State. The procedures are based on Hawaii Revised Statutes Chapter 91 and Sections 231-51 to 231-59, Hawaii Administrative Rules Chapter 20-10, and Board of Regents Policies Section 8-1.

2. Applicability

This directive applies to appeals of tax setoffs at all campuses of the University of Hawaii (refer to A8.651 Accounts Receivables).

3. Definitions

Appeal means the request for hearing to contest the setoff of a person's delinquent financial obligation against the person's income tax refund or any other sum owed to the person from the State.

Board means the Board of Regents of the University of Hawaii and shall include its authorized designees.

Claimant means the University program which initiates the utilization of the setoff procedures.

Contested case means the administrative case involving the setoff of a person's delinquent financial obligation against the person's income tax refund or any other sum owed to the person from the State.

Debtor is a person owing a debt to the University.

Delinquent financial obligation means being past due on a financial obligation of the University of Hawaii, or failing to pay for tuition and fees by a published deadline.

Designee means a person designated or appointed by the University for a specific purpose or duty.

Hearing officer means a person duly designated by the University to preside over a hearing.

Party is any person that participates in an appeal hearing or a contested case hearing as a person filing the appeal, a business office, a debtor, or a claimant.

Person means any individual, corporation, partnership, association, or any trustee, assignee, receiver, or legal successor thereof.

President means the President of the University of Hawaii and shall include the President's authorized designees.

Review means an informal proceeding which gives a person the opportunity to present a case to an authorized University staff member.

Sanctions are the penalties that the University may impose when a financial obligation becomes delinquent.

Setoff means the application of person's income tax refund or any other sums due to the person from the State, to a valid debt owed to the University.

University means the several institutions, collectively or individually, which fall under the jurisdiction of the Board of Regents of the University of Hawaii.

4. Designation of Hearing Officers

The President shall designate a hearing officer to hear appeals involving the setoff of a debtor's delinquent financial obligation against the debtor's Hawaii State income tax refund or any other sum due to the debtor from the State.

5. Appeals Involving the Setoff of a Debtor's Delinquent Financial Obligation Against the Debtor's Hawaii State Income Tax Refund or Any Other Sum Due to the Debtor From the State
- a. The debtor shall submit a written request for hearing to the Director of the General Accounting & Loan Collection Office not more than thirty days from the date of the Comptroller's notice of tax setoff. In the case of a joint refund, the debtor's spouse is also entitled to appeal the tax setoff.
 - b. The Vice President for Administration may extend the time for the submission of the hearing request for good reason.
 - c. The Director of the General Accounting & Loan Collection Office shall send the hearing request to the hearing officer. The Director shall retain a copy of the hearing request for its files.
 - d. The hearing officer shall prepare the written notice of hearing. The notice shall include:
 - 1) The date, time, place, and nature of the hearing.
 - 2) The legal authority under which the hearing is to be held.
 - 3) The particular sections of the statutes and rules involved.
 - 4) A statement of the issues involved and the facts alleged by the claimant.
 - a) If the claimant is unable to state the issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.
 - b) Thereafter, a detailed written statement of the issues and facts shall be provided by the claimant to the debtor.

- c) That the contested case is limited to issues not previously contested by the debtor.
- d) The fact that any party may retain counsel if so desired, and the fact that an individual may appear on the individual's own behalf.
- 5) The hearing officer shall send the written notice of hearing to the debtor and the claimant at least fifteen days before the hearing. The hearing officer shall retain a copy of the written notice of hearing in the debtor's case file.
- e. The hearing officer shall conduct the hearing in accordance with the Hawaii Administrative Procedure Act (Hawaii Revised Statutes Chapter 91) and Hawaii Administrative Rules Chapter 20-10.
 - 1) The hearing officer shall provide all parties in a contested case with the opportunity to present evidence and argument on all issues involved.
 - 2) Any procedure in a contested case may be modified or waived by agreement of the parties and informal settlement of the case may be accomplished by agreement of the parties, consent order, or default.
 - 3) The hearing officer may receive any oral or written evidence in a contested case.
 - a) Hearing officer shall provide for the exclusion of irrelevant, immaterial, or repetitious evidence.
 - b) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions that are cited by a party and supported by the evidence.
 - c) Hearing officer shall give effect to the rules of privilege recognized by law.

- d) Evidence may be received in the form of copies or excerpts if the original is not readily available. If requested, the parties shall be given an opportunity to compare the copy with the original.
- 4) Each party shall have the right to cross-examine the other party for a full disclosure of the facts and shall have the right to submit rebuttal evidence.
- 5) The hearing officer may consider judicial, technical or scientific facts that are within the hearing officer's specialized knowledge.
 - a) Parties shall be notified of the facts before or during the hearing.
 - b) Parties shall be given an opportunity to contest the facts.
- 6. Any document filed in a contested case, other than evidence, shall conform to the requirements of section 20-1-7, Hawaii Administrative Rules.
 - a. Documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible.
 - b. Documents shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached.
- 7. The record of the contested case shall include:
 - a. All pleadings, motions, and rulings.
 - b. Evidence, including oral testimony, exhibits, and other official documents.
 - c. Answers (for the record) that would have been given if the other party had not objected to the question.
 - d. Proposed findings.

- e. Report of the administrative hearing officer who presided at the hearing.
 - f. Staff memoranda submitted to the Board in connection with their consideration of the case.
8. For the purpose of preserving a record, the hearing shall be tape recorded. It shall not be necessary to transcribe the record unless requested for purposes of rehearing, Board review, or court review.
9. Within a reasonable time following the hearing, the hearing officer shall prepare a proposed decision on the case as a recommendation for the Board.
- a. No matters outside the record shall be considered by the hearing officer in making a proposed decision.
 - b. Hearing officer's decision shall be in writing and shall contain the reasons for the decision and a determination of the proposed finding of facts.
 - c. If any party has filed proposed finding of facts, the hearing officer shall rule upon each fact.
10. The hearing officer shall send the proposed decision to each party or to the party's attorney of record within a reasonable time following the closure of the hearing. The hearing officer shall retain a copy of the proposed decision in the debtor's case file.
11. The hearing officer shall send a memorandum to the Vice President for Administration summarizing the contested case. The hearing officer shall retain a copy of the memorandum in the debtor's case file.
12. If the debtor is adversely affected by the proposed decision, the debtor shall be given the opportunity to file exceptions to the proposed decision.
- a. The exceptions shall be in writing and filed with the hearing officer not more than fifteen days from the date of the proposed decision.

- b. The hearing officer shall send the exceptions and a copy of the debtor's case file to the Board of Regents or its designee. The hearing officer shall retain a copy of the exceptions in the case file.
 - 1) The final decision in a contested case of less than \$100,000 shall be rendered by a Board of Regents' designee.
 - 2) The final decision in a contested case of \$100,000 or more shall be rendered by the Board of Regents.
 - c. The Board of Regents or its designee shall provide the debtor with an opportunity to present written and oral arguments before a final decision is rendered.
 - d. In rendering the final decision for the University, the Board of Regents or its designee shall consider the whole record of the contested case or the specific portions cited by the parties.
 - 1) No matters outside the record shall be considered by the Board of Regents or its designee in making a decision.
 - 2) Every decision rendered by the Board of Regents or its designee shall be in writing and shall include the findings of fact and conclusions of law.
13. The hearing officer, Board member or designee, or any other person who is likely to advise these officials in the decision on the contested case is prohibited from discussing ex parte any issue of fact or the merits of the case with any interested person not performing a decision making function, except where:
- a. Notice is given to both the debtor and the claimant providing an opportunity for all parties to participate in the discussion; or
 - b. Consultation is required for the disposition of ex parte matters authorized by law or the consultations

with the decisionmakers' legal counsel is covered by the attorney-client privilege.

14. The Board of Regents or its designee shall send the final decision to each party or to the party's attorney of record. The Board shall retain a copy of the final decision in the debtor's case file.
15. Appeals from the final decision of the Board of Regents or its designee shall be held in accordance with Hawaii Revised Statutes Chapter 91.