

47535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 797

Procedures for Debt Collection

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to the Debt Collection Improvement Act of 1996 NCUA is issuing a regulation governing procedures for collecting debts owed to the federal government by present and former NCUA employees. The regulation sets forth the procedures NCUA will follow in collecting debts owed to the United States arising from activities under NCUA jurisdiction. These procedures include collection of debts through administrative offset and salary offset.

DATES: This rule is effective April 2, 2008.

FOR FURTHER INFORMATION CONTACT: Dianne Salva, Trial Attorney, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements the Debt Collection Improvement Act of 1996 (DCIA).

The DCIA requires federal agencies to collect debts owed to the United States under regulations prescribed by the head of the agency, and standards prescribed by the Department of Justice and the Department of the Treasury. *31 U.S.C. 3711(d)(2)*. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR chapter IX and parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States, to:

(1) adopt without change regulations on collecting debts by offset promulgated by the Department of Justice or Department of the Treasury (FCCS); or (2) prescribe agency regulations for collecting such debts by offset, which are consistent with the FCCS. *31 U.S.C. 3716*. Agency regulations protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

NCUA has decided to issue its own rule for debt collection and offset, given NCUA's status as an independent regulatory agency. The final rule is consistent

with the FCCS, as required by the DCIA. The salary offset portion of the rule has been submitted to and approved by the Office of Personnel Management (OPM), as required by *5 U.S.C. 5514(b)(1)*. In addition to these legal authorities, NCUA is issuing these regulations pursuant to *12 U.S.C. 1752a(d)*, which authorizes NCUA to adopt regulations it deems necessary for transaction of its business.

II. The Final Rule

A. Subpart A - Scope, Purpose, Definitions and Delegations of Authority

The final rule applies only to debts owed to the United States which arise out of NCUA transactions and functions in its agency capacity, including, but not limited to, erroneous salary overpayments to employees and claims arising out of employee benefit withholdings and contributions. The rule does not apply to debts owed to or payments made by NCUA in connection with NCUA's conservatorship, liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect NCUA's authority pursuant to *12 U.S.C. 1752(a) and 1766*.

The Executive Director shall follow the procedural standards for collecting debts set forth in the FCCS when he determines that it is appropriate to initiate debt collection or seek offset to collect a debt. 31 CFR parts 900 through 904. The FCCS establish procedures governing the following areas of the debt collection process: (1) prompt demand for payment of the claim from the debtor; (2) review

of the existence or amount of a debt claimed upon the debtor's demand for a final agency determination; (3) standards for collecting debts in installment payments; (4) the assessment of interest, penalties and administrative costs on debts claimed; (5) standards for compromise of claims due; and (6) standards to be followed in determining whether to suspend or terminate collection action.

B. Subpart B - Administrative Offset

Pursuant to *31 U.S.C. 3716*, NCUA may collect debts owed to the United States through administrative offset. Subpart B of the final rule authorizes NCUA to collect debts owed to the United States by: (1) withholding money payable by NCUA to the debtor, or held by NCUA for the debtor; or (2) by requesting that another federal agency withhold money payable to the debtor, or held by the other federal agency for the debtor. Subpart B meets the requirements under *31 U.S.C. 3716(b)* to provide due process rights to the debtor, including the ability to verify, challenge, and compromise claims, and to provide to administrative appeals procedures which are both reasonable and protect the interests of NCUA. Subpart B also meets the requirement of *31 U.S.C. 3711(d)* that NCUA promulgate administrative offset regulations consistent with the standards established by the Attorney General and the Secretary of the Treasury.

C. Subpart C - Salary Offset

Subpart C of the final rule provides that when NCUA determines it is appropriate to collect a debt by means of deductions from the current pay account of an NCUA employee, or any individual employed by the federal government (including a former NCUA employee), NCUA shall initiate a salary offset under *5 U.S.C. 5514(a)(1)*. Salary offset is a form of administrative offset governed by statute (*5 U.S.C. 5514*) and by regulations issued by the OPM (5 CFR part 550, subpart K). Salary offset may only be used to collect debts owed by persons currently employed by the federal government. Agencies are required to promulgate their own salary offset regulations that conform to OPM's salary offset regulations. As noted above, salary offset rules must receive OPM approval before the regulations become effective. *5 U.S.C. 5514(b)(1)*; 5 CFR 550.1104. Subpart C implements those statutory requirements.

III. Administrative Procedure Act

NCUA has determined that this rule pertains to agency practice and procedure and is interpretative in nature. The procedures contained in the rule for salary offset and administrative offset are mandated by law and by regulations promulgated by OPM, jointly by the Department of the Treasury and the Department of Justice and by the IRS. Notice of proposed rulemaking is not required under the Administrative Procedure Act (APA) because the rule pertains solely to agency procedure and practice. *5 U.S.C. 553(b)(3)(A)*. Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory scheme mandated by the DCIA.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that NCUA prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, or those with under \$10 million dollars in assets.

The final rule applies to federal agencies and federal employees. Accordingly, the Board determines and certifies that this final rule does not have significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required

Paperwork Reduction Act

The final rule is not subject to the Paperwork Reduction Act (*44 U.S.C. 3501*), since it does not contain any new information collection requirements.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in *44 U.S.C. 3502(5)*, voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of

government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999- Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2682 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has obtained the determination of the Office of Management and Budget that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR part 797

Administrative practice and procedure, Claims, Debt collection, Government employees, Hearing procedures, Wages.

By the National Credit Union Administration Board on February 21, 2008

Mary F. Rupp

Secretary of the Board

For the reasons set forth in the preamble, NCUA adds 12 CFR part 797 to read

as

follows:

PART 797--PROCEDURES FOR DEBT COLLECTION

Subpart A—Scope, Purpose, Definitions and Delegations of Authority

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797.25 Recovery from final check or other payments due a separated employee.

Authority: *12 U.S.C. 1752a; 5 U.S.C. 5514; 31 U.S.C. 3711, 3716, 3720A, 3720D.*

Subpart A--Scope, Purpose, Definitions and Delegation of Authority

§797.1 Scope.

This part establishes NCUA procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by NCUA from:

- (1) Federal employees who are indebted to NCUA;
- (2) Employees of NCUA who are indebted to other agencies or NCUA; and
- (3) Former federal employees who are indebted to NCUA.

(b) This part does not apply:

- (1) To debts or claims arising under the Internal Revenue Code of 1986 (Title 26, U.S. Code), the Social Security Act (*42 U.S.C. 301 et seq.*), or the tariff laws of the United States;
- (2) To a situation to which the Contract Disputes Act (*41 U.S.C. 601 et seq.*) applies;
- (3) In any case where collection of a debt is explicitly provided for or prohibited by another statute;
- (4) To debts owed to or payments made by NCUA in connection with NCUA's conservatorship, liquidation, supervision, enforcement, or insurance responsibilities pursuant to *12 U.S.C. 1786 and 1787*, nor does it limit or affect NCUA's authority with respect to debts and/or claims pursuant to *12 U.S.C. 1752(a) and 1766*.

(c) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under standards implementing the Debt Collection Improvement Act (DCIA) (*31 U.S.C. 3711 et seq.*), the Federal Claims Collection Standards (FCCS) (31 CFR parts 900 through 904); or any other applicable law.

§797.2 Purpose.

(a) The purpose of this part is to implement federal statutes and regulatory standards authorizing NCUA to collect debts owed to the United States. This part is consistent with the following federal statutes and regulations:

(1) DCIA at *31 U.S.C. 3711* (collection and compromise of claims); section 3716 (administrative offset), and section 3717 (interest and penalty on claims).

(2) *5 U.S.C. 5514* (salary offset);

(3) *5 U.S.C. 5584* (waiver of claims for overpayment);

(4) 31 CFR parts 900 through 904 (FCCS);

(5) 5 CFR part 550, subpart K (salary offset);

(6) *31 U.S.C. 3720D*, 31 CFR 285.11 (administrative wage garnishment); and

(7) 5 CFR 831.1801 through 1808 (U.S. Office of Personnel Management (OPM) offset).

(b) Collectively, these statutes and regulations prescribe the manner in which federal agencies should proceed to establish the existence and validity of debts

owed to the federal government and describe the remedies available to agencies to offset valid debts.

§797.3 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) Administrative offset, as defined in *31 U.S.C. 3701(a)(1)*, means withholding money payable by the United States government to, or held by the government for, a person to satisfy a debt the person owes the government.

(b) Agency means a department, agency, or instrumentality in the Executive, Judicial, or Legislative branch of the government.

(c) Claim or debt means money or property owed by a person or entity to an agency of the federal government. A “claim” or “debt” includes amounts due the government, fees, services, overpayments, penalties, damages, interest, fines and forfeitures. For purposes of this part, a debt owed to NCUA constitutes a debt owed to the federal government.

(d) Claim certification means a creditor agency's written request to a paying agency to effect an administrative or salary offset.

(e) Creditor agency means an agency to which a claim or debt is owed.

(f) Debtor means the person or entity owing money to the federal government.

(g) Disposable pay means that part of current basic pay or other authorized pay remaining after the deduction of any amount required by law to be withheld.

NCUA shall allow the deductions described in 5 CFR 581.105(b) through (f).

(h) Employee means a current employee of NCUA or another agency.

(i) FCCS means the Federal Claims Collection Standards published in 31 CFR part 900.

(j) Hearing official means an individual who is authorized to conduct a hearing with respect to the existence or amount of a debt claimed and issue a final decision on the basis of such hearing. A hearing official may not be under the supervision or control of NCUA when NCUA is the creditor agency.

(k) NCUA means the National Credit Union Administration.

(l) Paying agency means an agency of the federal government owing money to a debtor against which an administrative or salary offset can be effected.

(m) Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

(n) Waiver means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to NCUA or another agency as permitted or required by 5 U.S.C. 5584 or any other law.

§797.4 Delegation of authority.

Authority to conduct the following activities is delegated to the Executive Director to:

(a) Initiate and carry out the debt collection process on behalf of NCUA, in accordance with the FCCS;

(b) Accept or reject compromise offers, suspend, terminate or waive collection actions to the full extent of NCUA's legal authority under *12 U.S.C. 1752(a)* and *1789*; *31 U.S.C. 3711*, and any other applicable statute or regulation.

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use offset procedures, including administrative and salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the government in accordance with the policies contained herein and as otherwise provide by law.

Subpart B--Administrative offset

§797.5 Authority and scope.

NCUA may collect a debt owed to the federal government from a person, organization, or other entity by administrative offset, pursuant to *31 U.S.C. 3716*, where:

(a) The debt is certain in amount;

(b) Administrative offset is feasible, desirable, and not otherwise prohibited;

(c) The applicable statute of limitations has not expired; and

(d) Administrative offset is in the best interest of the federal government.

§797.6 Administrative offset prior to completion of procedures.

Prior to the completion of the procedures described in §797.7, NCUA may effect administrative offset if failure to offset would substantially prejudice its ability to collect the debt, and if the time before the payment is to be made does not reasonably permit completion of the procedures described in §797.7. Such prior administrative offset shall be followed promptly by the completion of the procedures described in §797.7.

§797.7 Procedures.

Prior to collecting any debt by administrative offset or referring such claim to another agency for collection through administrative offset, NCUA shall provide the debtor with a written Notice of Intent to Collect by Administrative Offset (the Notice) at least 30 calendar days before administrative offset is to commence.

The Notice shall provide the following information:

- (a) The nature and amount of the debt, the intention of NCUA to collect the debt through administrative offset, and a statement of the rights of the debtor under this section, including the right to request a waiver under *5 U.S.C. 5584*;
- (b) An opportunity to inspect and copy the records of NCUA related to the debt or receive copies if personal inspection is impractical;
- (c) The payment due date, which shall be 30 calendar days from the date after receipt of the initial demand for payment;
- (d) An opportunity for the debtor to obtain a review of the determination of indebtedness. Any request for review by the debtor shall be in writing and shall be submitted to NCUA within 15 calendar days after receipt of the Notice. NCUA

may waive the time limits for requesting review for good cause shown by the debtor. NCUA shall provide the debtor with a reasonable opportunity for an oral hearing when:

(1) An applicable statute authorizes or requires NCUA to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and NCUA determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, as for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this subpart is not required to be a formal evidentiary hearing, although NCUA shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this subpart, NCUA shall make its determination on the request for waiver or reconsideration based upon a review of the written record.

(e) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of NCUA;

(f) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with *31 U.S.C. 3717*, if payment is not received by the payment due date, unless excused by the FCCS;

(g) That if the debtor has not entered into an agreement with NCUA to pay the debt, has not requested NCUA to review the debt, or has not paid the debt by the

payment due date, NCUA intends to collect the debt by all legally available means;

(h) The name and address of the Executive Director whom the debtor shall send all correspondence relating to the debt; and

(i) Other information, as may be appropriate.

§797.8 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of NCUA's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Executive Director within 15 calendar days after receipt of the Notice. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The NCUA shall promptly notify the debtor, in writing, that the NCUA has received the request for review. The NCUA shall conduct its review of the claim in accordance with §797.9.

§797.9 Review procedures.

(a) Unless an oral hearing is required by §797.7(d), NCUA's review shall be a review of the written record of the claim.

(b) If an oral hearing is required, NCUA shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. When NCUA is the creditor agency and the debtor is an NCUA employee, NCUA shall contact any agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. When NCUA is the creditor agency and the debtor is not an NCUA employee (i.e., the debtor is employed by another federal agency, also known as the paying agency), and NCUA cannot provide a prompt and appropriate hearing, NCUA may contact an agent of the paying agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. The paying agency must cooperate with NCUA to provide a hearing official, as required by the FCCS.

(d) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by NCUA, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines that there is good cause to grant the

delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(e) Upon issuance of the written opinion, NCUA shall promptly notify the debtor of the hearing official's decision. The notification shall include a copy of the written decision issued by the hearing official.

§797.10 Special review.

(a) An employee subject to offset, or a voluntary repayment agreement, may, at any time, request a special review by the Executive Director of the amount of the offset or voluntary repayment, based on materially changed circumstances, including,

but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses, the employee shall submit a detailed statement and supporting documents for the employee, the employee's spouse, and dependents indicating the employee's assets and liabilities.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement.

(d) The Executive Director shall evaluate the statement and supporting documents,

and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Executive Director shall notify the

employee in writing within 30 calendar days of such determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, NCUA shall provide a new certification to the paying agency.

§797.11 Interest, administrative costs, and penalties.

Where NCUA is the creditor agency, it shall assess interest, penalties and administrative costs pursuant to *31 U.S.C. 3717* and 31 CFR parts 900 through 904, unless excused in accordance with the FCCS.

§797.12 Refunds.

NCUA shall refund promptly those amounts recovered by offset but later found not to be owed to the federal government.

§797.13 Requests for administrative offset where NCUA is the creditor agency.

(a) NCUA may request that a debt owed to NCUA be collected by administrative offset against funds due and payable to a debtor by another agency.

(b) In requesting administrative offset, NCUA, as creditor, shall certify in writing to the agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and

(3) That NCUA has complied with the requirements of its own administrative offset regulations and the applicable provisions of the FCCS with respect to providing the debtor with due process.

§797.14 Requests for administrative offset from other federal agencies where NCUA is the paying agency.

(a) Any agency may request that funds due and payable to a debtor by NCUA be administratively offset in order to collect a debt owed to such agency by the debtor.

(b) NCUA shall initiate the requested administrative offset only upon receipt of a written certification from the creditor agency that:

(1) The debtor owes the debt, including the amount and basis of the debt;

(2) The agency has prescribed regulations for the exercise of administrative offset; and

(3) The agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, with respect to providing the debtor with due process.

§797.15 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

NCUA may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to NCUA by the debtor. NCUA shall provide OPM with a written certification that

states the debtor owes the debt, the amount of the debt, and that NCUA has complied with the agency's offset regulations, as well as, the requirements set forth in 31 CFR parts 900 through 904 and OPM's regulations.

§797.16 Stay of offset.

(a) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 15 calendar days beyond the date set for the record inspection.

(b) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(c) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision. The written decision must be issued within 60 days after receipt of the debtor's request for review.

Subpart C—Salary offset

§797.17 Authority and scope.

(a) NCUA may collect debts owed by employees to the federal government by means of salary offset under the authority of 5 U.S.C. 5514, 5 CFR part 550, subpart K, and this subpart. The procedures set forth in this subpart apply to situations where NCUA is attempting to collect a debt by salary offset that is owed to it by an individual employed by NCUA or by another agency; or where

NCUA employs an individual who owes a debt to another agency. Since salary offset is a type of administrative offset, this subpart supplements subpart B.

(b) The procedures set forth in this subpart do not apply to:

(1) Any routine intra-agency adjustment of pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to \$50 or less. However, at the time of any such adjustment, or as soon thereafter as possible, NCUA or its designated payroll agent shall provide the employee with a written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(2) Any negative adjustment to pay that arises from an employee's election of coverage or a change in coverage under a federal benefits program that requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, at the time that such adjustment is made, NCUA shall provide the employee a statement that informs the employee of the previous overpayment.

§797.18 Notice requirements where NCUA is the creditor agency.

Where NCUA seeks salary offset under *5 U.S.C. 5514* as the creditor agency, NCUA shall first provide the employee with a written Notice of Intent to Collect by Salary Offset (the Notice) at least 30 calendar days before salary offset is to commence. The Notice shall provide the following information:

(a) That the Executive Director has determined that a debt is owed to NCUA and intends to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full or otherwise resolved;

(b) The amount of the debt and the factual basis for the debt;

(c) A salary offset schedule stating the frequency and amount of each deduction, stated as a fixed dollar amount or percentage of disposable pay not to exceed 15 percent;

(d) That in lieu of salary offset, the employee may propose a voluntary repayment plan to satisfy the debt on terms acceptable to NCUA, which must be documented in writing, signed by the employee and the Executive Director, and documented in NCUA's files;

(e) NCUA's policy concerning interest, penalties, and administrative costs, and a statement that such assessments must be made, unless excused in accordance with the FCCS;

(f) That the employee has the right to inspect and copy NCUA records related to the debt, or to receive copies of such records if personal inspection is impractical;

(g) That the employee has a right to request a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by NCUA, provided that the employee files a request for such a hearing with NCUA in accordance with §797.20, and that such a hearing will be conducted by a hearing official not under the supervision or control of NCUA;

- (h) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the Executive Director or other designated individual to whom a request for hearing must be sent;
- (i) That a request for hearing must be received by NCUA on or before the 30th calendar day following receipt of the Notice, and that filing of a request for hearing will stay the collection proceedings;
- (j) That NCUA will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice, unless the employee files a timely request for a hearing;
- (k) That if a hearing is held, the hearing official will issue a decision at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests a delay in the proceedings which is granted by the hearing official;
- (l) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to disciplinary procedures appropriate under *5 U.S.C. chapter 75*, *5 CFR part 752*; penalties under the False Claims Act, *31 U.S.C. 3729 through 3731*; criminal penalties under *18 U.S.C. 286, 287, 1001, 1002*; or any other applicable statutory authority, and;
- (m) That the employee also has the right to request waiver of overpayment pursuant to *5 U.S.C. 5584*, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made.

§797.19 Review of NCUA records related to the debt.

(a) An employee who desires to inspect or copy NCUA records related to the employee's debt must send a written request to the Executive Director or the individual designated in the Notice. The letter must be received in the office of that individual within 15 calendar days after the employee's receipt of the Notice.

(b) In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to the debt. If the employee is unable personally to inspect such records, NCUA shall arrange to send copies of such records to the employee.

§797.20 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the Executive Director within 15 calendar days after the employee's receipt of the Notice.

If the employee files a request for a hearing after the expiration of the 15th calendar day, NCUA may accept the request if the employee can show that the delay was the result of circumstances beyond the employee's control or the employee failed to receive actual notice of the filing deadline.

(b) The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that support the employee's position. The request must also

state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall state why the matter cannot be resolved by a review of documentary evidence alone.

(c) The failure of an employee to request a hearing will be considered an admission by the employee that the debt exists in the amount specified in the Notice.

§797.21 Hearing procedures.

(a) *Obtaining the services of a hearing official.* When the debtor is not an NCUA employee and NCUA cannot provide a prompt and appropriate hearing before a hearing official, NCUA may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency. When the debtor is an NCUA employee, NCUA may contact any agent of another agency, as designated in 5 CFR part 581, appendix A.

(b) *Notice of hearing.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee, within 30 calendar days shall submit any evidence or written arguments that should be considered by the hearing official.

(c) *Oral hearing.* (1) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity is involved. The oral hearing need not be an adversarial adjudication and rules of evidence need not apply.

(2) Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee; or

(iii) Formal written submissions followed by an opportunity for oral presentation.

(d) *Hearing by examination of documents.* If the hearing official determines that an oral hearing is not necessary, the hearing official shall make the determination based upon an examination of the documents.

(e) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(f) *Decision.* (1) The hearing official shall issue a written decision based upon evidence and information developed at the hearing or in the case of a documentary hearing the decision shall be based on the documents and written submissions. The decision shall be issued, as soon as practicable after the hearing, but not later than 60 calendar days after the hearing request was received by NCUA. If the hearing was delayed at the request of the employee,

the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(2) The decision of the hearing official shall be final and is considered to be an official certification regarding the existence and the amount of the debt for purposes of executing salary offset under *5 U.S.C. 5514*. If the hearing official determines that a debt may not be collected by salary offset, but NCUA finds that the debt is still valid, NCUA may seek collection of the debt through other means in accordance with applicable law and regulations.

(g) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(h) *Failure to appear.* If the employee or the NCUA representative fails to appear, the hearing official shall proceed with the hearing as scheduled, and issue the decision based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may re-schedule the hearing date.

§797.22 Voluntary repayment agreement

(a) In response to the Notice, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to NCUA. Any proposal under this section must be received by NCUA within 15 calendar days after receipt of the Notice.

(b) In response to a timely proposal by the employee, NCUA shall notify the employee whether the employee's proposed repayment schedule is acceptable. NCUA has the discretion to accept, reject, or propose to the employee a modification of the proposed repayment schedule.

(1) If NCUA decides that the proposed repayment schedule is unacceptable, the employee shall have 15 calendar days from the date of the decision in which to file a request for a hearing.

(2) If NCUA decides that the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by NCUA, an agreement shall be put in writing and signed by both the employee and NCUA.

§797.23 Certification where NCUA is the creditor agency.

(a) NCUA shall issue a certification in all cases where the hearing official determines that a debt exists or the employee admits the existence and amount of the debt, as for example, by failing to request a hearing.

(b) The certification must be in writing and state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the federal government's right to collect the debt first accrued;

(4) The date the employee was notified of the debt, the action(s) taken pursuant to NCUA's regulations, and the dates such actions were taken;

(5) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(6) If the collection is to be made in installments, the amount or percentage of disposable pay to be collected in each installment and, if NCUA wishes, the desired commencing date of the first installment, if a date other than the next officially established pay period; and

(7) A statement that NCUA's regulation on salary offset has been approved by OPM pursuant to 5 CFR part 550, subpart K.

§797.24 Certification where NCUA is the paying agency.

(a) Upon issuance of a proper certification by NCUA or upon receipt of a proper certification from another creditor agency, NCUA shall send the employee a written notice of salary offset.

(b) Such written notice of salary offset shall advise the employee of the:

(1) Certification that has been issued by NCUA or received from another creditor agency;

(2) Amount of the debt and of the deductions to be made; and

(3) Date and pay period when the salary offset will begin.

(c) If NCUA is not the creditor agency, NCUA shall provide a copy of the notice to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

§797.25 Recovery from final check or other payments due a separated employee.

(a) *Lump-sum deduction from final check.* In order liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(b) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from NCUA, and the balance of the debt cannot be liquidated by offset of the final salary payment, NCUA may offset any later payments of any kind to the former employee to collect the balance of the debt pursuant to 31 U.S.C. 3716.