

Farm Credit Administration

§ 608.822

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following:

(1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the FCA is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the FCA determines under § 608.824 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 608.822 Notice requirements before offset.

(a) Except as provided in § 608.824, the FCA will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the FCA imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset: (i) The FCA's intention 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; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the FCA related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor shall be assessed for the cost of copying the documents in accordance with § 608.807;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the FCA's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the FCA official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by

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an official arranged for by the FCA who shall be a hearing official not under the control of the Chairman of the Farm Credit Administration, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the FCA to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the FCA;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the FCA to pay the debt, has not requested the FCA to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the FCA intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the FCA reserves the right to impose an offset prior to this

date if the FCA determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority;

(ii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations, or any other applicable statute or regulation;

(14) The name and address of the FCA official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the FCA is not required to duplicate those requirements before effecting offset.

§ 608.823 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the FCA's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. 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 FCA official named in the