



DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to S7C

Memorandum

Date:

From: Acting Director
Office of Labor Management Relations

Subject: Review of Memorandum of Understanding (MOU) Regarding the
Procedures for Resolving Disputes Concerning the Collection
To: of Employee Debts--INFORMATION

All Regional Labor Relations Specialist

This MOU dated March 13, 1995 was reviewed for conformance with applicable law, rule and regulation as required by 5 USC 7114. The agreement is approved and may be implemented.

Please furnish a copy of this memorandum to the union.

Patricia A. Randle
Patricia A. Randle

Attachment

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is to establish procedures for resolving disputes concerning the collection of employee debts through salary setoffs of various types between the Social Security Administration (hereinafter called SSA, Agency, or Management) and employees who are members of SSA bargaining units represented by the American Federation of Government Employees (hereinafter called Union). When used herein, "Department" refers to the Department of Health and Human Services, the parent agency of SSA. Where appropriate, the use of the word "Agency" also refers to actions by officials of the Department.

This MOU stems from the Agency's implementation of procedures to effectuate the Debt Collection Act of 1982, P.L. 97-365 (hereinafter called Debt Collection Act, the Act, or the DCA), including questions related to employee requests for waiver of debts owed to the Government, and from Mediation-Arbitration proceedings in Case No. 91 FSIP 233.

No rights of any employees, the Union or Management have been waived either explicitly or implicitly. This MOU shall be subject to all provisions of 5 USC Chapter 71 (hereinafter called the Statute) and to all provisions of the National Agreement between the Parties hereto (except as otherwise specifically provided herein in accordance with the Letter of Understanding reached on March 9, 1993 and reaffirmed on August 10, 1993 during the negotiations for the 1993 National Agreement). This MOU shall in no way be construed to conflict with or detract from any rights provided the Union under any provision of the Statute or the National Agreement.

NOTICES AND EMPLOYEE RIGHTS

1. When the head of the Agency, or his/her designee, determines that an employee is indebted to the Agency for debts for which the government is entitled to be repaid, the following procedures will apply:

a. The employee will be notified, in writing, by the Agency that a debt is owed.

b. The employee will be given a minimum of 30 days written notice before the Agency initiates deductions from the current pay account of the individual.

c. Notices concerning debts sent to employee will:

1) be on Agency or Department letterhead and bear the name of an appropriate management official;

2) be clearly addressed to the employee;

3) provide a clear explanation of the alleged debt and an opportunity, on official time and in duty status, for the employee and/or the employee's designated Union representative to inspect records relied upon to support the alleged debt, including the nature and amount of the indebtedness; if such records are not available then all time-frames (including the time to request a hearing) will be extended until such records are available;

4) provide notice of the Agency's intent to initiate proceedings to collect the debt through payroll deduction; the amount to be deducted for any period may not exceed 15 per cent of the employee's disposable pay, except that a greater percentage may be deducted upon written consent of the individual involved; if the individual retires or resigns, or if his/her employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual from the Agency;

5) provide an explanation of the employee's right under this Award to request a hearing to resolve all disputes regarding the

existence of the debt, the amount of the debt, and the payment schedule, as well as the right to seek waiver of the debt, the criteria for waiver and the information which generally would be considered in ruling upon requests for waiver;

6) contain the name, title, address and telephone number of the individual(s) to whom questions and/or waiver requests should be addressed;

7) give the employee and/or the employee's designated Union representative the opportunity to negotiate a written agreement for repayment of the debt;

8) notify the employee that, to be timely, a request for hearing must be in writing and filed on or before the fifteenth day following receipt of the notice described in this MOU and in accord with the procedures of this MOU; the notice will clearly identify the name and ~~address of the individuals who are to be provided that request for hearing~~; the timely filing of a request for hearing with the incorrect Agency official will not serve to bar the request for hearing on timeliness grounds;

9) notify the employee that the only hearing available to challenge the debt or the repayment schedule will be expedited arbitration; that the Union is the exclusive bargaining representative and that the Union must approve arbitration before an arbitration hearing will be held; that the failure of the Union to authorize arbitration will result in the withdrawal of the employee's request for a hearing; and that an employee request to meet with Agency representative(s) will not be viewed by the Agency as constituting a request for a hearing under the Debt Collection Act;

10) employee requests for a hearing should briefly state the basis of the appeal (i.e., the factual reasons for the dispute), include copies of supporting documents, identify supporting witnesses (if any) with knowledge about the matter being contested, and sign the request; this submission will not preclude the introduction by the employee or the Union at the hearing or in conferences of other

relevant documents and/or witnesses;

11) after a designation of a Union representative, the Agency agrees to simultaneously forward copies of all subsequent correspondence sent to the employee to the designated Union representative and to further provide to the designated Union representative, within five working days of the Agency's receipt of such designation, copies of all prior correspondence, including a copy of the employee request (including any attachments) docketed in connection with the particular claim;

12) All notices to employees will contain the following statement: IF YOU ARE A BARGAINING UNIT EMPLOYEE YOU ARE ENTITLED TO UNION REPRESENTATION ON THESE ISSUES IF YOU SO CHOOSE;

13) All notices to employees will include a form for the employee to designate a Union representative if desired; and

14) inform the employee of the facts that, unless extended by the head of the Agency, if not paid or otherwise the subject of an agreed upon repayment schedule, the debt will be deemed to be overdue 31 calendar days from the date of mailing or the date of hand delivery of the initial notice of indebtedness that, if not paid in full within 30 days of the date of the notice, interest on the amount will accrue from the date of mailing of the notice; that the Agency may assess administrative collection costs and the amount of those costs; and the fact that, if the debt is more than 90 calendar days overdue, a late payment penalty of not more than 6 percent a year may be assessed in addition to accrued interest and any administrative collection costs.

2. The Agency will mail the notice or other correspondence regarding the overpayment to the employee by registered or certified mail, return receipt requested, to the most current address of the employee that is available to the head of the Agency or his designee, or by hand delivery. If the Agency opts for hand delivery, the Agency must exercise care to

insure that the notice is dated the same date as the date of hand delivery and further is responsible for insuring that written confirmation is made of the date and fact of actual hand delivery. The date of hand delivery or the date on the certified or registered mail return receipt, as appropriate, will be used herein as the date for employee receipt of the written notice.

In the event that the Agency opts for hand delivery of the notice, care will be taken to ensure that the manner of delivery, checking the date, and recording of the receipt will not violate the Privacy Act.

3. Employees may use Agency penalty mail or metered mail, as appropriate, for correspondence with the Agency or the Union concerning the debt, including the pursuit of the meeting and/or hearing procedures specified in this MOU.

4. Employees will be given written notice of the rate of interest that may be charged, a statement explaining in detail the administrative costs and other charges involved, and the payment schedule if the employee takes no action to appeal the claim.

SPECIAL DEBTS

5. In accordance with government-wide regulation (5 CFR §550.1104(c)), adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less may be recouped by the Agency following the issuance of only limited notice and without any opportunity

for meeting or hearing. In accordance with 5 CFR Part 890, debts which arise pursuant to employee agreements to repay adjustments arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay which are attributable to periods of leave of absence without pay may be recouped by the Agency, following notice, at the same rate that the debt arose without regard to the 15% limitation on setoffs contained in this MOU.

Any complaints about the validity of such recoupments (e.g., that the recoupments were factually in error) will be resolved under the negotiated grievance and arbitration procedure rather than the procedures specified in this MOU.

6. Emergency employee payments ("EEPs") will continue to be provided in accordance with the terms and procedures set forth in the language contained in Article 3, Sections 7 and 10 of the 1993 National Agreement. In cases where the Agency intends to recoup monies by means of salary offset based upon a claimed breach of the repayment obligation contained in Article 3 and/or the repayment agreement, it is recognized that: a) there can be no challenge to the requirement that the monies be repaid immediately, in a single installment whenever possible; b) the 15% limitation on offset per pay period contained in this MOU is inapplicable to recoupment of EEP, original, and/or replacement payment; and c) the debt in EEP cases is not subject to waiver and will be subject to full assessment of interest, administrative costs, and penalties if not promptly paid in full.

Any complaints about the validity of such recoupments

(e.g., that the recoupments were factually in error) will be resolved under the negotiated grievance and arbitration procedure rather than the procedures specified in this MOU.

7. Employees who receive EEPs and who have not repaid those payments may be required by the Agency to periodically certify, in writing, that they have still not received the original or any replacement payment.

8. The EEP repayment agreement will be signed simultaneously with the employee being provided the EEP check.

9. The EEP repayment agreement and all subsequent EEP certifications will prominently state, among other things, that any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority. A refusal by the employee to sign the certification referenced in paragraph 7 herein will result in the entire EEP amount being subject to immediate recoupment by the Agency, without notice or the need to complete any appeals process.

10. Determinations regarding the existence and amount of a debt or the repayment schedule applicable to such debt which are made by a court of competent jurisdiction are not subject to waiver or relitigation in the meeting and hearing procedures set forth in this MOU.

HEARING PROCEDURES

11. To be timely, employees and/or their designated Union representatives must file a Request for Hearing on or before the fifteenth day following receipt of the notice described in Section 1 of this MOU. As previously noted, however, the time for requesting a hearing will be tolled and appropriately extended in the event that the records relied upon to support the alleged debt, including the nature and amount of the indebtedness, are not timely provided by the Agency.

12. Under current case law, the arbitration procedures of this MOU become the exclusive means available to employees for pursuit of their rights under the Debt Collection Act. Given the brief time frames on the issuance of a hearing decision contained in the Debt Collection Act, the hearing to be provided to requesting employees will be the Expedited Arbitration hearings provided for in Article 25, Section 7, of the National Agreement. Inasmuch, however, as the Union, and not the employee, enjoys the exclusive right to invoke Expedited Arbitration, the Request for Hearing will be deemed timely filed if filed by either the Union or the employee on or before the fifteenth day following receipt of the notice described in Section 1 of this MOU, but the Union must further affirmatively notify the Agency on or before the thirtieth day following the filing of the Request for Hearing whether or not the Union invokes Expedited Arbitration. The failure of the Union to affirmatively notify the Agency of its invocation of Expedited Arbitration will operate as a withdrawal of the Request for Hearing and end the stay of collection

proceedings.

Due to the role of the Union in all hearings and the effect that a failure of the Union to request Expedited Arbitration will have upon the employee's request for hearing, in the absence of a designated Union representative, the Agency will notify the President of the Local Union representing the employee in writing of the fact that a Request for Hearing has been filed, of the employee's name, job title, work address, and telephone, of the date of both the request for hearing and the notice seeking offset of the debt, and of the fact that no Union representative has yet been designated.

No meetings will take place between the Employee and the Agency in regard to the challenge to the debt without the designated Union representative or, if no Union representative has been designated, the President of the Local Union representing the employee, first being offered the opportunity to participate unless the Employee has voluntarily and knowingly waived the right to proceed to formal hearing and further voluntarily and knowingly waived the right to Union representation.

The designated Union representative or, if no specific representative is designated, then the President of the Local Union representing the employee, will be provided with copies of all correspondence, notices, etc., sent by the Agency to the employee. Unless other mutually agreed to arrangements have been made, the copies to the Union representative will be sent by the same means and at the same time as the original correspondence, notices, etc., are sent to the employee.

13. Independent of the hearing process, the Parties recognize that in many cases it will be desirable for a meeting to be conducted, in person or by telephone as appropriate, with the employee, the Union (if there is a designated Union representative), and the Agency official identified as the response person in the Notice (or his/her designee). The Agency agrees to hold a meeting, upon the request of the employee or his/her designated Union representative, to discuss the basis for the debt, the basis for the repayment schedule, any adjustments which may be mutually agreed to regarding the amount of the debt and/or the repayment schedule, and the possibility of the Agency waiving all or part of the debt. No meetings will be conducted with Agency officials who lack the authority to resolve or to make effective recommendations to resolve disputes regarding the existence and amount of the debt, who lack the authority to resolve or to make effective recommendations to resolve disputes regarding the repayment schedule, or who are unable to provide informed and meaningful responses to inquiries regarding waiver requests.

14. The holding of the meeting described in paragraph 13 of this MOU or pursuit of a reclaim process will not toll either Party's obligation to timely pursue the hearing process.

15. The Expedited Arbitration hearing will be conducted under the Expedited Arbitration procedures set forth in Article 25, Section 7 of the National Agreement. The Arbitrator's fees and expenses shall be borne by the parties on a 50/50 basis unless the arbitrator renders a decision

in which the employee substantially prevails, in which case the Agency shall pay 100 per cent of the arbitrator's fees and expenses. The arbitrator shall address in the decision the proper allocation of arbitration fees and expenses.

16. Whenever feasible and cost effective, hearings will be held within the commuting area of the employee. Hearings held outside the employee's commuting area will be deemed to be for the Agency's convenience and the employee, witnesses, the Union representative, and a Technical Advisor will receive travel time and travel and per diem expenses, as allowable under the Federal Travel Regulations. Any dispute over the need for a particular witness will be resolved by the arbitrator by telephone conference prior to the hearing. Unless specifically modified by this MOU, the procedures for holding expedited arbitration hearings and resolving ancillary disputes regarding witnesses and representatives shall be governed by the provisions of Article 25 of the National Agreement.

17. Bargaining unit employees and witnesses who are Agency employees will be given duty time for the meeting and hearing procedures.

18. The decision of the arbitrator shall be issued within 60 days of the filing of the Request for Hearing.

19. The arbitrator will provide a summary record of the proceedings. A listing briefly describing all exhibits produced and accepted at the hearing will be appended to the summary record.

20. The Agency's representative should offer evidence first.

21. In cases where the debtor seeks an alternative repayment schedule to that proposed by the Agency, the arbitrator will resolve the dispute concerning an alternative repayment schedule in accordance with the criteria contained in applicable government-wide regulations [e.g., 4 CFR §102.11; 5 CFR §550.1104(i)], considering the size of the debt, the employee's ability to repay, any agreement in writing entered into by the employee concerning the schedule for repayment of the debt, and the 15% of disposable income limitation imposed by law and regulation (unless the employee has agreed in writing to the deduction of a greater amount).

22. The final written decision should include the following:

- a. Name of Debtor;
- b. Name of Creditor;
- c. Names of Representatives;
- d. Amount of the Debt;
- e. Date of Decision;
- f. Issues Presented -- e.g., existence or validity of the debt and/or repayment schedule; the decision should also note if the employee is also seeking a waiver of the debt from the Agency and/or from the General Accounting Office;
- g. Describe the record which was reviewed, including a listing and brief summary of all record documents;
- h. Findings of fact and conclusions of law in support of the decision;
- i. The total amount to be offset, if any, and offset schedule; and

j. A determination concerning the appropriate allocation of the fees and expenses of the arbitration.

23. Copies of the decision and the summary record will be sent to the Agency, the employee, and the Union representative.

24. No later than five working days prior to the Expedited Arbitration hearing, the Agency and Union representatives will jointly forward to the arbitrator a packet of applicable laws and regulations which may be needed to decide the particular dispute.

WAIVER OF CLAIMS FOR OVERPAYMENT

25. An employee who is notified that he/she is indebted to the government may request a waiver of the debt, payment of interest, late penalties, and/or administrative costs.

26. Arbitrators presented with waiver requests shall utilize the same criteria and standards in reviewing such requests which would be used by the General Accounting Office and the Comptroller General pursuant to 4 CFR Parts 91 and 92, as amended, and in cases where offset is upheld shall include in the Opinion and Award a recommendation as to the request for waiver. The recommendation in connection with the Waiver request shall include a detailed statement of the basis for a recommendation that any request for waiver should be granted in whole or in part. Waiver is precluded when an employee or other person having a significant interest in obtaining waiver: a) receives a significant unexplained increase in pay or allowances, or otherwise knew, or reasonably should have known, that an erroneous payment has

occurred, and fails to make inquiries or bring the matter to the attention of appropriate officials, or b) there is an indication that such person(s) have engaged in fraud, misrepresentation, fault, or lack of good faith.

27. In cases where waiver is being requested in Expedited Arbitration, the Union must specifically advise the Agency of that fact in writing no later than ten working days before the date scheduled for the Expedited Arbitration hearing. Following such advice, in cases where the amount involved is more than \$100.00, the Agency will prepare for submission at the arbitration a written report similar in content to that mandated by 4 CFR §92.3.

28. In those cases in which a recommendation is made by an Arbitrator that the Agency waive a debt and/or payment of interest, late penalties, and/or administrative costs, copies of the Opinion and Award shall be promptly forwarded by the Agency to the Department Head (or designee) or to the General Accounting Office, as appropriate, for a final ruling upon the employees' waiver request.

29. The intention of this MOU is to provide bargaining unit employees with the same ability to obtain waivers of debts, interest, late penalties and/or administrative costs as are enjoyed by non-bargaining unit employees. In the event that there is a subsequent ruling by an appropriate tribunal that serves to foreclose bargaining unit members as a class from the administrative waiver process, then in such an event, the authority of arbitrators hearing waiver requests under this MOU will be changed and rulings, rather than recommendations, on such waiver requests shall be

required. The same substantive standards should govern waiver requests, regardless of whether arbitrators are issuing rulings or recommendations upon those requests.

DEBTS BASED UPON CLAIMS FROM OTHER AGENCIES

30. In cases in which neither the Agency nor the Department is the creditor, the Agency may offset against salary or other payments provided that the Agency has first obtained from the creditor agency a written certification stating:

- a) that the employee owes the debt,
- b) the amount and basis of the debt,
- c) the date on which payment is due,
- d) the date that the government's right to collect the debt first accrued, and
- e) that all procedural requirements under applicable law, rule, and regulation have been complied with by the creditor agency.

In cases where the written certification has been provided, employees are to receive copies of the certification prior to the initiation of offset, but are not entitled to the notice, meeting, and hearing procedures set forth in this MOU. Offset need not be held in abeyance pending any employee challenges to the validity of the certification. Employee challenges that the Agency has commenced offsets on a debt from another agency without obtaining a valid certification, as well as complaints concerning the payment schedule for such other agency debts, are to be resolved through the grievance and arbitration procedures of the National Agreement rather than through the hearing procedures set forth in this MOU.

RETROACTIVITY

31. In full settlement of their disputes regarding the application of the requirements imposed by the Debt Collection Act prior to the effective date of this MOU, the Agency and the Union agree to a mediation and hearing process to resolve those written complaints filed with the Agency within a reasonable period of the payment of the debt which concern the question of the existence or amount of the debt and which have not already been subject to resolution before a third party neutral (i.e., an arbitrator, an administrative law judge, the Merit Systems Protection Board, the Comptroller General, or a court of competent jurisdiction).

Retroactive claims will be limited to issues regarding the existence or amount of the debt and will not include challenges to the adequacy of the Agency's notice, the repayment schedule, or any failure to have granted an employee application for waiver.

The Agency will provide notice to all bargaining unit employees of the right to a hearing concerning any debts which were the subject of written complaints filed with any member of Agency management within a reasonable period of the payment of the debt, whether or not paid through salary offset, and whether or not the debt is a "Section 5" type pay and allowance debt or a "Section 10" administrative offset.

Other debts which are excluded from this retroactive claims process are:

- 1) debts which were not the subject of written complaints filed with an Agency official;
- 2) written complaints which predated November 3, 1986;

3) debts which were waived in full;

4) adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring period deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; and

5) debts arising from EEPs.

The form Notice to be used by the Agency is set forth in Appendix A to this MOU.

The Agency's notification efforts will include posting copies of the Notice on bulletin boards and desk drops, publicizing the Notice in the Oasis, and promptly providing copies of the Notice to employees upon request.

32. Within 60 days of the effective date of this MOU, the Agency will issue notice to bargaining unit employees of their right to receive a hearing on the retroactive claims described in paragraph 31 of this MOU. The notice and claim form will prominently note, among other things, that any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority.

33. Employees who desire hearings must submit written notice of that desire to the Agency within 120 days of the date of the notice.

All requests for hearings must include:

a) a statement of the factual reasons for the dispute,

including a statement as to the amount of the portion of the debt which is being disputed,

b) a copy of the written complaint (if still available),

c) if the complaint is no longer available, a certification of the fact that a written complaint was made, identifying the approximate date of the complaint and to whom it was provided,

d) copies of all supporting documents regarding the debt which are in the employee's possession -- e.g., the debt notification letter, responses to the employee's complaint and/or inquiry, copies of relevant pay documents, etc.,

e) an identification of the names of supporting witnesses, if any, who are alleged to have knowledge about the disputed debt, and

f) an identification of the employee's designated Union representative, if known.

34. Shortly after the 120 day period, the Parties will meet to discuss appropriate arrangements for consolidating any claims for hearing. Consolidation would permit economies to be recognized in terms of hearing time and travel expenses. Paragraphs 13-19 and 22-24 of the MOU would apply to the conduct of hearings on the retroactive claims before Arbitrators in Expedited Arbitration, with the exception of the fact that: a) the Union may request that the procedures contained in the Debt Collection Mediation Experiment (DCoME) be utilized; and b) if such mediation procedures are utilized, then the fees and expenses of the arbitrator will be borne 75% by the Agency and 25% by the Union, with the Agency paying 100% of the arbitrator's fees and expenses in those

cases in which the employee substantially prevails.

The decision to proceed to Expedited Arbitration rests exclusively with the Union and not with the individual employee.

The procedures for the Debt Collection Mediation Experiment (DCoME) are attached hereto as Appendix B and are incorporated in this MOU.

REFUNDS

35. If the Agency collects funds from an employee in excess of the amount owed, such excess funds will be promptly refunded to the employee.

CASH AWARDS

36. Other than those cases in which an employee's employment or period of active duty otherwise ends before collection of the amount of the indebtedness is completed, debts shall not be collected from cash award payments made under the authority of 5 USC 4501.

NO HARASSMENT/INTIMIDATION/REPRISAL

37. Employees shall not be subjected to harassment, intimidation, coercion, reprisal or disciplinary action for exercising their due process rights.

DURATION

38. This agreement is effective upon signing by the parties and following the completion of the Section 7114(c) Agency head review process.

39. Should SSA, pursuant to 5 USC 7114(c), reject any portion of this agreement, the parties will reopen bargaining within 30 days of the parties receipt of notice of that

rejection. Jurisdiction is retained for the limited purpose of assisting in an resolution of any issues which may arise following such action by the Agency head.

40. This agreement will be coterminous with the 1993 National Agreement.

41. The Agency is to be given a period of 90 days from the effective date of this MOU to implement the new procedures and processes set forth herein in regard to new debts and offsets. Claims which arise during this initial "grace" implementation period may be processed under the "retroactive" claim processes set forth in this MOU, including the use of DCoME.

For the Agency:

For the Union:

Barbara Lorandos 8/4/95

[Signature] for Barry [Signature] 8/4/95

APPENDIX A

As a result of negotiations between the Social Security Administration and the American Federation of Government Employees, a number of SSA employees may be eligible to seek Mediation and a hearing on notices of overpayment and/or payroll withholding on or after November 3, 1986.

You are eligible to seek Mediation and a hearing only if all of the following criteria are met:

- 1) You had monies offset from your salary and/or benefits for satisfaction of a debt after November 3, 1986;
- 2) You made a written complaint to the Agency within thirty (30) days of the date on which the withholding took place; and
- 3) That written complaint was not resolved by a third party adjudicator.

Complaints under this procedure will address only claims that qualified employees had monies improperly withheld and will not focus upon the form or adequacy of notice given by the Agency prior to setoff.

Adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring period deductions from pay, if the amount to be recovered was accumulated over four pay periods or less, and debts arising from Emergency Employee Payments are excluded from this retroactive claims procedure.

In the event of a conflict between this Notice and the Debt Collection Memorandum of Understanding (MOU), the terms of the MOU will take precedence.

To file a Claim, you should sent to [AGENCY DESIGNATED

OFFICIAL] the following information:

- 1) date(s) of the offset which you claim was/were improperly implemented by the Agency;
- 2) the amount of money which you claim was improperly offset;
- 3) a brief explanation of why you believe that this amount was improperly offset; copies of all documents related to the allegedly improper offset should be attached to the claim;
- 4) the name and title of the Agency official to whom you gave the written Complaint and the date or approximate date on which that written Complaint was made; a copy of the Complaint and any response must be filed with the Claim, if available;
- 5) whether you wish to request a hearing in regard to your claim;
- 6) the name, address, and telephone number of the Union representative that you wish to represent you in this matter; and
- 7) whether you desire to participate in Mediation in an attempt to resolve your claim short of hearing.

Any Mediation would be conducted under the procedures of the Debt Collection Mediation Experiment (DCoME) and arbitration hearings would be conducted under the Expedited Arbitration procedures of Article 25 of the National Agreement between SSA and AFGE. Both Mediation and Arbitration may be invoked only with the agreement of the Union.

Copies of the full MOU are available upon request.

All claims must be filed on or before [date 120 days

after the MOU becomes effective].

Filing by certified mail, return receipt requested, or other means which will identify the date on which the claim was submitted is strongly recommended since late claims may not be entertained.

Any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority.

All claims or requests for further information should be sent to:

NAME/ADDRESS/FACSIMILE NUMBER OF AGENCY OFFICIAL
CHOSEN BY SSA TO RECEIVE SUCH CLAIMS/INQUIRIES

APPENDIX B

DEBT COLLECTION MEDIATION EXPERIMENTAL PROCEDURES

1. This Debt Collection Mediation Experiment ("DCoME") is designed to address "retroactive" claims of wrongful offsets of salary and/or benefits described in paragraphs 31-34 of the Debt Collection Act MOU. As used herein, Social Security Administration is referenced as SSA, Agency, or Management; employees who are members of SSA bargaining units represented by the American Federation of Government Employees (which is referenced as the Union) are referenced as Employees; the Department of Health and Human Services, the parent agency of SSA, is referenced as Department, and, where appropriate, the use of the word "Agency" also refers to actions by officials of the Department.

2. The objective of the DCoME is to provide a more efficient and fair way of resolving those disputes which relate to offsets from salary and/or benefits collected by the Agency from November 3, 1986 to the date that the procedures for offsets contained in the Debt Collection MOU is implemented and which satisfy the other eligibility criteria noted in paragraphs 31-34 of the Debt Collection MOU.

3. If mediation under this DCoME is not requested or no mutually satisfactory resolution of the dispute is achieved, nothing will preclude the Employee from continuing to pursue his or her right to obtain review of his or her dispute pursuant to the provisions of the Debt Collection MOU.

4. Mediation will be made available through the Departmental Appeals Board in the Office of the Secretary, Department of HHS, and will be persons in the Board's pool of

mediators. No SSA employees will serve as mediators in this Mediation Experiment.

5. Mediation may be requested by submitting a request for mediation to:

BY MAIL

Mediation Coordinator
Departmental Appeals Board
Room 637D, Humphrey Building
Department of Health and Human Services
Washington, D.C. 20201

BY FAX

Facsimile Number: 202-690-5863

6. Requests for Mediation should include following information:

- a) Name, Work Address, and Telephone Number of Employee;
- b) Name, Work Address, and Telephone Number of designated Union representative (if any);
- c) copies of the Request for Hearing described in Paragraph 33 of the Debt Collection MOU (including all attachments); and
- d) an indication of the relief being sought by the Employee through mediation; this request will NOT be admissible in any formal hearings and will not be deemed a waiver of any relief otherwise available to the Employee in any Expedited Arbitration proceedings which may be held.

7. Promptly after invocation of mediation, the Mediation Coordinator will contact the Parties and representatives, by telephone, to determine if mediation is acceptable and, if both parties agree, proceed to appoint a Mediator.

8. Mediation should be completed within 21 days of the filing of the request.

9. It is recognized that the availability of mediation is subject to the availability of Mediators.

10. The following procedures will govern the conduct of mediations under this DCoME:

a. Proceedings before the Mediator will be informal. Rules of Evidence shall not apply. Offers of compromise shall be deemed confidential and will not be cited by either Party in any other proceeding. No formal record of the meeting shall be made.

b. Each Party may be represented by representatives of their choice. Discussions will be open to all participants.

c. At the beginning of the mediation conference, each Party will present a brief statement of the facts, issues, and arguments.

d. While the Mediator shall have no authority to impose a resolution of the dispute, either or both Parties may request that the Mediator suggest a resolution or make a recommendation to the Parties. The Mediator will have the authority to meet separately with either Party as deemed appropriate.

e. Disputes not resolved through mediation may proceed to be resolved in accordance with the procedures set forth in the Debt Collection MOU. In such event, further proceedings will be held as if Mediation had not occurred. No offers of settlement or compromise and the overall conduct of the Parties, their representatives, or the Mediator may not be used or referred to during further proceedings.

f. Any materials presented to the Mediator shall be

returned to the Party which provided them at the termination of the Mediation.

g. Mediation conferences shall occur at a location which is agreeable to the Parties and the Mediator, with attendance at the conference determined by the Mediator. At the Mediator's option, upon consultation with both Parties, the Mediation may proceed by means of telephone or similar conference.

h. Mediation procedures will be designed to keep costs to the lowest possible level. The Parties will bear their own costs, but the Union will not be responsible for the Mediator's costs. Employees and Union representatives will be in official duty status while engaged in proceedings under the DCoME. Employees and Union officials will be entitled to receive reasonable official time and travel and per diem costs and be entitled to ordinary use of Agency telephones, facsimile machines, mail, computers, etc. The use of Agency equipment, official time, travel and per diem, will be in accordance with the provisions of the National Agreement and applicable law, rule and regulation. Official time for the representation of employees in DCoME proceedings will be not be charged against the banks, caps, etc., of official time set forth in the National Agreement.

i. The Parties agree to jointly maintain records of the DCoME for evaluation purposes. Difficulties in implementing this DCoME will be referred to the General Committee-SSA Headquarters level for resolution.

j. The DCoME will lapse after Mediation of all "retroactive claims" have been completed. The Parties agree

to meet, upon request of the other Party, to discuss the possible extension of the DCOME, either in its current form or in some modified form, to "current" debt collection disputes.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

S7C

Acting Director
Office of Labor Management Relations

Review of Memorandum of Understanding (MOU) Regarding the
Procedures for Resolving Disputes Concerning the Collection
of Employee Debts--INFORMATION

All Regional Labor Relations Specialist

This MOU dated March 13, 1995 was reviewed for conformance
with applicable law, rule and regulation as required by
5 USC 7114. The agreement is approved and may be
implemented.

Please furnish a copy of this memorandum to the union.

Patricia A. Randle

Attachment

bcc:
OLMR Teams

RTownsend;kc 4/03/95
C:\WP51\DATA\RON\95-MOU-
95-MOU-26

1995

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
S7C	Townsend	4/3			
S7C	Randles	4/3			5/13
S7C	Randles	6/1			

FM
Copy

DEPARTMENT OF HEALTH AND HUMAN SERVICES

S7C

Acting Director
Office of Labor Management Relations

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Attachment

bcc:
OLMR Teams

RTownsend;kc
C:\WP51\DATA
95-MOU-26

Change ↑ "All Regional Labor Relations
Specialists"

TO

Barbara Loraudus

1995

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
S7C	Townsend	4/3			
S7C	Loraudus	4/3 (1/3)			
S7C	Townsend	6/1			

Copy



DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to S7C

Memorandum

Date:

From: Acting Director
Office of Labor Management Relations

Subject: Review of Memorandum of Understanding (MOU) Regarding the
Procedures for Resolving Disputes Concerning the Collection
To: of Employee Debts--INFORMATION

All Regional Labor Relations Specialist

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Patricia A. Randle
Patricia A. Randle

Attachment



Refer to S7C

Memorandum

Date:

From: Acting Director
Office of Labor Management Relations

Subject:

Review of Memorandum of Understanding (MOU) Regarding the
Procedures for Resolving Disputes Concerning the Collection
of Employee Debts--INFORMATION

To:

All Regional Labor Relations Specialist

This MOU dated March 13, 1995 was reviewed for conformance with applicable law, rule and regulation as required by 5 USC 7114. The agreement is approved and may be implemented.

Please furnish a copy of this memorandum to the union.

Patricia A. Randle
Patricia A. Randle

Attachment

*make 2
copies*

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is to establish procedures for resolving disputes concerning the collection of employee debts through salary setoffs of various types between the Social Security Administration (hereinafter called SSA, Agency, or Management) and employees who are members of SSA bargaining units represented by the American Federation of Government Employees (hereinafter called Union). When used herein, "Department" refers to the Department of Health and Human Services, the parent agency of SSA. Where appropriate, the use of the word "Agency" also refers to actions by officials of the Department.

This MOU stems from the Agency's implementation of procedures to effectuate the Debt Collection Act of 1982, P.L. 97-365 (hereinafter called Debt Collection Act, the Act, or the DCA), including questions related to employee requests for waiver of debts owed to the Government, and from Mediation-Arbitration proceedings in Case No. 91 FSIP 233.

No rights of any employees, the Union or Management have been waived either explicitly or implicitly. This MOU shall be subject to all provisions of 5 USC Chapter 71 (hereinafter called the Statute) and to all provisions of the National Agreement between the Parties hereto (except as otherwise specifically provided herein in accordance with the Letter of Understanding reached on March 9, 1993 and reaffirmed on August 10, 1993 during the negotiations for the 1993 National Agreement). This MOU shall in no way be construed to conflict with or detract from any rights provided the Union under any provision of the Statute or the National Agreement.

NOTICES AND EMPLOYEE RIGHTS

1. When the head of the Agency, or his/her designee, determines that an employee is indebted to the Agency for debts for which the government is entitled to be repaid, the following procedures will apply:

a. The employee will be notified, in writing, by the Agency that a debt is owed.

b. The employee will be given a minimum of 30 days written notice before the Agency initiates deductions from the current pay account of the individual.

c. Notices concerning debts sent to employee will:

1) be on Agency or Department letterhead and bear the name of an appropriate management official;

2) be clearly addressed to the employee;

3) provide a clear explanation of the alleged debt and an opportunity, on official time and in duty status, for the employee and/or the employee's designated Union representative to inspect records relied upon to support the alleged debt, including the nature and amount of the indebtedness; if such records are not available then all time-frames (including the time to request a hearing) will be extended until such records are available;

4) provide notice of the Agency's intent to initiate proceedings to collect the debt through payroll deduction; the amount to be deducted for any period may not exceed 15 per cent of the employee's disposable pay, except that a greater percentage may be deducted upon written consent of the individual involved; if the individual retires or resigns, or if his/her employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual from the Agency;

5) provide an explanation of the employee's right under this Award to request a hearing to resolve all disputes regarding the

existence of the debt, the amount of the debt, and the payment schedule, as well as the right to seek waiver of the debt, the criteria for waiver and the information which generally would be considered in ruling upon requests for waiver;

6) contain the name, title, address and telephone number of the individual(s) to whom questions and/or waiver requests should be addressed;

7) give the employee and/or the employee's designated Union representative the opportunity to negotiate a written agreement for repayment of the debt;

8) notify the employee that, to be timely, a request for hearing must be in writing and filed on or before the fifteenth day following receipt of the notice described in this MOU and in accord with the procedures of this MOU; the notice will clearly identify the name and address of the individuals who are to be provided that request for hearing; the timely filing of a request for hearing with the incorrect Agency official will not serve to bar the request for hearing on timeliness grounds;

9) notify the employee that the only hearing available to challenge the debt or the repayment schedule will be expedited arbitration; that the Union is the exclusive bargaining representative and that the Union must approve arbitration before an arbitration hearing will be held; that the failure of the Union to authorize arbitration will result in the withdrawal of the employee's request for a hearing; and that an employee request to meet with Agency representative(s) will not be viewed by the Agency as constituting a request for a hearing under the Debt Collection Act;

10) employee requests for a hearing should briefly state the basis of the appeal (i.e., the factual reasons for the dispute), include copies of supporting documents, identify supporting witnesses (if any) with knowledge about the matter being contested, and sign the request; this submission will not preclude the introduction by the employee or the Union at the hearing or in conferences of other

relevant documents and/or witnesses;

11) after a designation of a Union representative, the Agency agrees to simultaneously forward copies of all subsequent correspondence sent to the employee to the designated Union representative and to further provide to the designated Union representative, within five working days of the Agency's receipt of such designation, copies of all prior correspondence, including a copy of the employee request (including any attachments) docketed in connection with the particular claim;

12) All notices to employees will contain the following statement: IF YOU ARE A BARGAINING UNIT EMPLOYEE YOU ARE ENTITLED TO UNION REPRESENTATION ON THESE ISSUES IF YOU SO CHOOSE;

13) All notices to employees will include a form for the employee to designate a Union representative if desired; and

14) inform the employee of the facts that, unless extended by the head of the Agency, if not paid or otherwise the subject of an agreed upon repayment schedule, the debt will be deemed to be overdue 31 calendar days from the date of mailing or the date of hand delivery of the initial notice of indebtedness that, if not paid in full within 30 days of the date of the notice, interest on the amount will accrue from the date of mailing of the notice; that the Agency may assess administrative collection costs and the amount of those costs; and the fact that, if the debt is more than 90 calendar days overdue, a late payment penalty of not more than 6 percent a year may be assessed in addition to accrued interest and any administrative collection costs.

2. The Agency will mail the notice or other correspondence regarding the overpayment to the employee by registered or certified mail, return receipt requested, to the most current address of the employee that is available to the head of the Agency or his designee, or by hand delivery. If the Agency opts for hand delivery, the Agency must exercise care to

insure that the notice is dated the same date as the date of hand delivery and further is responsible for insuring that written confirmation is made of the date and fact of actual hand delivery. The date of hand delivery or the date on the certified or registered mail return receipt, as appropriate, will be used herein as the date for employee receipt of the written notice.

In the event that the Agency opts for hand delivery of the notice, care will be taken to ensure that the manner of delivery, checking the date, and recording of the receipt will not violate the Privacy Act.

3. Employees may use Agency penalty mail or metered mail, as appropriate, for correspondence with the Agency or the Union concerning the debt, including the pursuit of the meeting and/or hearing procedures specified in this MOU.

4. Employees will be given written notice of the rate of interest that may be charged, a statement explaining in detail the administrative costs and other charges involved, and the payment schedule if the employee takes no action to appeal the claim.

SPECIAL DEBTS

5. In accordance with government-wide regulation (5 CFR §550.1104(c)), adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less may be recouped by the Agency following the issuance of only limited notice and without any opportunity

for meeting or hearing. In accordance with 5 CFR Part 890, debts which arise pursuant to employee agreements to repay adjustments arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay which are attributable to periods of leave of absence without pay may be recouped by the Agency, following notice, at the same rate that the debt arose without regard to the 15% limitation on setoffs contained in this MOU.

Any complaints about the validity of such recoupments (e.g., that the recoupments were factually in error) will be resolved under the negotiated grievance and arbitration procedure rather than the procedures specified in this MOU.

6. Emergency employee payments ("EEPs") will continue to be provided in accordance with the terms and procedures set forth in the language contained in Article 3, Sections 7 and 10 of the 1993 National Agreement. In cases where the Agency intends to recoup monies by means of salary offset based upon a claimed breach of the repayment obligation contained in Article 3 and/or the repayment agreement, it is recognized that: a) there can be no challenge to the requirement that the monies be repaid immediately, in a single installment whenever possible; b) the 15% limitation on offset per pay period contained in this MOU is inapplicable to recoupment of EEP, original, and/or replacement payment; and c) the debt in EEP cases is not subject to waiver and will be subject to full assessment of interest, administrative costs, and penalties if not promptly paid in full.

Any complaints about the validity of such recoupments

(e.g., that the recoupments were factually in error) will be resolved under the negotiated grievance and arbitration procedure rather than the procedures specified in this MOU.

7. Employees who receive EEPs and who have not repaid those payments may be required by the Agency to periodically certify, in writing, that they have still not received the original or any replacement payment.

8. The EEP repayment agreement will be signed simultaneously with the employee being provided the EEP check.

9. The EEP repayment agreement and all subsequent EEP certifications will prominently state, among other things, that any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority. A refusal by the employee to sign the certification referenced in paragraph 7 herein will result in the entire EEP amount being subject to immediate recoupment by the Agency, without notice or the need to complete any appeals process.

10. Determinations regarding the existence and amount of a debt or the repayment schedule applicable to such debt which are made by a court of competent jurisdiction are not subject to waiver or relitigation in the meeting and hearing procedures set forth in this MOU.

HEARING PROCEDURES

11. To be timely, employees and/or their designated Union representatives must file a Request for Hearing on or before the fifteenth day following receipt of the notice described in Section 1 of this MOU. As previously noted, however, the time for requesting a hearing will be tolled and appropriately extended in the event that the records relied upon to support the alleged debt, including the nature and amount of the indebtedness, are not timely provided by the Agency.

12. Under current case law, the arbitration procedures of this MOU become the exclusive means available to employees for pursuit of their rights under the Debt Collection Act. Given the brief time frames on the issuance of a hearing decision contained in the Debt Collection Act, the hearing to be provided to requesting employees will be the Expedited Arbitration hearings provided for in Article 25, Section 7, of the National Agreement. Inasmuch, however, as the Union, and not the employee, enjoys the exclusive right to invoke Expedited Arbitration, the Request for Hearing will be deemed timely filed if filed by either the Union or the employee on or before the fifteenth day following receipt of the notice described in Section 1 of this MOU, but the Union must further affirmatively notify the Agency on or before the thirtieth day following the filing of the Request for Hearing whether or not the Union invokes Expedited Arbitration. The failure of the Union to affirmatively notify the Agency of its invocation of Expedited Arbitration will operate as a withdrawal of the Request for Hearing and end the stay of collection

proceedings.

Due to the role of the Union in all hearings and the effect that a failure of the Union to request Expedited Arbitration will have upon the employee's request for hearing, in the absence of a designated Union representative, the Agency will notify the President of the Local Union representing the employee in writing of the fact that a Request for Hearing has been filed, of the employee's name, job title, work address, and telephone, of the date of both the request for hearing and the notice seeking offset of the debt, and of the fact that no Union representative has yet been designated.

No meetings will take place between the Employee and the Agency in regard to the challenge to the debt without the designated Union representative or, if no Union representative has been designated, the President of the Local Union representing the employee, first being offered the opportunity to participate unless the Employee has voluntarily and knowingly waived the right to proceed to formal hearing and further voluntarily and knowingly waived the right to Union representation.

The designated Union representative or, if no specific representative is designated, then the President of the Local Union representing the employee, will be provided with copies of all correspondence, notices, etc., sent by the Agency to the employee. Unless other mutually agreed to arrangements have been made, the copies to the Union representative will be sent by the same means and at the same time as the original correspondence, notices, etc., are sent to the employee.

13. Independent of the hearing process, the Parties recognize that in many cases it will be desirable for a meeting to be conducted, in person or by telephone as appropriate, with the employee, the Union (if there is a designated Union representative), and the Agency official identified as the response person in the Notice (or his/her designee). The Agency agrees to hold a meeting, upon the request of the employee or his/her designated Union representative, to discuss the basis for the debt, the basis for the repayment schedule, any adjustments which may be mutually agreed to regarding the amount of the debt and/or the repayment schedule, and the possibility of the Agency waiving all or part of the debt. No meetings will be conducted with Agency officials who lack the authority to resolve or to make effective recommendations to resolve disputes regarding the existence and amount of the debt, who lack the authority to resolve or to make effective recommendations to resolve disputes regarding the repayment schedule, or who are unable to provide informed and meaningful responses to inquiries regarding waiver requests.

14. The holding of the meeting described in paragraph 13 of this MOU or pursuit of a reclaim process will not toll either Party's obligation to timely pursue the hearing process.

15. The Expedited Arbitration hearing will be conducted under the Expedited Arbitration procedures set forth in Article 25, Section 7 of the National Agreement. The Arbitrator's fees and expenses shall be borne by the parties on a 50/50 basis unless the arbitrator renders a decision

in which the employee substantially prevails, in which case the Agency shall pay 100 per cent of the arbitrator's fees and expenses. The arbitrator shall address in the decision the proper allocation of arbitration fees and expenses.

16. Whenever feasible and cost effective, hearings will be held within the commuting area of the employee. Hearings held outside the employee's commuting area will be deemed to be for the Agency's convenience and the employee, witnesses, the Union representative, and a Technical Advisor will receive travel time and travel and per diem expenses, as allowable under the Federal Travel Regulations. Any dispute over the need for a particular witness will be resolved by the arbitrator by telephone conference prior to the hearing. Unless specifically modified by this MOU, the procedures for holding expedited arbitration hearings and resolving ancillary disputes regarding witnesses and representatives shall be governed by the provisions of Article 25 of the National Agreement.

17. Bargaining unit employees and witnesses who are Agency employees will be given duty time for the meeting and hearing procedures.

18. The decision of the arbitrator shall be issued within 60 days of the filing of the Request for Hearing.

19. The arbitrator will provide a summary record of the proceedings. A listing briefly describing all exhibits produced and accepted at the hearing will be appended to the summary record.

20. The Agency's representative should offer evidence first.

21. In cases where the debtor seeks an alternative repayment schedule to that proposed by the Agency, the arbitrator will resolve the dispute concerning an alternative repayment schedule in accordance with the criteria contained in applicable government-wide regulations [e.g., 4 CFR §102.11; 5 CFR §550.1104(i)], considering the size of the debt, the employee's ability to repay, any agreement in writing entered into by the employee concerning the schedule for repayment of the debt, and the 15% of disposable income limitation imposed by law and regulation (unless the employee has agreed in writing to the deduction of a greater amount).

22. The final written decision should include the following:

- a. Name of Debtor;
- b. Name of Creditor;
- c. Names of Representatives;
- d. Amount of the Debt;
- e. Date of Decision;
- f. Issues Presented -- e.g., existence or validity of the debt and/or repayment schedule; the decision should also note if the employee is also seeking a waiver of the debt from the Agency and/or from the General Accounting Office;
- g. Describe the record which was reviewed, including a listing and brief summary of all record documents;
- h. Findings of fact and conclusions of law in support of the decision;
- i. The total amount to be offset, if any, and offset schedule; and

j. A determination concerning the appropriate allocation of the fees and expenses of the arbitration.

23. Copies of the decision and the summary record will be sent to the Agency, the employee, and the Union representative.

24. No later than five working days prior to the Expedited Arbitration hearing, the Agency and Union representatives will jointly forward to the arbitrator a packet of applicable laws and regulations which may be needed to decide the particular dispute.

WAIVER OF CLAIMS FOR OVERPAYMENT

25. An employee who is notified that he/she is indebted to the government may request a waiver of the debt, payment of interest, late penalties, and/or administrative costs.

26. Arbitrators presented with waiver requests shall utilize the same criteria and standards in reviewing such requests which would be used by the General Accounting Office and the Comptroller General pursuant to 4 CFR Parts 91 and 92, as amended, and in cases where offset is upheld shall include in the Opinion and Award a recommendation as to the request for waiver. The recommendation in connection with the Waiver request shall include a detailed statement of the basis for a recommendation that any request for waiver should be granted in whole or in part. Waiver is precluded when an employee or other person having a significant interest in obtaining waiver: a) receives a significant unexplained increase in pay or allowances, or otherwise knew, or reasonably should have known, that an erroneous payment has

occurred, and fails to make inquiries or bring the matter to the attention of appropriate officials, or b) there is an indication that such person(s) have engaged in fraud, misrepresentation, fault, or lack of good faith.

27. In cases where waiver is being requested in Expedited Arbitration, the Union must specifically advise the Agency of that fact in writing no later than ten working days before the date scheduled for the Expedited Arbitration hearing. Following such advice, in cases where the amount involved is more than \$100.00, the Agency will prepare for submission at the arbitration a written report similar in content to that mandated by 4 CFR §92.3.

28. In those cases in which a recommendation is made by an Arbitrator that the Agency waive a debt and/or payment of interest, late penalties, and/or administrative costs, copies of the Opinion and Award shall be promptly forwarded by the Agency to the Department Head (or designee) or to the General Accounting Office, as appropriate, for a final ruling upon the employees' waiver request.

29. The intention of this MOU is to provide bargaining unit employees with the same ability to obtain waivers of debts, interest, late penalties and/or administrative costs as are enjoyed by non-bargaining unit employees. In the event that there is a subsequent ruling by an appropriate tribunal that serves to foreclose bargaining unit members as a class from the administrative waiver process, then in such an event, the authority of arbitrators hearing waiver requests under this MOU will be changed and rulings, rather than recommendations, on such waiver requests shall be

required. The same substantive standards should govern waiver requests, regardless of whether arbitrators are issuing rulings or recommendations upon those requests.

DEBTS BASED UPON CLAIMS FROM OTHER AGENCIES

30. In cases in which neither the Agency nor the Department is the creditor, the Agency may offset against salary or other payments provided that the Agency has first obtained from the creditor agency a written certification stating:

- a) that the employee owes the debt,
- b) the amount and basis of the debt,
- c) the date on which payment is due,
- d) the date that the government's right to collect the debt first accrued, and
- e) that all procedural requirements under applicable law, rule, and regulation have been complied with by the creditor agency.

In cases where the written certification has been provided, employees are to receive copies of the certification prior to the initiation of offset, but are not entitled to the notice, meeting, and hearing procedures set forth in this MOU. Offset need not be held in abeyance pending any employee challenges to the validity of the certification. Employee challenges that the Agency has commenced offsets on a debt from another agency without obtaining a valid certification, as well as complaints concerning the payment schedule for such other agency debts, are to be resolved through the grievance and arbitration procedures of the National Agreement rather than through the hearing procedures set forth in this MOU.

RETROACTIVITY

31. In full settlement of their disputes regarding the application of the requirements imposed by the Debt Collection Act prior to the effective date of this MOU, the Agency and the Union agree to a mediation and hearing process to resolve those written complaints filed with the Agency within a reasonable period of the payment of the debt which concern the question of the existence or amount of the debt and which have not already been subject to resolution before a third party neutral (i.e., an arbitrator, an administrative law judge, the Merit Systems Protection Board, the Comptroller General, or a court of competent jurisdiction).

Retroactive claims will be limited to issues regarding the existence or amount of the debt and will not include challenges to the adequacy of the Agency's notice, the repayment schedule, or any failure to have granted an employee application for waiver.

The Agency will provide notice to all bargaining unit employees of the right to a hearing concerning any debts which were the subject of written complaints filed with any member of Agency management within a reasonable period of the payment of the debt, whether or not paid through salary offset, and whether or not the debt is a "Section 5" type pay and allowance debt or a "Section 10" administrative offset.

Other debts which are excluded from this retroactive claims process are:

- 1) debts which were not the subject of written complaints filed with an Agency official;
- 2) written complaints which predated November 3, 1986;

3) debts which were waived in full;

4) adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring period deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; and

5) debts arising from EEPs.

The form Notice to be used by the Agency is set forth in Appendix A to this MOU.

The Agency's notification efforts will include posting copies of the Notice on bulletin boards and desk drops, publicizing the Notice in the Oasis, and promptly providing copies of the Notice to employees upon request.

32. Within 60 days of the effective date of this MOU, the Agency will issue notice to bargaining unit employees of their right to receive a hearing on the retroactive claims described in paragraph 31 of this MOU. The notice and claim form will prominently note, among other things, that any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority.

33. Employees who desire hearings must submit written notice of that desire to the Agency within 120 days of the date of the notice.

All requests for hearings must include:

a) a statement of the factual reasons for the dispute,

including a statement as to the amount of the portion of the debt which is being disputed,

b) a copy of the written complaint (if still available),

c) if the complaint is no longer available, a certification of the fact that a written complaint was made, identifying the approximate date of the complaint and to whom it was provided,

d) copies of all supporting documents regarding the debt which are in the employee's possession -- e.g., the debt notification letter, responses to the employee's complaint and/or inquiry, copies of relevant pay documents, etc.,

e) an identification of the names of supporting witnesses, if any, who are alleged to have knowledge about the disputed debt, and

f) an identification of the employee's designated Union representative, if known.

34. Shortly after the 120 day period, the Parties will meet to discuss appropriate arrangements for consolidating any claims for hearing. Consolidation would permit economies to be recognized in terms of hearing time and travel expenses. Paragraphs 13-19 and 22-24 of the MOU would apply to the conduct of hearings on the retroactive claims before Arbitrators in Expedited Arbitration, with the exception of the fact that: a) the Union may request that the procedures contained in the Debt Collection Mediation Experiment (DCoME) be utilized; and b) if such mediation procedures are utilized, then the fees and expenses of the arbitrator will be borne 75% by the Agency and 25% by the Union, with the Agency paying 100% of the arbitrator's fees and expenses in those

cases in which the employee substantially prevails.

The decision to proceed to Expedited Arbitration rests exclusively with the Union and not with the individual employee.

The procedures for the Debt Collection Mediation Experiment (DCoME) are attached hereto as Appendix B and are incorporated in this MOU.

REFUNDS

35. If the Agency collects funds from an employee in excess of the amount owed, such excess funds will be promptly refunded to the employee.

CASH AWARDS

36. Other than those cases in which an employee's employment or period of active duty otherwise ends before collection of the amount of the indebtedness is completed, debts shall not be collected from cash award payments made under the authority of 5 USC 4501.

NO HARASSMENT/INTIMIDATION/REPRISAL

37. Employees shall not be subjected to harassment, intimidation, coercion, reprisal or disciplinary action for exercising their due process rights.

DURATION

38. This agreement is effective upon signing by the parties and following the completion of the Section 7114(c) Agency head review process.

39. Should SSA, pursuant to 5 USC 7114(c), reject any portion of this agreement, the parties will reopen bargaining within 30 days of the parties receipt of notice of that

rejection. Jurisdiction is retained for the limited purpose of assisting in an resolution of any issues which may arise following such action by the Agency head.

40. This agreement will be coterminous with the 1993 National Agreement.

41. The Agency is to be given a period of 90 days from the effective date of this MOU to implement the new procedures and processes set forth herein in regard to new debts and offsets. Claims which arise during this initial "grace" implementation period may be processed under the "retroactive" claim processes set forth in this MOU, including the use of DCoME.

For the Agency:

For the Union:

Barbara Lovardas 8/14/95

[Signature] for Barry Selman 8/14/95

APPENDIX A

As a result of negotiations between the Social Security Administration and the American Federation of Government Employees, a number of SSA employees may be eligible to seek Mediation and a hearing on notices of overpayment and/or payroll withholding on or after November 3, 1986.

You are eligible to seek Mediation and a hearing only if all of the following criteria are met:

- 1) You had monies offset from your salary and/or benefits for satisfaction of a debt after November 3, 1986;
- 2) You made a written complaint to the Agency within thirty (30) days of the date on which the withholding took place; and
- 3) That written complaint was not resolved by a third party adjudicator.

Complaints under this procedure will address only claims that qualified employees had monies improperly withheld and will not focus upon the form or adequacy of notice given by the Agency prior to setoff.

Adjustments to pay arising out of an employee's election of coverage or change in coverage under a Federal benefits program requiring period deductions from pay, if the amount to be recovered was accumulated over four pay periods or less, and debts arising from Emergency Employee Payments are excluded from this retroactive claims procedure.

In the event of a conflict between this Notice and the Debt Collection Memorandum of Understanding (MOU), the terms of the MOU will take precedence.

To file a Claim, you should sent to [AGENCY DESIGNATED

OFFICIAL] the following information:

- 1) date(s) of the offset which you claim was/were improperly implemented by the Agency;
- 2) the amount of money which you claim was improperly offset;
- 3) a brief explanation of why you believe that this amount was improperly offset; copies of all documents related to the allegedly improper offset should be attached to the claim;
- 4) the name and title of the Agency official to whom you gave the written Complaint and the date or approximate date on which that written Complaint was made; a copy of the Complaint and any response must be filed with the Claim, if available;
- 5) whether you wish to request a hearing in regard to your claim;
- 6) the name, address, and telephone number of the Union representative that you wish to represent you in this matter; and
- 7) whether you desire to participate in Mediation in an attempt to resolve your claim short of hearing.

Any Mediation would be conducted under the procedures of the Debt Collection Mediation Experiment (DCoME) and arbitration hearings would be conducted under the Expedited Arbitration procedures of Article 25 of the National Agreement between SSA and AFGE. Both Mediation and Arbitration may be invoked only with the agreement of the Union.

Copies of the full MOU are available upon request.

All claims must be filed on or before [date 120 days

after the MOU becomes effective].

Filing by certified mail, return receipt requested, or other means which will identify the date on which the claim was submitted is strongly recommended since late claims may not be entertained.

Any false or frivolous statements, representations or evidence, may subject the employee to criminal or civil penalties under 18 U.S.C. §§ 286, 287, 1001, and 1002 or 31 U.S.C. §§3729-3731, and disciplinary or adverse action under 5 C.F.R. Part 752 or any other applicable authority.

All claims or requests for further information should be sent to:

NAME/ADDRESS/FACSIMILE NUMBER OF AGENCY OFFICIAL
CHOSEN BY SSA TO RECEIVE SUCH CLAIMS/INQUIRIES

APPENDIX B

DEBT COLLECTION MEDIATION EXPERIMENTAL PROCEDURES

1. This Debt Collection Mediation Experiment ("DCoME") is designed to address "retroactive" claims of wrongful offsets of salary and/or benefits described in paragraphs 31-34 of the Debt Collection Act MOU. As used herein, Social Security Administration is referenced as SSA, Agency, or Management; employees who are members of SSA bargaining units represented by the American Federation of Government Employees (which is referenced as the Union) are referenced as Employees; the Department of Health and Human Services, the parent agency of SSA, is referenced as Department, and, where appropriate, the use of the word "Agency" also refers to actions by officials of the Department.

2. The objective of the DCoME is to provide a more efficient and fair way of resolving those disputes which relate to offsets from salary and/or benefits collected by the Agency from November 3, 1986 to the date that the procedures for offsets contained in the Debt Collection MOU is implemented and which satisfy the other eligibility criteria noted in paragraphs 31-34 of the Debt Collection MOU.

3. If mediation under this DCoME is not requested or no mutually satisfactory resolution of the dispute is achieved, nothing will preclude the Employee from continuing to pursue his or her right to obtain review of his or her dispute pursuant to the provisions of the Debt Collection MOU.

4. Mediation will be made available through the Departmental Appeals Board in the Office of the Secretary, Department of HHS, and will be persons in the Board's pool of

mediators. No SSA employees will serve as mediators in this Mediation Experiment.

5. Mediation may be requested by submitting a request for mediation to:

- BY MAIL

Mediation Coordinator
Departmental Appeals Board
Room 637D, Humphrey Building
Department of Health and Human Services
Washington, D.C. 20201

BY FAX

Facsimile Number: 202-690-5863

6. Requests for Mediation should include following information:

- a) Name, Work Address, and Telephone Number of Employee;
- b) Name, Work Address, and Telephone Number of designated Union representative (if any);
- c) copies of the Request for Hearing described in Paragraph 33 of the Debt Collection MOU (including all attachments); and
- d) an indication of the relief being sought by the Employee through mediation; this request will NOT be admissible in any formal hearings and will not be deemed a waiver of any relief otherwise available to the Employee in any Expedited Arbitration proceedings which may be held.

7. Promptly after invocation of mediation, the Mediation Coordinator will contact the Parties and representatives, by telephone, to determine if mediation is acceptable and, if both parties agree, proceed to appoint a Mediator.

8. Mediation should be completed within 21 days of the filing of the request.

9. It is recognized that the availability of mediation is subject to the availability of Mediators.

10. The following procedures will govern the conduct of mediations under this DCoME:

- a. Proceedings before the Mediator will be informal. Rules of Evidence shall not apply. Offers of compromise shall be deemed confidential and will not be cited by either Party in any other proceeding. No formal record of the meeting shall be made.
- b. Each Party may be represented by representatives of their choice. Discussions will be open to all participants.
- c. At the beginning of the mediation conference, each Party will present a brief statement of the facts, issues, and arguments.
- d. While the Mediator shall have no authority to impose a resolution of the dispute, either or both Parties may request that the Mediator suggest a resolution or make a recommendation to the Parties. The Mediator will have the authority to meet separately with either Party as deemed appropriate.
- e. Disputes not resolved through mediation may proceed to be resolved in accordance with the procedures set forth in the Debt Collection MOU. In such event, further proceedings will be held as if Mediation had not occurred. No offers of settlement or compromise and the overall conduct of the Parties, their representatives, or the Mediator may not be used or referred to during further proceedings.
- f. Any materials presented to the Mediator shall be

returned to the Party which provided them at the termination of the Mediation.

g. Mediation conferences shall occur at a location which is agreeable to the Parties and the Mediator, with attendance at the conference determined by the Mediator. At the Mediator's option, upon consultation with both Parties, the Mediation may proceed by means of telephone or similar conference.

h. Mediation procedures will be designed to keep costs to the lowest possible level. The Parties will bear their own costs, but the Union will not be responsible for the Mediator's costs. Employees and Union representatives will be in official duty status while engaged in proceedings under the DCoME. Employees and Union officials will be entitled to receive reasonable official time and travel and per diem costs and be entitled to ordinary use of Agency telephones, facsimile machines, mail, computers, etc. The use of Agency equipment, official time, travel and per diem, will be in accordance with the provisions of the National Agreement and applicable law, rule and regulation. Official time for the representation of employees in DCoME proceedings will be not be charged against the banks, caps, etc., of official time set forth in the National Agreement.

i. The Parties agree to jointly maintain records of the DCoME for evaluation purposes. Difficulties in implementing this DCoME will be referred to the General Committee-SSA Headquarters level for resolution.

j. The DCoME will lapse after Mediation of all "retroactive claims" have been completed. The Parties agree

to meet, upon request of the other Party, to discuss the possible extension of the DCoME, either in its current form or in some modified form, to "current" debt collection disputes.