

PART 1951 - SERVICING AND COLLECTIONS

Subpart C - Offsets of Federal Payments to USDA Agency Borrowers

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PART 1951 - SERVICING AND COLLECTIONS

Subpart C - Offset of Federal Payments to USDA Agency Borrowers

§ 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS) for its community facility program, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency," to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to direct single family housing loans, direct multi-family housing loans, and the Rural Utilities Service. Section 1951.136 of this subpart only applies to the RHS for its community facility program and the RBS for the offset of Federal payments. Nothing in this subpart affects the common law right of set off available to USDA Agencies.

§ 1951.102 Standards and procedures for administrative offset.

General. Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106. See 7-FLP, Part 3

§§ 1951.103 - 1951.105 [Reserved]

§ 1951.106 Offsets of payments to entities related to debtors.

(a) General. Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

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(b) Offsetting entities. Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA, FLP has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(1) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency that have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, in the entity as determined by FSA.

(c) Other remedies. Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

(d) See 7-FLP, Part 3

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. For delinquent FLP direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR Part 766. In addition, for FLP direct loans, salary offset will not be instituted if the Federal salary has been considered on the farm operating plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. For FLP guaranteed debtors, salary offset can not begin until a final loss claim has been paid. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

(a) Authorities. The following authorities are granted to USDA Agency employees in order that they may initiate and implement salary offset:

(1) Certifying Officials are authorized to certify to the debtor's employing agency that the debt exists, the amount of the delinquency or debt, that the procedures in the United States Department of Agriculture's (USDA's) regulations regarding salary offsets have been followed, that the actions required by the Debt Collection Act have been taken; and to request that salary offset be initiated by the debtor's employing agency. This authority may not be redelegated.

(2) Certifying Officials are authorized to advise the Finance Office to establish employee defalcation accounts and non-cash credits to borrower accounts in cases involving other debts, such as those arising from theft, fraud, embezzlement, loss of funds through negligence, and similar actions involving Agency employees.

(3) The Finance Office is authorized to establish defalcation accounts and non-cash credits to borrower accounts upon receipt of requests from the Certifying Officials.

(b) Definitions.

(1) Certifying Officials - State Directors; State Executive Directors; the Assistant Administrator, Finance Office; Financial Management Director, Financial Management Division; and the Deputy Administrator for Management, National Office.

(2) Debt or debts - A term that refers to one or both of the following:

(i) Delinquent debts - A past due amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(ii) Other debts - An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(A) Theft, misuse, or loss of Government funds;

(B) False claims for services and travel;

(C) Illegal, unauthorized obligation and expenditures of Government appropriations;

(D) Using or authorizing the use of Government owned or leased equipment, facilities supplies, and services for other than official or approved purposes;

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(E) Lost, stolen, damaged, or destroyed Government property;

(F) Erroneous entries on accounting record or reports; and,

(G) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(3) Defalcation account - An account established in the Finance Office for other debts owed the Federal government in the amount missing due to the action of an employee or former employee.

(4) Disposable pay - Pay due an employee that remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits, and such other deductions required by law to be withheld.

(5) Hearing Officer - An Administrative Law Judge of the USDA or another individual not under the control of the USDA, designated by the Certifying Official to review the determination of the alleged debt.

(6) Non-cash credit - The accounting action taken by the Finance Office to credit and make a borrower's account whole for funds paid by the borrower but missing due to an employee's or former employee's actions.

(7) Salary offset - The collection of a debt due to the United States by deducting a portion of the disposable pay of a Federal employee without the employee's consent.

(c) Feasibility of salary offset. The first step the Certifying Official must take to use this offset procedure is to decide, on a case by case basis, whether offset is feasible. If an offset is feasible, the directions in the following paragraphs of this section will be used to collect by salary offset. If the official making this determination decides that salary offset is not feasible, the reasons supporting this decision will be documented in the borrower's running case record in the case of delinquent debts, or the "For Official Use Only" file in cases of other debts. Ordinarily, and where possible, debts should be collected in one lump-sum; but payments may be made in installments. Installment deductions can be made over a period not greater than the anticipated period of employment. However, the amount deducted for a period will not exceed 15 percent of the disposable pay from which the deduction is made. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. Based on the Comptroller General's decisions, other debts by employees cannot be forgiven. If the employee retires or resigns, or if employment ends before collection of the debt is completed, final salary payment, lump sum leave, etc. may be offset to the extent necessary to liquidate the debt. Salary offset is feasible if:

(1) The cost to the Government of collecting salary offset does not exceed the amount of the debt. County Committee members are exempt from salary offset because the amount collected by salary offset would be so small as to be impractical.

(2) There are not any legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years.

(d) Notice to debtor.

(1) After the Certifying Official determines that collection by salary offset is feasible, the debtor should be notified within 15 calendar days after the salary offset determination. This notice will notify the debtor of intended salary offset at least 30 days before the salary offset begins. For FLP direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR 766. For FLP guaranteed debtors, this notice will be sent after a final loss claim has been paid. The salary offset determination notice will be delivered to the debtor by regular mail. (Revised 01-09-08, PN 417.)

(2) The Debt Collection Act of 1982 requires that the hearing officer issue a written decision not later than 60 days after the filing of the petition requesting the hearing; thus, the evidence upon which the decision to notify the debtor is based, to the extent possible, should be sufficient for the Agency to proceed at a hearing, should the debtor request a hearing under paragraph (f) of this section.

§ 1951.111 (Con.)

(e) Notice requirement before salary offset. Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (Guide Letter 1951-C-4) will be addressed to the debtor or the debtor's representative. The Notice of Intent must be modified if it is addressed to the debtor's representative. In either case, the Notice of Intent will state:

- (1) It has been determined that the debt is owed, the amount of the delinquency or debt, and the facts giving rise to the debt;
- (2) The cost to the Government of collecting salary offset does not exceed the amount of the debt;
- (3) There are not any legal restrictions that would bar collecting the debt;
- (4) The debt will be collected by means of deduction of not more than 15 percent from the employee's current disposable pay until the debt and all accumulated interest are paid in full;
- (5) The amount, frequency, approximate beginning date, and duration of the intended deductions;
- (6) An explanation of the requirements concerning interest, penalties and administrative costs, unless such payments are waived;
- (7) The employee's right to inspect and request a copy of records relating to the debt;
- (8) The employee's right to voluntarily enter into a written agreement for a repayment schedule with the agency different from that proposed by the Agency, if the terms of the repayment proposed by the employee are agreeable with the agency;
- (9) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by the Agency;

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(10) The timely filing of a petition for hearing will stay the collection proceedings;

(11) That a final decision will be issued at the earliest practical date, but not later than 60 calendar days after the filing of petition requesting the hearing;

(12) That any knowingly false or frivolous statements may subject the employee to disciplinary procedures, or penalties, under the applicable statutory authority;

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

(14) That 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 unless there are provisions to the contrary;

(15) The method and time period for requesting a hearing; and

(16) The name and address of an official of USDA to whom communications should be directed.

(f) Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.

(1) If a debtor responds to RD Guide Letter 1951-C-4 by asking to review and copy USDA Agency's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's USDA Agency files and that the files may be reviewed and copied within the next 30 days. Copying costs (see RD Instruction 2018-F) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have USDA Agency copy the records, a copy will be made within 30 days of the request. (Revised 6-28-89, PN 111)

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(2) If a debtor responds to RD Guide Letter 1951-C-4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the Government. RD Form Letter 1951-8 will be used if a repayment offer for an USDA Agency loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay institution of a hearing proceeding until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide whether to accept or reject the offer. This decision will be documented in the running case record or the "For Official Use Only" file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. If the offer is rejected, it should be based upon a realistic budget or Farm and Home Plan and according to the servicing regulations for the type of loan(s) involved.

(3) If a debtor responds to RD Guide Letter 1951-C-4 by asking for a hearing on USDA Agency's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with paragraph (g)(3) of this section and request the debtor's case file or the "For Official Use Only" file.

(4) If a debtor is willing to have more than 15 percent of the disposable pay sent to USDA Agency, a letter prepared and signed by the debtor clearly stating this must be placed in the debtor's case file or the "For Official Use Only" file.

(5) If a debtor who is an USDA Agency borrower requests debt settlement, the account must be in collection-only status or be an inactive account for which there is no security. The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) The time limits set in RD Guide Letter 1951-C-4 and in paragraphs (1), (2), and (3) of this section run concurrently. In other words, if a debtor asks to review the USDA Agency file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter.

(7) If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the negotiated procedure. Employees who are not covered by a negotiated procedure must utilize the salary offset proceedings as outlined in RD Guide Letter 1951-C-4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement.

(g) Hearings.

(1) A hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee. In order to ensure that a hearing officer will be available promptly when needed, Certifying Officials need to make appropriate arrangements with officials of nearby federal agencies for the use of each other's employees as hearing officers.

(2) Not later than 30 days from the date the debtor receives the Notice of Intent, (RD Guide Letter 1951-C-4), the employee must file with the Certifying Official issuing the notice, a written petition establishing his/her desire for a hearing on the existence and amount of the debt or the proposed offset schedule. The employee's petition must fully identify and explain all the information and evidence that supports his/her position. In addition, the petition must bear the employee's original signature and be dated upon receipt by the Certifying Official.

(3) Certifying Officials are responsible for determining if the employee's petition for a hearing has been submitted in a timely fashion. Petitions received from employees after the 30-day time limitation expires will be accepted only if the employee can show the delay was because of circumstances beyond his/her control or because of failure to receive notice of the time limitation. Certifying Officials are required to provide written notification to the employee of the acceptance or non-acceptance of the employee's petitions for hearing.

(4) For those petitions accepted, USDA Agency will arrange for a hearing officer and notify the employee of the time and place of the hearing. The hearing location should be convenient to all parties involved. The employee will also be notified that the acceptance of the petition for hearing will stay the commencement of collection proceedings. Any payments collected in error due to untimely or delayed filing beyond the employee's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

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(5) The hearing will be based on written submissions and documentation provided by the debtor and USDA Agency unless:

(i) A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or truth.

(ii) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or truth.

(iii) The hearing officer determines that an oral hearing is appropriate.

(6) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(7) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the Certifying Official grants a delay in the proceedings. The written decision will state the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the employee and USDA Agency will be provided with a copy of the hearing officer's written decision on the debt.

(h) Processing delinquent debts.

(1) Form AD-343, "Payroll Action Request," and RD Form Letter 1951-6 will be prepared and submitted by the Certifying Official to the National Office, Financial and Management Analysis Staff (FMAS), for coordination and forwarding to the debtor's employing agency if:

(i) The borrower does not respond to RD Guide Letter 1951-C-4 within 30 days.

(ii) The borrower responds to RD Guide Letter 1951-C-4 within 30 days and

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(A) has had an opportunity to review the file, if requested,

(B) has received a hearing, if requested, and

(C) a decision has been made by the hearing officer to uphold the offset.

(2) A copy of Form AD-343 and RD Form Letter 1951-6 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit.

(3) If the debtor is an USDA Agency employee, Form Ad-343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official. (Revised 6-28-89, PN 111)

(4) If the debtor has agreed to have more or less than 15 percent of the disposable pay sent to USDA Agency, a copy of the debtor's letter (RD Form Letter 1951-8) authorizing this must be attached to Form AD-343.

(5) Field offices will be notified of payments received from salary offset by receipt of a transaction record from the Finance Office.

(i) Deduction percentage.

(1) Generally, installment deductions will be made over a period not greater than the anticipated period of employment. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. Certifying Officials are responsible for determining the size and frequency of the deductions. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(2) Deductions will be made only from basic pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount. (Revised 11-2-88, PN 97)

§ 1951.111 (Con.)

(j) Agency/NFC responsibility for other debts.

(1) USDA Agency will inform NFC about other indebtedness by transmitting to NFC an AD-343. NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the USDA Agency's records. USDA Agency is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). NFC will send the salary offset notice to the employing office.

(k) Establishing employees-or former employees defalcation accounts and non-cash credits to borrower accounts. In cases where a borrower made a payment on an USDA Agency account(s) and, due to theft, embezzlement, fraud, negligence, or some other action on the part of an USDA Agency employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

- (i) Employee's name (or former),
- (ii) Social Security Number,
- (iii) Present or last known address,
- (iv) Date of Payment, and
- (v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

- (i) Borrower's name and case number,
- (ii) Fund Code and Loan Code,
- (iii) Date and amount of missing payment,
- (iv) Copy of receipt issued for the missing payment, and
- (v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k)(1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial and Management Analysis Staff and Employee Relations Branch, Personnel Division.

(1) Application of payments, refunds and overpayments.

(1) If a debtor is delinquent or indebted on more than one USDA Agency loan or debt, amounts collected by offset will be applied as specified on Form AD-343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts.

(2) If a court or agency orders USDA Agency to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending RD Form Letter 1951-5 to the Finance Office. Processing RD Form Letter 1951-5 in the Finance Office will cause a refund to be sent to the debtor through the county office or other appropriate USDA Agency office. The debtor is not entitled to any payment of interest on the refunded amount.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraph (1)(2) above.

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(4) If USDA Agency receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (1) and (2) above.

(m) Cancellation of offset. If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD-343 and send it to the National Office, FMAS. FMAS will notify the paying agency with Form AD-343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

(n) Intra-departmental transfer. When an USDA Agency employee who is indebted to one agency in USDA transfers to another agency within USDA, a copy of the repayment schedule should be forwarded by the agency personnel office to the new employing agency. The NFC will continue to make deductions until full recovery is effected.

(o) Liquidation from final checks. Upon the determination that an employee owing a debt to USDA Agency is to retire, resign, or employment otherwise ends, the Certifying Official should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD-343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR, Part 3, Subpart B, Section 3.32). (Revised 11-2-88, PN 97)

(p) Coordination with other agencies.

(1) If USDA Agency is the creditor agency but not the paying agency, the Certifying Official will submit Form AD-343 to the National Office, FMAS, to begin salary offset against an indebted employee. The request will include a certification as to the determination of indebtedness, and that USDA Agency has complied with applicable regulations and instructions for submitting the funds to the Finance Office. (See RD Form Letter 1951-6.) (Revised 6-28-89, PN 111)

(2) When an employee of USDA Agency owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the employee has been given the due process entitlements guaranteed by the Debt Collection Act of 1982. When a request for offset is received, USDA Agency will notify the employee and NFC and arrange for offset. (See RD Form Letter 1951-7).

(q) Deductions by the National Finance Center (NFC). The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FSA/RD issues the notice. If FSA/RD issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD-343.

(r) Interest, penalties and administrative costs. Interest and administrative costs will normally be assessed on outstanding claims being collected by salary offset. However, penalties should not be charged routinely on debts being collected in installments by salary offset, since it is not to be construed as a failure to pay within a given time period. Additional interest, penalties, and administrative costs will not be assessed on delinquent loans until FSA/RD publishes regulations permitting such charges.

(s) Adjustment in rate of repayment.

(1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, FSA/RD must take action to reduce the amount of the deductions to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, FSA/RD may increase the amount of the deductions accordingly. In either case, when a change is made the employee will be notified in writing.

(2) When an employee has an existing reduced repayment schedule because of financial hardship, the creditor agency may arrange for a new repayment schedule.

§ 1951.112 - 1951.135 [Reserved]

§ 1951.136 Procedures for Department of Treasury Offset and Cross-Servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service.

(a) The National Offices of the Rural Housing Service (RHS), Community Facilities (CF) and the Rural Business-Cooperative Service (RBS) will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, will be excluded from TOP or Cross-Servicing.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt from the Agency;

(3) An opportunity to review the matter within the Agency or the National Appeals Division if there has not been a previous opportunity to appeal the offset; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

RD Instruction 1951-C
§ 1951.136(c) (Con.)

- (1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;
- (2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;
- (3) The Agency has made reasonable efforts to obtain payment; and
- (4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

§ 1951.137 Procedures for Treasury Offset and Cross-Servicing for the Farm Service Agency (FSA) Farm Loan Program

(a) The Farm Service Agency, Farm Loan Programs, will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, will be excluded from TOP or Cross-Servicing. Guaranteed debtors will only be referred to TOP upon confirmation of payment on a final loss claim.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing by the Director of Kansas City Finance Office. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

- (1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;
- (2) An opportunity to inspect and copy the records related to the debt, from the Agency;
- (3) An opportunity to review the matter within the Agency; and
- (4) An opportunity to enter into a written repayment agreement.

§ 1951.137 (Con.)

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

(d) See 7 FLP, Part 4 and 8.

§§ 1951.138 - 1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0119.

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