

20. Act of February 4, 1938 (52 Stat. 27), Loans for crop production and harvesting.

21. Agricultural Adjustment Act (of 1933), as heretofore amended.

22. Bankhead Cotton Act of April 21, 1934, as heretofore amended, on account of the several cotton tax-exemption certificate pools.

23. Jones-Connally Cattle Act of April 7, 1934, as heretofore amended.

24. Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934 (48 Stat. 1056), as heretofore amended, (amendment to Agricultural Adjustment Act of 1933, relating to cotton option contracts.)

25. Kerr Tobacco Act of June 28, 1934 and Public Resolution No. 76 of March 14, 1936, as heretofore amended.

26. Section 32 of the Act of August 24, 1935 and related legislation, as heretofore amended.

27. Supplemental Appropriation Act, fiscal year 1936, as heretofore amended, (rental and benefit payments and cotton price adjustment payments).

28. Sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as heretofore amended.

29. Sugar Act of 1937, as heretofore amended.

30. Sections 303 and 381(a) of the Agricultural Adjustment Act of 1938 and related or subsequent legislation, as heretofore amended, authorizing parity or adjustment payments.

31. Title IV and Title V of the Agricultural Adjustment Act of 1938 and related legislation, as heretofore amended, (Cotton Pool Participation Trust Certificates (Title IV), and crop insurance (Title V)).

32. Any other Act of Congress heretofore enacted authorizing payments to farmers under programs administered through the Agricultural Adjustment Agency.

33. Act of April 8, 1935 (49 Stat. 115), Loan for rural rehabilitation and relief.

34. Act of June 22, 1936 (49 Stat. 1608), Loan for rural rehabilitation and relief.

35. Act of February 9, 1937 (50 Stat. 8), Loans for rural rehabilitation and relief.

36. Act of June 29, 1937 (50 Stat. 352), Loans for rural rehabilitation and relief.

37. The Bankhead-Jones Farm Tenant Act (50 Stat. 522 *et seq.*).

38. The Water Facilities Act of August 28, 1937 (50 Stat. 869 *et seq.*).

39. Act of March 2, 1938 (52 Stat. 83, Pub. Res. 80), Loans for rural rehabilitation and relief.

40. Act of June 21, 1938 (52 Stat. 809), Loans for rural rehabilitation and relief.

41. Act of June 30, 1939 (53 Stat. 927), Loans for rural rehabilitation and relief.

42. Act of June 26, 1940 (54 Stat. 611), Loans for rural rehabilitation and relief.

43. Act of July 1, 1941 (55 Stat. 408), Loans for rural rehabilitation.

44. Act of July 22, 1942 (56 Stat. 664), Loans for rural rehabilitation.

45. Act of July 12, 1943 (57 Stat. 392), Loans for rural rehabilitation.

46. Act of June 28, 1944 (58 Stat. 425), Loans for rural rehabilitation.

47. Flood restoration loans, Second Deficiency Appropriation Act, 1943 (57 Stat. 537, 542)

48. Subsequent legislation appropriating or making available funds for such loans as those listed under numbers 33 through 47, made by or through Resettlement Administration or the Farm Security Administration.

49. Crop-insurance programs formulated pursuant to Title V of the Agricultural Adjustment Act of 1938 (the Federal Crop Insurance Act), and any amendment or supplement thereto heretofore or hereafter enacted.

50. Any indebtedness of farmers evidenced by notes or accounts receivable, title to which has been acquired in the liquidation of loans to cooperative associations made under the provisions of the Act of June 15, 1929 (46 Stat. 11).

51. Any indebtedness of food stamp recipients and retailers/wholesalers. Food Stamp Act.

(Sec. 2, 58 Stat. 836; 12 U.S.C. 1150a)

[10 FR 807, Jan. 23, 1945. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997; 64 FR 11755, Mar. 10, 1999]

## Subpart B—Debt Collection

AUTHORITY: 31 U.S.C. 3701, 3711, 3716-3719, 3728; 4 CFR part 102; 4 CFR 105.4.

SOURCE: 50 FR 7722, Feb. 26, 1985, unless otherwise noted.

### § 3.21 Debt collection standards.

(a) The regulations in this subpart are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719), and the Joint Regulations issued under the Act by the Attorney General and the Comptroller General (4 CFR parts 101-105), prescribing Government-wide standards for administrative collection, compromise, suspension or termination of agency collection action, disclosure of debt information to consumer reporting agencies, referral of claims to private collection contractors for resolution, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims

### § 3.22

by the Government for money or property.

(b) The head of each agency of the Department may carry out the duties and exercise the authority of the Secretary under 31 U.S.C. 3701, 3711, 3716-3719, 3728, the Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this part, with respect to the claims of the agency. An agency head may adopt regulations, in accordance with the Debt Collection Act and the Joint Regulations, setting out agency procedures for the collection by administrative offset of such claims and debts. If the head of an agency of the Department adopts regulations separate from this subpart, the procedures thereby established, rather than those set out in this part, shall be followed for the collection of the claims and debts to which the separate regulations apply. If an agency does not adopt separate regulations, the Director of the Office of Finance and Management may carry out the duties and exercise the authority of the Secretary on behalf of agency heads.

(c) Except where administrative offset is explicitly prohibited by statute or where other procedures are explicitly provided for by statute, all contracts and other written agreements which are executed after the effective date of these regulations between an agency and any person or entity must include the following or substantially similar language:

Any monies that are payable or may become payable from the United States under this agreement to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States, under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719); 4 CFR part 102 and subpart B of this part. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial credit reporting agencies.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### 7 CFR Subtitle A (1-1-02 Edition)

#### § 3.22 Definitions.

In this subpart:

(a) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(b) *Contracting officer* has the same meaning as in 41 U.S.C. 601.

(c) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(d) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and assures that the funds are paid to the creditor agency to be applied to the debt.

(e) *Reviewing officer* means an agency employee responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of administrative offset.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

#### § 3.23 Collection by administrative offset.

(a) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in accordance with 31 U.S.C. 3716 and 4 CFR 102.3 to collect debts due the United States. The debt need not be reduced to judgment or be undisputed.

(b) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(1) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

(2) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt.

(3) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires.

(4) Whether the agency has substantiated the existence of the debt.

(c) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, or when a stay of offset expires, unless the agency determines under § 3.26 that immediate action is necessary. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to them in any order, with attention to applicable statutes of limitation.

(d) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts, but not including intracontractual claims or intracontractual disputes. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601–613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(e) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(f) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.24 Coordinating administrative offset with other Federal agencies.

(a) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

(b) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount

and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met.

(c) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor agency's certification.

(d) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(e) A USDA agency which is requested by another agency to effect administrative offset may decline for good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be sent in writing to the creditor agency.

### § 3.25 Notice requirements before offset.

(a) Before an agency effects administrative offset, the creditor agency must provide the debtor with a minimum of 30 calendar days' written notice that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement or requests review.

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery, first class mail, or certified mail and will state:

(1) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(2) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter, and the

### § 3.26

amount of any other penalties or administrative costs added to the principal debt.

(3) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(4) The date on which administrative offset will be effected, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement or requests a review.

(5) That the debtor has a right to inspect and copy agency or other Department records related to the debt. The debtor must pay copying costs unless they are waived by the agency.

(6) That the debtor may enter into a written agreement to repay the debt, which must be approved by the creditor agency.

(7) That the debtor has a right to obtain review of the agency's determination that the debt exists and the propriety of administrative offset.

(8) That a repayment agreement or request for review may be sought only from the creditor agency and not the offsetting agency.

(9) Time limitations and other procedures or conditions imposed by the agency.

(10) The address to which the debtor should send all correspondence relating to the offset.

(c) Any demand for payment will include a Notice of Intent to Collect by Administrative Offset, even if the debt is not delinquent at the time the letter is sent.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997]

#### **§ 3.26 Exceptions to notice requirements.**

(a) When the procedural requirements of § 3.25 have been met by the creditor agency or under some other statutory or regulatory authority, an agency need not duplicate the notice before effecting administrative offset.

(b) A USDA agency may effect administrative offset against a payment to be made to a debtor before completion of the procedures in § 3.25 when the

### 7 CFR Subtitle A (1-1-02 Edition)

agency finds, or is advised by the requesting creditor agency, that:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds, or where expiration of a statute of limitations is imminent; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

(c) The finding required by paragraph (b) of this section must be furnished by the offsetting agency to the debtor in writing as soon as reasonably possible after the offset is effected. Promptly after administrative offset is effected under this subsection, the creditor agency must give the debtor the notice required by § 3.25.

(d) An offsetting USDA agency may rely on the information contained in a creditor agency's request for administrative offset under this section.

#### **§ 3.27 Inspection of USDA records related to the debt.**

A debtor who intends to inspect or copy agency or Departmental records with respect to the claim action must notify the agency in writing within 20 calendar days of the date the Notice of Intent to Offset was delivered to the debtor. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

#### **§ 3.28 Written agreements to repay debt as alternative to administrative offset.**

The debtor may, in response to Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the Government's interest in collecting the debt against fairness to the debtor.

### § 3.29 Hearings and reviews.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset may request a hearing or documentary review of the agency's determination that the debt exists and the propriety of administrative offset. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.

(d) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 calendar days after the request for review is received.

(e)(1) Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once

admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(2) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(3) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(f)(1) Within no more than 30 calendar days after the hearing or the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days, and beyond the 30 calendar days extension only with the consent of the debtor. The decision need not be lengthy or formal in style, but must address the substantive issues. The decision should address any significant procedural matter which was in dispute before or during the hearing or documentary review.

(2) The reviewing officer's decision constitutes final agency action as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(g) The reviewing officer will promptly distribute copies of the decision to the Assistant Secretary for Administration, USDA and to the debtor and the debtor's representative.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

**§ 3.30****§ 3.30 Stay of offset.**

(a)(1) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, when an agency receives a debtor's request for inspection of agency records, the offset is stayed for no longer than 10 calendar days beyond the date set by the creditor agency for the record inspection.

(2) When an agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When administrative offset is stayed, the amount of the debt and interest will be withheld from payments to the debtor, but not applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) When administrative offset is stayed, the creditor agency will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

**§ 3.31 Agency procedures.**

(a) Any USDA agency may publish in the FEDERAL REGISTER, by rule or notice, a listing by category of the order in which any funds it holds for or intends to pay to a person may be reached by administrative offset.

(b) For principal debts of \$600 or more, an agency head may direct that no compromise be made, or no collection action suspended or terminated without advice from the USDA General Counsel.

**§ 3.32 Offset against amounts payable from Civil Service retirement and disability fund.**

An agency may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the agency by the debtor. The creditor agency must certify that the debtor owes the debt, the

amount of the debt, and that the creditor agency has complied with 4 CFR 102.4 and Office of Personnel Management regulations. The request must be submitted to the official designated in Office of Personnel Management regulations.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

**§ 3.33 Offset of debtor's judgment against the United States.**

Collection by offset against a judgment obtained by a debtor against the United States must be effected in accordance with 31 U.S.C. 3728.

**§ 3.34 Interest, penalties and administrative costs.**

(a) USDA creditor agencies must attempt to collect interest, penalties and administrative costs on any delinquent debts owed to the United States in accordance with 4 CFR 102.13 and 102.14, or according to written documentation constituting the basis of the debt, or under any guidelines issued by the Assistant Secretary for Administration or by the creditor agency's fiscal officer.

(1) Interest will not be assessed on interest, penalties or administrative costs. However, if a debtor defaults on a repayment agreement, interest which has accrued but was not collected under the defaulted agreement will be added to the principal to be paid under a new repayment agreement.

(2) Agencies will assess a penalty of six percent a year on any unpaid debt balance delinquent for more than 90 days. This charge accrues from the date the debt becomes delinquent.

(3) Agencies will charge the debtor for administrative costs incurred in processing and handling a delinquent debt. Administrative costs may include costs of obtaining credit reports, using a private debt collector, or selling collateral or property to satisfy the debt.

(b) Agencies will waive the collection of interest assessed under these regulations on a delinquent debt or any portion of that debt which is paid within 30 days after the date on which interest began to accrue. Agencies may extend the 30-day period on a case-by-case basis, if it is determined that an extension is appropriate because of partial

or complete absence of culpability by the debtor for the delay in payment.

(c) Agencies may waive collection of all or part of the interest, penalties, and administrative costs assessed under these regulations when it is determined:

(1) That the Government cannot collect the full amount of the delinquent debt or interest and costs because of the debtor's inability to pay the full amount within a reasonable time (considering such factors as those listed at 4 CFR 103.2(b)), or the debtor's refusal to pay the full amount where the Government is unable to effect collection in full within a reasonable time; or

(2) That there is a real doubt concerning the Government's ability to recover interest, penalties or costs in court, either because of the legal or equitable issues involved or because the facts are being disputed in court; or

(3) That the cost of collecting the delinquent debt with interest, penalties, or costs outweighs the amounts to be recovered; or

(4) That the collection of some or all of these charges would be against equity and good conscience or not in the best interests of the United States; or

(5) (For waiver of interest) that a request is pending for reconsideration, administrative review, or waiver of the underlying delinquent debt under a statute allowing but not requiring one or more of these remedies. If the statute under which review or waiver is sought by the debtor prohibits the agency from collecting the delinquent debt before resolution of the review or waiver request, interest, penalties and administrative costs must be waived during the period in which collection action is stayed. Otherwise, interest, penalties and administrative costs will not be waived except for a separate reason included in this section; or

(6) (For waiver of interest) that the agency has agreed to a repayment plan consistent with 4 CFR 102.11 and with § 3.28 of this subpart, there is no indication of fault or lack of good faith by the debtor, and the amount of interest is sufficiently large relative to the size of the installments reasonably affordable by the debtor that the principal debt would never be repaid; or

(7) The debt is repaid after the date on which interest, penalties and administrative costs became payable and the estimated costs of recovering the remaining interest balance exceed the amount owed to the agency.

(d) The creditor agency must document its reasons for waiving interest, penalties, or administrative costs. This documentation must be retained by the agency for at least three years.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.35 Disclosure to a credit reporting agency.

(a) The Department may report all commercial debts and all delinquent consumer debts to credit reporting agencies. The Department need not report foreign debts, or the debts of State and local governments, Indian tribal governments, or other public institutions.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR 102.3(c), and 5 U.S.C. 552a (the Privacy Act).

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.36 Use of collection agencies.

USDA agencies should use collection agencies at any time accounts become delinquent. Agencies must refer all accounts 6 months or more delinquent unless other collection actions are being pursued or referral is prohibited by statute.

[55 FR 38663, Sept. 20, 1990]

## Subpart C—Salary Offset

AUTHORITY: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

SOURCE: 51 FR 8995, Mar. 17, 1986, unless otherwise noted.

### § 3.51 Scope.

(a) The provisions of this subpart set forth the Department's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to: