

§ 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 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 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