AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER E—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

PART 792—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.
792.1 Applicability.
792.2 Administration.
792.3 Definitions.
792.4 Demand for payment of debts.
792.5 Collection by payment in full.
792.6 Collection by installment payments.
792.7 Collection by administrative offset.
792.8 Priorities of offsets versus assignments.
792.9 Withholding.
792.10 Late payment interest, penalty and administrative charges.
792.11 Waiver of late payment interest, penalty charge and administrative charges.
792.12 Administrative appeal.
792.13 Additional administrative collection action.
792.14 Contact with debtor's employing agency.
792.15 Prior provision of rights with respect to debt.
792.16 Discharge of debts.
792.17 Referral of delinquent debts to credit reporting agencies.
792.18 Referral of debts to Department of Justice.
792.19 Referral of delinquent debts to IRS for tax refund offset.
792.20 Reporting discharged debts to IRS.
792.21 Referral of debts to private collection agencies.
792.22 Collection and compromise.

AUTHORITY: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR parts 101–105; 7 CFR 3.21(b).

SOURCE: 59 FR 15829, Apr. 5, 1994, unless otherwise noted.

§ 792.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Farm Service Agency (FSA) will settle and collect debts by FSA. The provisions of part 1403 of this title are applicable to actions of FSA regarding the settlement and collection of debts on the behalf of the Commodity Credit Corporation (CCC).

§ 792.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Administrator, FSA.

§ 792.3 Definitions.

The following definitions shall be applicable to this part:

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

Administrative offset means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

FSA means the Farm Service Agency of the United States Department of Agriculture (USDA).

CCC means the Commodity Credit Corporation.

Certified financial statement means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the debtor and preparer, under penalty of perjury.

Claim means an amount of money or property which has been determined by FSA, after a notice of delinquency and a demand for the payment of the debt has been made by FSA, to be owed to FSA by any person other than a Federal agency.

Credit reporting agency means: (1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

Debt means any amount owed to FSA which has not been satisfied through payment or otherwise.

Debt record refers to the account, register, balance sheet, file, ledger, data

file, or similar record of debts owed to FSA, CCC, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an FSA office.

Delinquent debt means: (1) Any debt owed to FSA that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) Any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 792.4.

Discharged debt means any debt, or part thereof, which FSA has determined is uncollectible and has closed out, and if the amount in controversy exceeds $100,000.00, excluding interest and administrative charges, or such higher amount as may be prescribed, in which the Department of Justice has concurred in such determination.

IRS means the Internal Revenue Service.

Late payment interest rate means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

Salary offset means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

Settlement means any final disposition of a debt or claim.

System of records means a group of any records under the control of FSA or CCC from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

Withholding means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 792.4 Demand for payment of debts.

(a) When a debt is due FSA, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to FSA has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by FSA that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due FSA, including the principal, applicable interest, costs, and other charges;

(2) FSA' intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 792.10.

(4) FSA' intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or FSA payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) FSA' intent, if applicable, under § 792.17, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(6) FSA' intent, if applicable, under § 792.19, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(7) If not previously provided, the debtor's right to request administrative review by an authorized FSA official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter, if applicable.

(8) The debtor's right to a full explanation of the debt and to dispute any information in the records of FSA concerning the debt;

(9) The opportunity afforded the debtor to enter into a written agreement which is acceptable to FSA for the repayment of the debt;

(10) That FSA maintains the right to initiate legal action to collect the amount of the debt;

(11) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to FSA has not been arranged 90 days after the due date, a penalty charge shall be assessed on the unpaid balance of the debt as prescribed in § 792.10(e);

(b) When FSA deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 792.5 Collection by payment in full.

Except as FSA may provide, FSA shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, FSA will impose late payment interest, as provided in § 792.10, unless such interest is waived as provided in § 792.11.

§ 792.6 Collection by installment payments.

(a) Payments in installments may be arranged, at FSA' discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by FSA, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 workdays following its request by FSA.

(c) All installment payment agreements shall be in writing and require the payment of interest at the late payment interest rate in effect on the date such agreement is executed, unless such interest is waived or reduced by FSA. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults.

(d) FSA may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides FSA a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to FSA, FSA may allow the debtor to designate the manner in which a voluntary installment payment is to be

applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by FSA.

§ 792.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due FSA except as otherwise provided in this part and part 1404 of this title. This section is not applicable to:

(1) FSA requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and FSA requests for salary offset against a present, former or retired employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) FSA requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 792.19;

(3) Cases in which FSA must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by FSA; and

(4) Any case in which a statute explicitly provides for or prohibits using administrative offset to collect the debt for the type of debt involved.

(b) Debts due FSA or CCC may be collected by administrative offset from amounts payable by FSA when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with part 780 of this chapter or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of FSA related to the debt;

(3) The debtor has been given the opportunity to enter into a written agreement which is acceptable to FSA for repayment of the debt;

(4) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(5) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by FSA:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of FSA or the United States.

(d) A payment due any person may be offset when there is a breach of a contract or a violation of FSA program requirements, and offset is considered necessary by FSA to protect the financial interests of the Government.

(e) FSA may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraphs (b)(1) through (b)(4) of this section if:

(1) Failure to take the offset would substantially prejudice FSA' ability to collect the debt; and

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

(f)(1) Judgments in favor of the United States may be offset against any amounts payable by FSA based on information provided by or obtained from the Department of Justice. Debts due any agency other than FSA which have not been reduced to judgment shall be offset against amounts payable by FSA to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate FSA State office, Kansas City Financial Management Office, Kansas City Management Office, or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the Social Security number or employer ID number of the debtor, and a brief description of the basis of the debt, including identification of the judgment, if any;

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate FSA office.

(g)(1) After FSA has complied with the provisions of this part, FSA may request other agencies of the Government to offset amounts payable by them to persons indebted to FSA.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 792.19 shall apply.

(h)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to FSA.

(ii) Debts to other agencies of USDA as determined by FSA.

(iii) Debts to other government agencies as determined by FSA.

(2) In the case of multiple debts involving the same debtor, FSA may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by FSA based on the facts and circumstances of the particular case.

(i) Amounts recovered by offset for FSA and CCC debts but later found not to be owed to the Government shall be promptly refunded.

(j) The debtor shall be notified whenever any offset action has been taken.

(k) Offsets made pursuant to this section shall not deprive a debtor of any right he or she might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(l) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by FSA.

(2) When FSA determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

(m) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(n) Offset action will not be taken against payments when:

(1) A debt has been discharged as provided in § 792.16.

(2) FSA determines such action will unduly interfere with the administration of an FSA or CCC program.

(3) The debt has been delinquent for more than ten years or legal action to enforce the debt due FSA is barred by an applicable period of limitation, whichever is later.

[59 FR 15829, Apr. 5, 1994, as amended at 60 FR 43706, Aug. 23, 1995]

§ 792.8 Priorities of offsets versus assignments.

(a) No amounts payable to a debtor by FSA shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

(b) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC–36 shall be subject to offset for any debt owed to FSA or CCC or any judgment in favor of the United States without regard to the date notice of assignment was accepted by FSA or CCC.

(c) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC–252 shall be offset:

(1) Against any debt of the assignor entered on the debt record of the applicable FSA office prior to the filing of such form with FSA or CCC, or

(2) At anytime, regardless of the date of filing of such form with FSA or CCC, if the debt which is the basis for the offset arises from a judgment in favor of the United States, or under the same contract under which the payment is earned by the assignor.

(d) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which have not been reduced to judgment, and which are entered on the debt record of the appropriate FSA office prior to the date the notice of assignment was accepted by FSA or CCC.

(e) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

§ 792.9 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by FSA to ensure that the interests of FSA and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of FSA or the United States only if FSA determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of FSA;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of FSA;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of FSA;

(5) The facts available to FSA are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of FSA has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due FSA or CCC, withholding action by FSA on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 792.10 Late payment interest, penalty and administrative charges.

(a) Late payment interest provisions of this section shall not apply:

(1) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged to the extent authorized under the common law or applicable statutory authority.

(2) If an applicable statute, regulation, agreement, or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(3) If the late payment interest is waived by FSA in accordance with § 792.11.

(4) To administrative charges as set forth in paragraph (f) of this section.

(b) FSA will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued program interest, and any other charges which are otherwise due and owing to FSA on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which FSA charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value

of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section. The rate of interest assessed under the Prompt Payment Act was chosen as an alternative rate to ensure that the Government would recoup interest at a rate which was at least as high as that which it pays for late payments.

(d)(1) When a debt results from a statute, regulation, contract, or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract, or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt, including notice of late payment interest, is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. FSA may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, a penalty charge of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to FSA has been agreed upon. Such penalty charge will be assessed retroactively from the date late payment interest began to accrue and applied on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) FSA shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to the penalty charge assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

§ 792.11 Waiver of late payment interest, penalty charge and administrative charges.

(a) FSA shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) FSA may waive the assessment and collection of all or a portion of the penalty charge on debts which are appealed in accordance with 7 CFR part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, the penalty charge and administrative charges under this part may be waived by FSA in full, or in part, if it is determined by the Controller, FSA, or his or her designee,

that such action is in the best interest of FSA.

§ 792.12 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under part 24 of this title or part 780 of this chapter or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this chapter, or other applicable appeal procedures, of FSA' determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of FSA' initial demand letter, unless a longer period is specified in the initial demand letter.

§ 792.13 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to FSA to collect debts owed to the Government.

§ 792.14 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, FSA may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp., p 306.

§ 792.15 Prior provision of rights with respect to debt.

FSA will not provide an administrative appeal with respect to issues which were raised or should have been raised at any administrative review requested by the debtor as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 792.16 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed FSA shall be discharged with the concurrence of the Department of Justice, if applicable, and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to FSA and no appeal will be taken by FSA;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 792.7(b)(5).

(b) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 792.20.

§ 792.17 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by FSA and the rights that will be afforded to debtors when FSA reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, FSA shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 792.4, of FSA' intent to make such a report. Such notification shall include:

(1) FSA' intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of FSA, installment payments, and that if such

an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when FSA has reported any delinquent debt to a credit reporting agency.

(e)(1) FSA shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) FSA shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by FSA.

(g) FSA shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom FSA does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, FSA shall, upon request of the debtor, provide for a review of the debt in accordance with § 792.12. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 792.12.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, FSA shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Administrator, FSA, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to FSA that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) FSA shall not report delinquent debt information to credit reporting agencies when: (i) The debtor has entered a repayment agreement covering the debt with FSA, and such agreement is still valid; or

(ii) FSA has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

(l) The provisions of paragraphs (a) through (k) of this section apply to commercial debts owed by farm producers and all personal debts. All commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies without following the provisions of paragraphs (a) through (k) of this section.

§ 792.18 Referral of debts to Department of Justice.

(a) Debts that exceed $100,000.00 exclusive of interest, penalties, and administrative charges, or such higher amount as may be prescribed, shall be

referred to the Department of Justice before they can be discharged.

(b) Debts which cannot be compromised or on which collection action cannot be suspended or terminated, may be referred to the Department of Justice for collection action. Claims of less than $600.00 exclusive of interest, penalties, and administrative costs will not be referred to the Department of Justice unless:

(1) Referral is important to a significant enforcement policy, or

(2) The debtor not only has the clear ability to pay the claim, but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

§ 792.19 Referral of delinquent debts to IRS for tax refund offset.

FSA may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 792.20 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, FSA may report to IRS as discharged debts on IRS Form 1099–G the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS: (1) The amount of a debt discharged under a compromise agreement between FSA and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

§ 792.21 Referral of debts to private collection agencies.

If FSA' collection efforts have been unsuccessful after 90 days from the date of delinquency, the head of the agency or his designee may enter into a contract with any person or organization, under such terms and conditions as the head of the agency or his designee considers appropriate for collection services to recover debts owed to FSA.

§ 792.22 Collection and compromise.

The Administrator, FSA, or his designee may compromise any claim of the Government of not more than $100,000.00 exclusive of interest, penalties, and administrative charges, or such higher amount as may be prescribed, that has not been referred to another executive or legislative agency for further collection action.

PART 795—PAYMENT LIMITATION

GENERAL

Sec.
795.1 [Reserved]
795.2 Applicability.
795.3 Definitions.
795.4 Family members.
795.5 Timing for determining status of persons.
795.6 Multiple individuals or other entities.
795.7 Entities or joint operations not considered as a person.
795.8 Corporations and stockholders.
795.9 Estate or trust.
795.10 Club, society, fraternal or religious organization.
795.11 Husband and wife.
795.12 Minor children.
795.13 Other cases.
795.14 Changes in farming operations.
795.15 Determination whether agreement is a share lease or a cash lease.
795.16 Custom farming.
795.17 Scheme or device.
795.20 Joint and several liability.
795.21 Appeals.
795.22 Interpretations.
795.23 Paperwork Reduction Act assigned number.
795.24 Relief.

AUTHORITY: Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat, 1444, as amended, 7 U.S.C 1308; Pub. L. 99–500 and Pub. L. 99–591.

SOURCE: 43 FR 9784, Mar. 10, 1978, unless otherwise noted.

GENERAL

§ 795.1 [Reserved]

§ 795.2 Applicability.

(a) The provisions of this part are applicable to payments when so provided by the individual program regulations