

§ 3.43

which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F. 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. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.

(c) A debtor must request an administrative review of the debt under subpart F within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by referral to Treasury for offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) *Scope.* In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt from, for example, a Federal employee's lump sum payment upon leaving government service in order to pay an unpaid advance. Also, non-centralized administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (FSA) delinquent debts. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset.

(b) *Effectuation of offset.* A non-centralized administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative re-

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view conducted under subpart F upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(c) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) *Certification.* A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as set forth in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(d) *Responsibilities of payment authorizing agencies.* Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) *Application of recovered amounts to satisfaction of debts.* When collecting multiple debts by non-centralized administrative offset, agencies shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 3.44 Centralized administrative offset.

(a) *Mandatory referral.* After the notice and review opportunity requirements of § 3.41 are met, an agency shall refer debts which are over 180 days delinquent to Treasury for collection

through centralized administrative offset 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor seeks review under subpart F, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 180 days delinquent.

(b) *Discretionary referral.* After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 180 days delinquent.

(c) *Procedures for referral.* Agencies shall refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR part 285.5.

(d) *Payment authorizing agency responsibilities.* (1) The names and TINs of debtors who owe debts referred to Treasury under this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative offset under this section must notify a debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include the information set forth in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section shall furnish a warning notice to a payee/debtor prior to beginning offset of recurring payments. Such warning notice shall include the information set forth in paragraph (d)(4) of this section.

(4) The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(5) The priorities for collecting multiple payments owed by a payee/debtor shall be those set forth in 31 CFR 285.5(f)(3).

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized administrative offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency; or

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized administrative offset under § 3.44.