

### § 3.4

*NAD* means the USDA National Appeals Division.

*Non-centralized administrative offset* means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. An internal administrative offset is a type of non-centralized administrative offset.

*Offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

*OGC* means the USDA Office of the General Counsel.

*Payee* means a person who is due a payment from a payment authorizing agency, and includes a person who is entitled to all or part of a payment.

*Payment authorizing agency* means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

*Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

*Recoupment* means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

*Reviewing officer* means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

*Secretary* means the Secretary of Agriculture, unless otherwise specified.

*Treasury* means the United States Department of the Treasury.

*USDA* means the United States Department of Agriculture.

### § 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility, and may delegate and authorize the re-delegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

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### Subpart B—Standards for the Administrative Collection and Compromise of Claims

SOURCE: 73 FR 4, Jan. 2, 2008, unless otherwise noted.

#### § 3.10 Aggressive agency collection activity.

An agency shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

#### § 3.11 Demand for payment.

(a) *Demand Letters.* Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency shall follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency shall give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1 or otherwise. When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) *Required notices.* In demand letters, the USDA creditor agency shall inform the debtor:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with §3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) The willingness of the creditor agency to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (*see* §3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office within the creditor agency;

(6) The intention of the creditor agency to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset*. Offset the debtor's USDA payments and refer the debtor's debt to TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D;

(ii) *Private collection agency*. [Reserved]

(iii) *Credit reporting agency reporting*. Report the debt to a credit reporting agency in accordance with §3.12;

(iv) *Administrative wage garnishment*. Refer the debt to Treasury in accordance with subpart E for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation*. Refer the debt to Justice in accordance with §3.21 to initiate litigation to collect the debt;

(vi) *Referral to Treasury*. Referral of the debt to Treasury for collection in accordance with subpart C of this part;

(7) That USDA debts over 180 days delinquent must be referred to Treasury for the collection actions described in paragraph (b)(6) of this section;

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the USDA creditor agency's de-

termination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* subpart F of this part);

(10) [Reserved]

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* subpart G of this part);

(12) How a debtor may request a waiver of the debt, if applicable;

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see* <http://www.irs.gov>);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for government loans, guarantees, and insurance (*see* §3.14);

(16) If applicable, the creditor agency's intention to suspend or revoke licenses, permits, or privileges (*see* §3.14); and

(17) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(c) *Exceptions to notice requirements*. A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (b)(17) if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(d) Agencies shall exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies shall utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies shall respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and shall advise debtors who dispute debts to furnish available evidence to support their contentions.

### §3.12

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, internal administrative offset, the procedures applicable to offset must be followed (*see* subpart D). The availability of funds or money for debt satisfaction by internal administrative offset, and the agency's determination to pursue collection by internal administrative offset, shall release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies shall advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification shall comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government shall be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency shall immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency is advised that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor must stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies shall refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies

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may seek legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also may seek legal advice from OGC to determine whether recoupment is available.

#### §3.12 Reporting of consumer debts.

(a) *Notice.* In demand letters to debtors sent in accordance with §3.11, agencies shall inform debtors:

(1) The intent of the agency to report the delinquent consumer debt to credit reporting agencies after 60 days;

(2) The specific information to be transmitted (*i.e.*, name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (*i.e.*, repayment in full or a repayment agreement); and

(4) The rights of the debtor to seek review of the existence of the debt in accordance with subpart F.

(b) *Disclosure.* Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) *Non-duplication of hearings.* When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit bureaus.

(d) *Stay of disclosure.* Agencies shall not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F until a final determination is made by a reviewing official that upholds the agency intent to disclose.

(e) *Commercial debt.* The requirement of this section does not apply to commercial debts, although agencies should report commercial debts to commercial credit bureaus.