

payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies shall consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated “debt collection centers” in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through internal administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

- (a) The debts being transferred are valid and legally enforceable;
- (b) There are no legal bars to collection; and
- (c) The agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or trans-

ferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

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

§ 3.40 Scope.

(a) This subpart sets forth the procedures to be used by agencies in collecting debts by administrative offset. The term “administrative offset” has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) This section does not apply to:

(1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);

(3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;

(4) Offsets against Federal salaries (such offsets are covered by subpart F);

(5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(6) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts;

(7) Offsets in the course of judicial proceedings, including bankruptcy; or

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 601–613.

(c) Unless otherwise provided by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(d) Supplemental provisions related to offsets by the Commodity Credit Corporation (CCC) may be found at 7 CFR part 1403 and for the Farm Service Agency at 7 CFR part 792.

(e) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to