

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****7 CFR Part 3****Federal Crop Insurance Corporation****7 CFR Part 400****Farm Service Agency****7 CFR Parts 761, 765, 766, 772, and 792****Commodity Credit Corporation****7 CFR Part 1403****Farm Service Agency****Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Parts 1951 and 1956****[Docket ID USDA–2019–0007]****RIN 0560–AA16****Debt Management**

**AGENCY:** Office of the Secretary, Commodity Credit Corporation, Farm Service Agency, Federal Crop Insurance Corporation, Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The general debt management regulations of the Department of Agriculture (USDA) provide that individual USDA agencies may issue regulations for their own specific debt collection activities principally in recognition that the agencies conducted debt collection activities prior to the enactment of the Debt Collection Improvement Act of 1996 (DCIA). Many of the provisions of individual agencies are redundant to part 3. This rule will eliminate the debt collection regulations of the following USDA agencies, and part 3 will be revised to include specific provisions used by these agencies: the Commodity Credit Corporation (CCC); the Federal Crop Insurance Corporation (FCIC), and the Farm Service Agency (FSA). In addition, as required by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (the 2015 Civil Penalties Act), this rule updates the size of civil monetary penalties to reflect inflationary adjustments for 2020.

**DATES:** Effective: June 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** For information, contact Iris Roseboro; telephone: (202) 720–6257; email: *Iris.Roseboro@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 7 CFR part 3 (part 3) specify the general regulations applicable to debt collection activities of USDA agencies and specify the amount of civil penalties that USDA agencies levy as authorized by law. Federal agencies are required by several laws to collect debts owed to the United States, principally DCIA. Several USDA agencies issued debt collection regulations prior to the enactment of DCIA and the provisions of 7 CFR 3.1(b) allow individual USDA agencies to issue regulations to supplement part 3.

The Office of the Chief Financial Officer (OCFO), USDA, is reviewing the individual agency regulations and procedures in order to ensure that all agencies' individual debt collection policies align with government-wide policies, as well as the specific policies of the Secretary. For purposes of this review, a "debt" is a delinquent amount owed to the United States and does not include the entire outstanding amount of a loan made by an agency when the borrower is making scheduled loan payments as required by the loan agreement. If a USDA agency determines that a borrower is delinquent on a loan payment, the delinquent amount will be considered to be a "debt" for purposes of part 3 and the agency will be required to give all due process notices prior to proceeding with debt collection actions, including administrative offset or salary offset and referral to the Department of Treasury for centralized offset. The intent of this review is to consolidate the debt collection and settlement regulations of USDA in one location to ensure consistency and uniformity in operations of USDA agencies. This action is not intended to make any substantive changes in USDA policy or procedure or to impose any additional burden on a person who is indebted to the United States.

The amendments made by this final rule incorporate the results of this review by CCC, FSA, the Foreign Agricultural Service (FAS), FCIC, the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA).

FSA's principal debt settlement regulations that supplement part 3 have

been in 7 CFR part 792. In addition, regulations in 7 CFR parts 1951 and 1956 have been used by FSA in the settlement and adjustments of FSA farm loans made under the Consolidated Farm and Rural Development Act (ConAct) and debts related to those loans. This rule removes 7 CFR part 792 and 7 CFR part 1951, subpart C. Since 7 CFR part 1956 is also used by the Rural Development of USDA (RD), those regulations are not deleted but are amended to state affirmatively that they do not apply to loans made by FSA and debts relating to such loans. In those limited instances where provisions of 7 CFR parts 792, 1951, and 1956 will continue to be used because of their specific application to FSA debts, the provision has been included in part 3; for the provisions that will continue to only be used for Farm Loan Programs, the provisions have been included in 7 CFR part 761 as subpart F.

RD also has debt settlement authority under the ConAct and The Housing Act of 1949 (Housing Act). The following list of RD's implementing debt settlement regulations authorized by the ConAct and the Housing Act that are excepted from part 3 are:

- 7 CFR part 1717, subpart Y;
- 7 CFR part 1752;
- 7 CFR 1782.20;
- 7 CFR 1951.213;
- 7 CFR part 1956;
- 7 CFR part 3550, subpart F;
- 7 CFR 3560.457; and
- 7 CFR 3565.56.

Additionally, 7 CFR part 1951, subpart C, RD regulations that previously implemented the Debt Collection Improvement Act are being replaced by part 3 and therefore are being removed, as stated above.

Exceptions are included in the regulation for CCC and FCIC. CCC and FCIC are wholly-owned government corporations and each have independent settlement authority under their respective authorizing laws. Accordingly, while the debt collection regulations for these entities have been deleted, provisions have been included in part 3 to recognize the ability of these corporations to settle and adjust claims without referral to the Department of Justice. In addition, this rule revises part 3 to make clear that, in those instances where a debt has been incurred by a foreign obligor and is potentially susceptible to the bankruptcy or insolvency laws of a foreign jurisdiction, the provisions of part 3 are not applicable. Principally, these instances of foreign debt collection arise under CCC programs which authorize CCC to make payments to entities who have financed exports of US agricultural

products and the foreign obligor does not make full payment to the exporter or the exporter's assignee. In these programs, CCC retains the right to pursue collection from the obligor, and often these matters fall within the jurisdiction of a foreign court.

NRCS, FAS, and RMA do not have agency specific debt collection regulations and currently follow part 3. Accordingly, no action was necessary to delete existing regulations or revise part 3.

This rule also revises subpart I of part 3 to update the amount of civil monetary penalties that may be levied by USDA agencies to reflect inflationary adjustments for 2020 as required by the 2015 Civil Penalties Act. As required by the 2015 Civil Penalties Act, the annual adjustment was made for inflation based on the Consumer Price Index for the month of October 2019 and rounded to the nearest dollar after an initial adjustment. The civil monetary penalties are listed according to the applicable administering agency.

#### **Effective Date and Notice and Comment**

The action taken by this rule: Consolidates at 7 CFR part 3 existing debt collection regulations used by certain USDA agencies; eliminates obsolete debt collection regulations; and adjusts USDA civil monetary penalties as required by the 2015 Civil Penalties Act.

Because the action to update existing regulations is ministerial and the adjustment to civil monetary penalties is required by the 2015 Civil Penalties Act, USDA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) that opportunity for prior comment is unnecessary and contrary to the public interest and USDA is issuing this revised regulation as a final rule.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the **Federal Register**.

#### **Executive Orders 12866, 13563, 13771, and 13777**

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, "Enforcing the Regulatory Reform Agenda," established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule and an analysis of costs and benefits is not required under either Executive Orders 12866 or 13563.

Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," requires that, in order to manage the private costs required to comply with Federal regulations, for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. USDA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever the Administrative Procedure Act or any other law requires an agency to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because USDA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

#### **Environmental Review**

The action taken by this rule is ministerial in nature in that the purpose of the rule is to eliminate obsolete

regulations and to consolidate current debt collection regulations of three USDA agencies at one USDA-wide regulation. Accordingly, this action does not require an analysis under the National Environmental Policy Act (NEPA).

#### **Executive Order 12372**

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions identified in 7 CFR part 3 must be exhausted.

#### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on

policies that have Tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under Executive Order 13175. If a Tribe requests consultation, OCFO will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided when changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

#### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. The UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **E-Government Act Compliance**

USDA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Federal Assistance Programs**

This rule does not provide any new Federal Domestic Assistance Program nor change any of the USDA programs that are in the Catalog of Federal Domestic Assistance. This rule prescribes standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

#### **Paperwork Reduction Act**

This rule does not create any new information collection requirements as the agencies affected by this rule will continue to conduct debt collection activities in the same manner as before this rule. Due to the nature of this rule, the information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the nature of the information collection activities is that the USDA agency is conducting administrative action against the individuals or debtors.

#### **List of Subjects**

##### *7 CFR Part 3*

Administrative practice and procedure, Claims, Government employees, Income taxes, Loan programs-agriculture, Penalties, Reporting and recordkeeping requirements, Wages.

##### *7 CFR Part 400*

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

##### *7 CFR Part 761*

Accounting, Loan programs-agriculture, Rural areas.

##### *7 CFR Part 765*

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

##### *7 CFR Part 766*

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

##### *7 CFR Part 772*

Agriculture, Loan programs-agriculture, Rural areas.

##### *7 CFR Part 792*

Claims, Income taxes.

##### *7 CFR Part 1403*

Claims, Income taxes, Loan programs-agriculture.

##### *7 CFR Part 1951*

Accounting, Agriculture, Claims, Community facilities, Credit, Disaster assistance, Government employees, Grant programs-housing and community development, Housing, Income taxes, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Reporting and

recordkeeping requirements, Rural areas, Wages.

##### *7 CFR Part 1956*

Accounting, Business and industry, Claims, Loan programs-agriculture, Loan programs-business, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

Under the authority of 5 U.S.C. 301, 7 U.S.C. 1506, and 15 U.S.C. 714b and as discussed in the preamble, USDA amends Title 7 of the Code of Federal Regulations as follows:

- 1. Revise part 3 to read as follows:

### **PART 3—DEBT MANAGEMENT**

#### **Subpart A—General**

Sec.

- 3.1 Purpose and scope.
- 3.2 Authority.
- 3.3 Definitions.
- 3.4 Delegations of authority.

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

- 3.10 Aggressive agency collection activity.
- 3.11 Demand for payment.
- 3.12 Reporting debts to Credit Reporting Agencies.
- 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
- 3.15 Liquidation of collateral.
- 3.16 Collection in installments.
- 3.17 Interest, penalties, and administrative costs.
- 3.18 Use and disclosure of mailing addresses.
- 3.19 Standards for the compromise of claims and debt settlement.
- 3.20 Standards for suspending or terminating collection activities.
- 3.21 Referrals of debts to Justice.
- 3.22 CCC withholding of payment.
- 3.23 CCC assignment of payment.

#### **Subpart C—Referral of Debts to Treasury**

- 3.30 General requirements.
- 3.31 Mandatory referral for cross-servicing.
- 3.32 Discretionary referral for cross-servicing.
- 3.33 Required certification.
- 3.34 Fees.

#### **Subpart D—Administrative Offset**

- 3.40 Scope.
- 3.41 Procedures for notification of intent to collect by administrative offset.
- 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
- 3.43 Non-centralized administrative offset.
- 3.44 Centralized administrative offset.
- 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
- 3.46 Offset against tax refunds.
- 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

**Subpart E—Administrative Wage Garnishment**

- 3.50 Purpose.
- 3.51 Scope.
- 3.52 Definitions.
- 3.53 Procedures.

**Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies**

- 3.60 Applicability.
- 3.61 Presiding employee.
- 3.62 Procedures.

**Subpart G—Federal Salary Offset**

- 3.70 Scope.
- 3.71 Definitions.
- 3.72 Coordinating offset with another Federal agency.
- 3.73 Determination of indebtedness.
- 3.74 Notice requirements before offset.
- 3.75 Request for a hearing.
- 3.76 Result if employee fails to meet deadlines.
- 3.77 Hearing.
- 3.78 Written decision following a hearing.
- 3.79 Review of USDA records related to the debt.
- 3.80 Written agreement to repay debts as alternative to salary offset.
- 3.81 Procedures for salary offset: when deductions may begin.
- 3.82 Procedures for salary offset: types of collection.
- 3.83 Procedures for salary offset: methods of collection.
- 3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.
- 3.85 Non-waiver of rights.
- 3.86 Refunds.
- 3.87 Agency regulations.

**Subpart H—Cooperation with the Internal Revenue Service**

- 3.90 Reporting discharged debts to the Internal Revenue Service.

**Subpart I—Adjusted Civil Monetary Penalties**

- 3.91 Adjusted civil monetary penalties.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1506, 1981, 1981a, 1981d, and 2008h; 15 U.S.C. 714b; 31 U.S.C. 3701, 3711, 3716–18, and 3720B; and 31 CFR parts 285 and 901–904.

**Subpart A—General****§ 3.1 Purpose and scope.**

(a)(1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law.

In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally will take precedence over this part.

(b) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

(c) The regulations of this part will not apply to:

(1) Collection of debts owed government travel card contractors by USDA employees;

(2) Collection of debts owed by individual Food Stamp Program recipients for whom debt collection procedures are provided under § 273.18 of this title.

(3) Collection of debts owed by foreign governments and, sovereign institutions of foreign governments.

(4) Actions pursuant to the FSA FLP Debt Settlement regulations in part 761, subpart F, of this title are authorized under the Consolidated Farm and Rural Development Act (ConAct), which are independent of the DCIA are excepted from this part.

(5) Actions pursuant to the following RD Debt Settlement regulations authorized under the ConAct and the Housing Act, which are independent of the DCIA are excepted from this part:

- (i) 7 CFR part 1717, subpart Y;
- (ii) 2 CFR part 175;
- (iii) 7 CFR 1782.20;
- (iv) 7 CFR 1951.213;
- (v) 7 CFR part 1956;
- (vi) 7 CFR part 3550, subpart F;
- (vii) 7 CFR 3560.457; and
- (viii) 7 CFR 3565.56.

**§ 3.2 Authority.**

(a) Generally, the regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701, 3711–3720) and the Federal Claims Collection Standards (FCCS) issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901–904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K)

and administrative offset of tax refunds (31 U.S.C. 3720A).

(b) With respect to agency specific provisions of this part, the following authorities are applicable:

(1) The Commodity Credit Corporation (CCC): section 4 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b).

(2) The Farm Service Agency (FSA): sections 331, 331A, 331D, and 373 of the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(3) The Federal Crop Insurance Corporation (FCIC): section 506(j) of the Federal Crop Insurance Act (7 U.S.C. 1506(j)).

**§ 3.3 Definitions.**

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

*Account* means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

*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, and costs of selling collateral or property to satisfy the debt.

*Administrative offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).

*Agency* means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

*Borrower* and *debtor* have the same meaning and refer to a person who owes a delinquent, nontax debt to the United States.

*Carrier* means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or inter-modal marketing companies, that provide transportation or other transportation-related services for compensation.

*CCC* means Commodity Credit Corporation.

*Centralized administrative offset* means referral of a debt to the Treasury Offset Program (TOP) to collect debts that creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a), and applicable regulations for offset of payments made to a debtor by Federal agencies other than USDA. Centralized offset also includes offset of payments made by States pursuant to 31 U.S.C. 3716(h) and 31 CFR 285.6.

*CFO* means Chief Financial Officer.

*Civil monetary penalties* are assessed for violations and failures to comply with various program requirements. The management and settlement of these debts are specified in this part, and the applicable laws and program specific regulations.

*Claim and debt* have the same meaning and refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

*Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards specified in FCCS and applicable federal law.

*Contracting officer* has the same meaning as in 41 U.S.C. 7101.

*Credit reporting agencies* (also known as credit bureaus) means major credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (Federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

*Creditor agency* means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to collection of the debt.

*Cross-servicing* means the centralized collection of Federal debt and the various collection actions taken by Treasury on behalf of a Federal agency in accordance with the provisions of 31 U.S.C. 3711, 31 U.S.C. 3720D, 31 CFR part 285, and other Treasury regulations. Cross-servicing includes, but is not limited to, the use of debt collection centers and private collection contractors.

*Day* means calendar day unless otherwise specified.

*DCIA* means the Debt Collection Improvement Act of 1996.

*Debt* means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any

person, organization, or entity, except another Federal agency.

*Debt collection center* means the Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

*Debt record* means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.

*Debtor* means a person who owes a delinquent, nontax debt to the United States.

*Delinquent* means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

*Discharged debt* means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

*Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but not including any amount withheld pursuant to a court order.

*Federal agency* means any department or entity within the Executive branch of the government that is not a USDA agency.

*Financial statement* means a statement of financial condition at a given date that accurately reflects the debtor's assets, liabilities, income, and expenses.

*Fiscal Service* means the United States Department of the Treasury's Bureau of the Fiscal Service.

*Foreign debt* means debt owed by a sovereign or non-sovereign entity, when the debt is subject to adjudication in a non-U.S. jurisdiction.

*FSA FLP* means the Farm Loan Programs of FSA.

*Government or Federal government* means the government of the United States, unless otherwise specified.

*Justice* means the United States Department of Justice.

*Late payment interest rate* means the amount of interest charged on delinquent debts and claims in cases where the annual rate of interest is not established by a promissory note. Unless otherwise provided by the law, regulation, contract, or agreement that established the debt, the late payment interest rate will 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, as of the date the debt became delinquent. Interest on delinquent debts will accrue on a daily basis.

*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. The creditor agency and paying agency can be the same.

*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.

*Penalty charge or penalty interest* means the additional penalty amount charged on delinquent debts as specified in 31 U.S.C. 3717(e)(2) and § 3.17(d).

*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.

*Private Collection Agency* means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

*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.

*Salary offset* means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514

to satisfy a debt that person owes the Government.

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

*Settlement or debt settlement* means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

*Tax Identification Number or TIN* means the identification number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or employer identification number (EIN).

*TOP* means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

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

*USDA* means the United States Department of Agriculture.

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

### § 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 redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

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

### § 3.10 Aggressive agency collection activity.

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

### § 3.11 Demand for payment.

(a) 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 will 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 will 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 will 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 will give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1. 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) In demand letters, the USDA creditor agency will 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) Of any willingness 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;

(6) The intent 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 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 of this part;

(ii) Refer the debt to a private collection agency.

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

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

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

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

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

(8) How the debtor may request an administrative review of the determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see subpart F of this part);

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

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

(11) 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>);

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

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

(14) If applicable, the intention to suspend or revoke licenses, permits, or privileges (see § 3.14); and

(15) 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.

(16) The debtor's right to appeal the determination in accordance with applicable appeal procedures;

(17) The debtor's right to present evidence that all or part of the debt is not past-due or not legally enforceable.

(c) A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (17) of this section 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. In the case of foreign debt that is subject to insolvency or bankruptcy proceedings outside the United States, a USDA creditor agency may, in lieu of a demand letter, submit such documentation necessary to establish its claim as a creditor.

(d) Agencies will exercise care to ensure that demand letters are mailed or delivered (as applicable for the program) on the same day that they are dated.

There is no prescribed format for demand letters. Agencies will 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 will respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(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, administrative offset, the procedures applicable to offset must be followed (see subpart D of this part). The availability of funds or money for debt satisfaction by administrative offset, and the agency's determination to pursue collection by administrative offset, will 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 will advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification complies with Executive Order 12988 (58 FR 51735, October 4, 1993) 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 will be advised that this notice has been given. In general, only one agency should service a debt at a time; that is, agencies should not simultaneously refer a debt to both Treasury and Justice for collection.

(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 will immediately request 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 requesting legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies will 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 request 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 may request 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 request legal advice from OGC to determine whether recoupment is available.

### **§ 3.12 Reporting of debts to Credit Reporting Agencies.**

(a) In demand letters to debtors sent in accordance with § 3.11, agencies will inform debtors:

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

(2) The specific information to be transmitted (that is, name, address, and taxpayer identification number, information about the debt);

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

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

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

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

### **§ 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.**

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the USDA Chief Financial Officer (CFO) or Deputy CFO. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt

classes of debts from this prohibition and has prescribed standards defining when a "delinquency" is "resolved" for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. See 31 U.S.C. 3720B.

(c) In non-bankruptcy cases, agencies pursuing the collection of statutory penalties, forfeitures, or other types of claims must consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor will be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by USDA or another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code or as specified in the appropriations provisions regarding outstanding tax debt in sections 745 and 746 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) and successor provisions of law) owed to any Federal agency or instrumentality is grounds for non-procurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. See 2 CFR 180.800(c)(3).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 will be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do

business with the government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, will ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(g) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

### **§ 3.15 Liquidation of collateral.**

(a) In accordance with applicable laws and regulations, agencies may liquidate security or collateral through a sale or a nonjudicial foreclosure and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency may request legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

### **§ 3.16 Collection in installments.**

(a) Whenever feasible, agencies will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies will obtain financial statements from debtors (or a similar statement from foreign debtors) who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g) for methods of verification). Agencies that agree to

accept payments in regular installments will obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments will be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

### **§ 3.17 Interest, penalties, and administrative costs.**

(a) Except as provided in paragraphs (g) and (h) of this section, agencies will charge interest, penalties, and administrative costs on debts owed to the United States as specified in 31 U.S.C. 3717. If not included in the agency's demand notice, an agency will mail or deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies will charge interest on debts owed the United States except as otherwise required by law and as provided in paragraph (i) of this section for debts owed to CCC and FSA. In charging such interest, agencies will apply the following provisions:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by law, the rate of interest charged will be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency must document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a

debtor defaults on a repayment agreement and requests to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) Agencies will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by law, agencies will charge a penalty, as specified in 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) Agencies may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt" includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. Agencies may use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency will be applied first to outstanding penalties, second to administrative charges (when applicable), third to interest, and last to principal, except as otherwise required by law.

(g) Agencies will waive the collection of interest and administrative charges imposed pursuant to this section (that is, this does not apply to interest or administrative penalties determined by

an applicable agreement or instrument such as a loan contract) on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria specified in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the interest of the United States.

(h) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law. Agencies will consult OGC before imposing interest and related charges under common law for any debt.

(i)(1) For debts resulting from CCC loans made in accordance with chapter XIV of this title:

(i) Late payment interest will begin to accrue from the date on which a claim is established. In addition, an additional charge of 3 percent per year will be assessed on a portion of a debt that remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis and will continue to be used until the delinquent debt has been paid.

(ii) Penalty charges, administrative costs and interest will continue to accrue if a debtor makes a request for appeal as provided by any agency or USDA-wide appeal regulation. Collection by offset will continue during the appeal process unless prohibited by statute. If the debtor ultimately wins an appeal and the debt is found to be incorrect, CCC will credit the debtor's debt for the amount of penalty charges, administrative costs, and interest that has accrued from the date such charges were initiated on the portion determined in the appeal to not be due.

(2) Late payment interest provisions of this section do not apply to FSA and CCC debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities will be assessed at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent.

(3) Late payment interest, penalty charges, and administrative costs may be waived by FSA or CCC in full or in part, if it is determined by the agency that such action is in the Government's interest.

(4) The provisions of this section do not apply to CCC foreign debt.

**§ 3.18 Use and disclosure of mailing addresses.**

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or 31 CFR parts 902 through 904 or other authority, agencies may send a request to Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service (IRS).

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

**§ 3.19 Standards for the compromise of claims and debt settlement.**

(a) An agency will follow the standards specified in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

(b) For FSA FLP debts, the first instance of debt cancellation is exempt from the monetary limits established in 31 CFR 902.1.

(c) For CCC debts, CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 902.2, 902.3, 902.4, 902.6, and 902.7, for the compromise of debts owed to CCC, to the maximum extent practicable. In addition to the bases for the compromise of debts specified in 31 CFR 902.2, CCC may compromise a debt when the approving official with the authority to compromise the debt has determined that such action is in the interest of CCC.

**§ 3.20 Standards for suspending or terminating collection activities.**

(a) An agency will follow the standards specified in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

(b) CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 903.2, 903.3, 903.4, and 903.5(c) and (d), for the suspension or termination of collection activities with regard to debts

owed to CCC, to the maximum extent practicable. In addition to the bases for the termination of collection activities specified in 31 CFR 903.3, CCC may terminate collection activities when the approving official with the authority to terminate collection activities with regard to the debt has determined that such action is in the interest of CCC.

**§ 3.21 Referrals of debts to Justice.**

An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures specified in 31 CFR part 904 in making such referrals. Agencies will consult with OGC on all debts which are to be collected in foreign jurisdictions to determine how and if a referral to Justice will take place.

**§ 3.22 CCC withholding of payment.**

(a) CCC may temporarily withhold issuance of payment of some or all amounts to a debtor under one or more contracts or programs. Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States if CCC 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 CCC;

(2) There is substantial evidence of violations of criminal or civil fraud laws and criminal prosecution or civil fraud action is of primary importance to program operations of CCC;

(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 CCC;

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

(6) A judgement on a claim of CCC has been obtained; or

(7) Such action has been requested by Justice.

**§ 3.23 CCC assignment of payment.**

(a) No amounts payable to a debtor by CCC will be paid to an assignee of the

debt until amounts owed by the debtor have been collected and applied to the debt.

(b) A payment that is assigned as specified in part 1404 of this title by execution of any CCC assignment form will be subject to offset for any debt owed to CCC, or any USDA agency, or any other Federal agency, any IRS notice of levy, or any judgment in favor of the United States, without regard to the date notice of assignment was accepted by CCC.

(c) Except as provided in 7 CFR 1404.6(b), any indebtedness owed by the assignor to CCC will be offset from any payment which is owed by CCC if such indebtedness was entered on the debt record of the applicable USDA office prior to the date of the filing Forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment).

### Subpart C—Referral of Debts to Treasury

#### § 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset with the exception of foreign debt that is exempt from cross-servicing per the Debt Collection Improvement Act of 1996. Additionally, USDA will transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart specifies the rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are specified in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury will service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) In cases where a debtor has more than one FSA FLP loan that has been referred to cross-servicing and Treasury accepts an agreement to compromise or adjust one loan, or several loans, but not all of the debt, cancellation of any loan balances remaining on the compromised or adjusted debt will not be processed for the debtor until:

(1) All payments have been received as agreed; and

(2) All loans referred to the cross-servicing program for that debtor have been returned to FSA, with or without payment agreements.

#### § 3.31 Mandatory referral for cross-servicing.

(a) Agencies will transfer to Treasury any legally enforceable nontax debt in excess of \$25, or combination of debts less than \$25 that exceeds \$25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action. Agencies that transfer delinquent debts to Fiscal Service for the purposes of debt collection and that rely on Fiscal Service to submit the transferred debts for administrative offset on the agency's behalf must transfer the debts to Fiscal Service no later than 120 days after the debts become delinquent in order to satisfy the 120-day notice requirement for purposes of administrative offset in accordance with 31 CFR 285.12(c)(1). For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure (see 31 CFR 285.12 (d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (see 31 CFR 285.12(d)(3)(i) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under administrative offset procedures within 3 years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the

Secretary of the Treasury that exemption for a certain class of debt is in the interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA CFO.

(7) Is foreign debt; or

(8) Is FSA FLP debt in which case the delinquent loan servicing procedures and appeals process required by the ConAct will apply, including the deferral for cross-servicing until all security has been liquidated, and FSA concludes its review of any pending debt settlement application from the debtor.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency 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 law 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 of this part), 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 will 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 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 transferred 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****§ 3.40 Scope.**

(a) This subpart specifies the procedures to be used by agencies in collecting debts by administrative offset.

(b) This subpart 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 of this part);

(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 laws specifically prohibiting offsets or recoupments of particular types of debts;

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

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 7101–7109; or

(9) Foreign Debt.

(c) Unless otherwise provided for 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) In bankruptcy cases, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553 on pending or contemplated collections by offset.

**§ 3.41 Procedures for notification of intent to collect by administrative offset.**

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA administrative offset) to collect the debt 30 days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized administrative offset, the intent to refer the debt to Treasury for collection through centralized administrative offset (including possible offset of tax refunds) 60 days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and

(iii) To make a written agreement to repay the debt.

(b) The procedures specified in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) In the case of a non-centralized administrative offset, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (see, for example, § 3.11). With respect to loans

paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment.

Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset will be included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency may employ.

**§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.**

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. 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. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title.

(b) The debtor may, in response to the 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 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 of this part. 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 will not be subject to review under subpart F of this part or by NAD under part 11 of this title. For proposed agreements to pay delinquent amounts owed on FSA FLP

loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.

(c) A debtor must request an administrative review of the debt under subpart F of this part 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 centralized offset against other Federal payments that would include tax refunds.

#### **§ 3.43 Non-centralized administrative offset.**

(a) 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. 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) A non-centralized administrative offset may start 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part 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(b) is not acceptable if the 30-day period for the debtor to request 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) 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 specified 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) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the interest 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) When collecting multiple debts by non-centralized administrative offset, agencies will apply the recovered amounts to those debts in accordance with the interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(f) Debts arising from the shipment of commodities procured by CCC are subject to the following:

(1) Debts due CCC from a carrier for overcharges will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(ii) The periods of limitation as specified in 49 U.S.C. 11705(f) or 49 U.S.C. 14705(f) have not expired;

(2) Debts due to CCC from a carrier for loss or damage will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) Timely demand for payment was made on the carrier;

(ii) The carrier has declined payment of the debt without reasonable justification or has ignored the debt; and

(iii) The periods of limitation as specified in 49 U.S.C. 11706(e) or 49 U.S.C. 14706(e) have not expired; and

(3) Any overcharge, loss, or damage debt due to CCC on which the applicable period of limitation has expired may be offset against any amounts owed by CCC to the carrier which are subject to limitation.

#### **§ 3.44 Centralized administrative offset.**

(a)(1) Except as provided in paragraph (a)(2) of this section, after the notice and review opportunity requirements of § 3.41 are met, an agency will refer debts which are over 120 days delinquent to Fiscal Service for collection through centralized administrative TOP 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor requests review under subpart F of this part, 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 120 days delinquent.

(2) For FSA FLP and Rural Development debt:

(i) The delinquent loan servicing procedures and timeframes required by the ConAct will be followed; and

(ii) Offsets will not occur during any moratorium required by the ConAct.

(b) After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F of this part is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 120 days delinquent.

(c) Agencies will refer debts to Treasury for collection in accordance with Treasury procedures specified in 31 CFR 285.5.

(d) The agencies will ensure that:

(1) The names and TINs of debtors who owe debts referred to Treasury under this section will 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, or Fiscal Service on behalf of the disbursing official, must notify a debtor or 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 specified 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, or Fiscal Service on behalf of the disbursing official, will furnish a warning notice to a payee or debtor prior to beginning offset of recurring payments. Such warning notice will include the information specified in paragraph (d)(4) of this section.

(4) The notice will 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 or debtor will be those specified 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.

**§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.**

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund.

**Subpart E—Administrative Wage Garnishment**

**§ 3.50 Purpose.**

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

**§ 3.51 Scope.**

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart will apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

(g) This subpart does not apply to foreign debt.

**§ 3.52 Definitions.**

As used in this subpart the following definitions will apply:

*Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

*Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments,

but does not include an agency of the Federal government.

*Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

**§ 3.53 Procedures.**

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.

(b) As specified in § 3.11, agencies must notify debtors of their intent to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days of the date of the demand letter.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F of this part that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury will not be subject to appeal to NAD under part 11 of this title. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO will provide a copy of the hearing official's final decision to Treasury for implementation with respect to the subject garnishment order.

**Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies**

**§ 3.60 Applicability.**

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section will satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized administrative offset.

(b) For debt collection proceedings initiated by FSA, CCC, FCIC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901–950cc–2), part 11 of this title will be applicable and not the provisions of this subpart.

**§ 3.61 Presiding employee.**

An agency reviewing officer may be an agency employee, or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

**§ 3.62 Procedures.**

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and requests review. The request must be received by the creditor agency within 60 days of the date of the notice

in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. 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) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official will notify the debtor of:

- (1) The date and time of a telephonic hearing;
- (2) The date, time, and location of an in-person oral hearing; or
- (3) The deadline for the submission of evidence for a documentary review.

(e) 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 days and no more than 45 days after receipt of the request for review.

(f) 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 days after the request for review is received.

(g) The hearing procedure will consist of:

(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) The agency will have the burden of going forward to prove the existence or amount of the debt.

(i) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.

(ii) In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) 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.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i) The determination will be made:

(1) Within no more than 30 days after the hearing or receipt of documentation for 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 days.

(2) The written decision will include:

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis and conclusions; and
- (iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(j) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701–703) as to the following issues:

(1) 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

(2) 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.

(k) The reviewing officer will promptly distribute copies of the decision to the USDA CFO, the agency CFO (if any), the agency debt management officer, the debtor, and the debtor's representative, if any.

### Subpart G—Federal Salary Offset

**Authority:** 5 U.S.C. 5514; and 5 CFR part 550, subpart K.

#### § 3.70 Scope.

(a) The provisions of this subpart specify USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) This subpart applies to:

(1) Current USDA employees and employees of other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) This subpart does not apply to debts owed by FSA county executive directors or non-Federal county office employees. For debts owed by FSA county executive directors or non-Federal county office employees to CCC or FSA, the salaries of these employees are subject to administrative offset not to exceed 15 percent of the employee's disposable pay. CCC and FSA will follow the notification requirements and procedures for collection by administrative offset as specified in 31 CFR part 285 and 31 U.S.C. 3716.

(d) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1–8023); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another law (for example travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) This subpart identifies the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written

notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by law; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

#### § 3.71 Definitions.

As used in this subpart the following definitions will apply:

*Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

*Salary offset* means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

#### § 3.72 Coordinating offset with another Federal agency.

(a) When USDA is owed a debt by an employee of another agency, the other agency will not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by:

(1) A certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment).

(2) That the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

#### § 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness will be made and salary offset will not proceed until USDA is assured that the requirements have been met.

#### § 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days written notice. This Notice of Intent to Offset Salary will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the

employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable laws or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under laws or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

### § 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition to request a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed salary offset schedule (including percentage).

(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

### § 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset as specified in USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

### § 3.77 Hearing.

(a) If an employee timely files a petition for a hearing under § 3.75, USDA will select the time, date, and location for the hearing.

(b) A hearing will not be held and Federal salary offset will not be pursued if the cost of the hearing is greater than the delinquent debt.

(c)(1) Hearings will be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence will not be adhered to, but the hearing official will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(d) USDA will have the burden of going forward to prove the existence of the debt.

(e) The employee requesting the hearing will bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

### § 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still pursue collection of the debt by other means authorized by this part; and

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

### § 3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

**§ 3.80 Written agreement to repay debts as alternative to salary offset.**

(a)(1) The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.

(b) USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. For FSA FLP debt, a decision by USDA under this paragraph is not subject to review by NAD under part 11 of this title.

**§ 3.81 Procedures for salary offset: when deductions may begin.**

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

**§ 3.82 Procedures for salary offset: types of collection.**

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as specified in § 3.83.

**§ 3.83 Procedures for salary offset: methods of collection.**

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than 3 years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

**§ 3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.**

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

**§ 3.85 Non-waiver of rights.**

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

**§ 3.86 Refunds.**

USDA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed to the United States

(unless expressly prohibited by law or regulation); or

(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

**§ 3.87 Agency regulations.**

USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

**Subpart H—Cooperation With the Internal Revenue Service**

**Authority:** 26 U.S.C. 61; 31 U.S.C. 3720A.

**§ 3.90 Reporting discharged debts to the Internal Revenue Service.**

When USDA discharges a debt, whether for the full value or less, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

**Subpart I—Adjusted Civil Monetary Penalties**

**Authority:** 28 U.S.C. 2461 note.

**§ 3.91 Adjusted civil monetary penalties.**

(a) *In general—(1) Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after June 17, 2020.

(3) *Illustrative purposes.* The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) of this section are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) of this section do not necessarily contain a complete description of the circumstances (for example, requirements regarding the "state of mind" of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(b) *Penalties*—(1) *Agricultural Marketing Service*. (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of \$964 in the case of the first offense, and a minimum of \$1,872 in the case of subsequent offenses, except that the penalty will be less than \$1,872 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of \$5,246.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of \$1,675 for each such offense and not more than \$418 for each day it continues, or a maximum of \$418 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of \$3,348 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of \$151 and a maximum of \$15,300.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$293 and a maximum of \$29,276.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of \$2,928. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of \$293.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$100 and a maximum of \$1,996.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of \$2,928.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the

Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of \$1,312 and a maximum of \$12,104.

(xii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of \$1,312. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of \$1,517 and a maximum of \$15,174.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of \$1,517. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of \$11,837.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of \$2,928.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of \$1,378 and a maximum of \$13,777.

(xviii) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of \$1,378. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$2,547.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of \$765 and a maximum of \$7,846.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of \$785. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of \$2,368.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of \$1,184. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of \$1,184 and a maximum of \$11,837.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of \$1,184. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of \$1,928 and a maximum of \$19,268.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of \$1,926.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of \$937 and a maximum of \$9,365.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of \$937. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of \$937 and a maximum of \$9,365.

(xxxi) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of \$937. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of \$1,928.

(xxxiii) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of \$9,593. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of \$937 and a maximum of \$9,365, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of \$18,405 and a maximum of \$187,296.

(xxxv) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of \$9,639. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of \$18,730.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of \$883 and a maximum of \$8,831.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of \$8,831. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of \$1,722.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of \$860. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of

\$1,625 and a maximum of \$16,257 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of \$1,625 and a maximum of \$16,257. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of \$1,625 for each violation.

(xliv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of \$8,128. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of \$813 and a maximum of \$8,128 for each violation.

(xlvi) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of \$813. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of \$1,625 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$9,365 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of \$1,478 and a maximum of \$14,790 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of \$14,790 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999,

codified at 7 U.S.C. 1636b(a)(1), has a maximum of \$15,300 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of \$15,300 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of \$14,790 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of \$1,188 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of \$2,547 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of \$29,270.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$1,995 and not more than \$100 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of \$1,996 and not more than \$100 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of \$29,270.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of \$1,996.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of \$85,150.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$286,049.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of \$36,975 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$100 and a maximum of \$1,996.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$11,883, and knowing failure to obey a cease and desist order has a civil penalty of \$1,782.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of \$14,790.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$29,726.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: \$73,950 in the case of any individual (except that the civil penalty may not exceed \$1,479 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$369,749 in the case of any other person for each violation, \$594,129 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,188,259 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a

maximum of the greater of: \$70,972 in the case of any individual, except that the civil penalty may not exceed \$1,420 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$354,860 in the case of any other person for each violation, \$594,129 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,188,259 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of \$354,860 in the case of an individual and \$709,721 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of \$5,856.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$11,444.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$53,525 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$25,632 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$1,351 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of \$168 and a maximum of \$860.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of \$812. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of \$26,615 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than \$356, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or \$26,615, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of \$665.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of \$118,826 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of \$42,819 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$77,106.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$38,553 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$77,106.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$181,484,308.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$15,692 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$62,767.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$15,306 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$62,767.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$9,365 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of \$963,837 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of \$144,576 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of \$96,384 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources

Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of \$963,837.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$21,065.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or \$12,502.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of \$204,891 in the case of an individual, and a maximum of \$2,048,915 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of \$36,975.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or \$73,950 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996,

codified at 7 U.S.C. 7272(g)(5), has a maximum of \$16,257 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$16,257 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$16,257 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of \$11,883 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of \$14,638 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of \$11,666.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of \$11,666.

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 2. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

### Subpart K [Removed and Reserved]

■ 3. Remove and reserve subpart K, consisting of §§ 400.115 through 400.142.

**PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION**

■ 4. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

**Subpart A—General Provisions**

■ 5. Amend § 761.1 by adding paragraphs (e), (f), and (g) to read as follows:

**§ 761.1 Introduction.**

\* \* \* \* \*

(e) Part 3 of this title and 31 CFR part 285 describe the policies and procedures the Agency will follow for non-centralized offset (including administrative offset) and referral to Treasury for centralized offset (TOP), Federal salary offset, Administrative Wage Garnishment, and collection through Treasury’s private collection agencies (cross-servicing). Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.

(f) Part 3 of this title and 31 CFR parts 900–904 describe the policies and procedures the Agency will follow for debt settlement authorities pursuant to the Federal Claims Collection Standards. Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.

(g) Part 761, subpart F of this title describes the debt settlement policies and procedures for FLP debt pursuant to the Act.

■ 6. Amend § 761.2 as follows:

■ a. In paragraph (a), add in alphabetical order abbreviations for “ARA”, “FCCS”, and “OIG”; and

■ b. In paragraph (b):

■ i. Revise the definition for “Adjustment”;

■ ii. Add in alphabetical order a definition for “Alternative repayment agreement”;

■ iii. Revise the definitions of “Cancellation” and “Debt forgiveness”; and

■ iv. Add in alphabetical order a definition for “Hearing official”.

The additions and revisions read as follows:

**§ 761.2 Abbreviations and definitions.**

\* \* \* \* \*

(a) \* \* \*  
ARA Alternative Repayment Agreement.

\* \* \* \* \*

FCCS Federal Claims Collection Standards.

\* \* \* \* \*

OIG Office of the Inspector General, USDA.

\* \* \* \* \*

(b) \* \* \*

*Adjustment* means the settlement of an FLP debt for less than the total amount owed. The adjusted amount is collected through a series of payments that are scheduled over time. An adjustment is not a final settlement until all scheduled payments have been made. After applying all payments pursuant to the adjustment agreement, any remaining balance is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

\* \* \* \* \*

*Alternative repayment agreement* is a written repayment agreement accepted by both the borrower and the Agency as specified in §§ 3.42(b) and 3.80 of this title. The agreement may allow for payments to be made from the borrower to the Agency as an alternative to collecting the payment amounts through administrative offset, or Federal salary offset.

\* \* \* \* \*

*Cancellation* means the final resolution of an FLP debt without receiving payment in full. Any amounts still owed, after applying payments in accordance with approved adjustment and compromise agreements, is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

\* \* \* \* \*

*Debt forgiveness* means the reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:

(i)(A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;

(C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;

(D) Discharging a debt as a result of bankruptcy; or

(E) Releases of liability which result in a loss to the Agency.

(ii) Debt forgiveness does not include:

(A) Debt reduction through a conservation contract;

(B) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;

(C) Prior debt forgiveness that has been repaid in its entirety;

(D) Consolidation, rescheduling, reamortization, or deferral of a loan; and

(E) Forgiveness of a YL debt due to circumstances beyond the borrower’s control.

\* \* \* \* \*

*Hearing official.* For the purposes of salary offset, the hearing official is an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA. For the purposes of administrative wage garnishment, the hearing official is selected pursuant to part 3, subpart E of this title.

\* \* \* \* \*

■ 7. Add Subpart F to read as follows:

**Subpart F—Farm Loan Programs Debt Settlement**

Sec.

- 761.401 Purpose.
- 761.402 Abbreviations and definitions.
- 761.403 General.
- 761.404 Eligibility.
- 761.405 Application.
- 761.406 Types of debt settlement.
- 761.407 Failure to pay.
- 761.408 Administrator authority.

**§ 761.401 Purpose.**

(a) This subpart describes the Agency’s policies for debt settlement as authorized by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921, 7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(b) FLP debts that cannot be debt settled using CONACT debt settlement authority such as when a borrower has received previous debt forgiveness on another direct loan made under the CONACT, will be processed as specified in 31 U.S.C. chapter 37 and 31 CFR parts 900 through 904.

**§ 761.402 Abbreviations and definitions.**

(a) Abbreviations and definitions for terms used in this subpart are provided in 7 CFR part 3 and § 761.2.

(b) Definitions used only in this subpart include:

(1) *Third party converter* means an individual or entity who:

(i) Is in possession of agency security property, or money from the sale of security, in relation to a loan or other debt that the individual or entity was not liable for; or

(ii) Assists, or participates knowingly or unknowingly, in the transportation or sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for; or

(iii) Assists, or participates knowingly or unknowingly, in temporarily or permanently relocating or concealing the location of agency security property, or money from the sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for.

(2) [Reserved]

**§ 761.403 General.**

(a) The Agency will settle debts that result from, except as otherwise specified in this section:

(1)(i) Farm Ownership loans (part 764, subpart D of this chapter), including down payment loans (764, subpart E of this chapter);

(ii) Operating loans (part 764, subpart G of this chapter), including microloans part 764 of this chapter), and youth loans (part 764, subpart H of this chapter);

(iii) Emergency loans (part 764, subpart I of this chapter);

(iv) Conservation loans (part 764, subpart F of this chapter);

(v) Economic Emergency loans (serviced under parts 761 through 767 of this chapter); softwood timber loans; Soil and Water loans; Individual Recreation Loans; Irrigation and Drainage loans; and Shift-in-land-use (Grazing Association) loans;

(2) Costs associated with servicing a borrower's account including, but not limited to, Uniform Commercial Code filing fees, surveys, appraisals, protective advances, and liquidation expenses;

(3) Debts reduced to judgment;

(4) Non-Program Loans;

(5) Amounts the Agency is authorized to recapture through agreements such as the Shared Appreciation Agreement (part 766, subpart E of this chapter);

(6) Loss claims paid on guaranteed loans (part 762 of this chapter);

(7) Unauthorized assistance;

(8) Amounts the Agency may collect from third party converters, or other individuals or entities having possession of security for FLP loans or monies obtained through the sale of FLP loan security; and

(9) Debt returned to the Agency from the Treasury cross-servicing program.

(b) The debtor's signature is not required to process some debt settlement actions. These cases include, but are not limited to, debts discharged in bankruptcy and debts returned from Treasury's cross-servicing program with amounts still owing when no further collection can be taken.

(c) FSA will not engage in settlement of a debt if:

(1) Foreclosure of security has been initiated and is pending with Justice, unless Justice has advised FSA that it does not object to the settlement; or

(2) Debts that have been referred to Justice for a judgment, or a judgement has been obtained by the United States Attorney or Justice, unless Justice closes its file and releases the judgement back to FSA for continued servicing; or

(3) The debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested; or

(d) The Agency will consider settlement of a debt only when:

(1) All security has been liquidated and the proceeds, less any prior lien amounts, have been applied to the debt; or the Agency received a lump sum payment equal to the security's current market value, less any prior lien amounts, and

(2) Payment is received based on the Agency's determination of the amount the borrower can pay to resolve the remaining balance owed on the unsecured debt.

(3) The lump sum payment made under paragraph (d)(1) of this section for the security's market value may be submitted by the borrower, an individual authorized to act for the borrower pursuant to a power of attorney document or court order, or an individual who is not an obligor on the debt but who has an ownership interest in the security.

(e) If an FLP loan has been accelerated and all security has been liquidated, and the agency has approved an adjustment debt settlement offer in accordance with this subpart, voluntary payments and involuntary payments (such as offsets) will be applied in the following order, as applicable:

(1) Recoverable costs and protective advances plus interest;

(2) Loan principal;

(3) Deferred non-capitalized interest;

(4) Accrued deferred interest; and

(5) Interest accrual to date of payment.

(f) Settlement of FLP debt referred to Treasury's cross-servicing program and returned to the Agency as uncollectible will not be processed for the borrower until all FLP debts referred to the cross-servicing program for that borrower have been returned, with or without payment agreements.

**§ 761.404 Eligibility.**

(a) A borrower is eligible for debt settlement if the borrower:

(1) Meets the requirements for the particular type of debt settlement under this part; and

(2) Submits a complete application for debt settlement as specified in § 761.405.

(b) All parties liable for the debt must submit a complete application with the following exceptions:

(1) The applicable information required in § 761.405 can be provided by the administrator or executor of the Estate, heir, or other authorized person

who can sign the debt settlement application; or compiled by FSA staff when a signature cannot be obtained.

(2) The debt may be settled when the borrower has no known assets or income from which collection can be made, has disappeared and cannot be located without undue expense, and there is no security remaining for the debt.

(3) In cases where the full amount of the unsecured debt cannot be collected in a reasonable time by legal action or through enforced collection proceedings, the Agency may consider a debt settlement offer submitted by a borrower without requiring a complete application. When evaluating these offers, the Agency will consider the likelihood of the debtor obtaining a larger income or additional assets, including inheritance prospects within 5 years, from which legal or enforced collection could be made.

(c) A borrower is not eligible for debt settlement if:

(1) The borrower is indebted on another active FLP loan that the borrower cannot or will not debt settle; or

(2) The debt has been referred to the OIG, OGC, or Justice because of suspected civil or criminal violation, unless investigation was declined or advice was provided that the debt can be canceled, compromised, or adjusted.

**§ 761.405 Application.**

(a) A borrower requesting debt settlement must submit complete and accurate information from which the Agency can make a full determination of the borrower's financial circumstances and repayment ability. Except for the situations listed in § 761.404(b), each liable party, must submit the following:

(1) One completed original debt settlement application on the applicable Agency form signed by all parties liable for the debt;

(2) A current financial statement;

(3) A cash flow projection for the next production or earnings period;

(4) Verification of employment or other earned income, including verification of a nondebtor spouse's income which will be included as available to pay family living expenses;

(5) Verification of assets including, but not limited to, cash, checking accounts, savings accounts, certificates of deposit, individual retirement accounts, retirement and pension funds, mutual funds, stocks, bonds, and accounts receivable;

(6) Verification of debts greater than \$1,000;

(7) Copies of complete Federal income tax returns for the previous 3 years; and

(8) Any other items requested by the Agency to evaluate the debtor's financial condition.

(b) [Reserved]

#### § 761.406 Types of debt settlement.

(a) *Compromise.* The Agency may compromise a debt owed to the Agency if the requirements of this subpart are met and:

(1) The borrower pays a lump sum as a compromise for the remaining unsecured debt; and

(2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt.

(b) *Adjustment.* The Agency may settle a debt owed to the Agency through an adjustment agreement if the requirements of this subpart are met and:

(1) The borrower agrees to pay the adjustment amount for a period of time not to exceed 5 years; and

(2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt; and

(3) The borrower provides documentation that funds are, or will be, available to pay the adjustment offer through its term.

(c) *Cancellation.* The Agency may cancel a debt owed to the Agency if the requirements of this subpart are met and the application and supporting documents indicate that the borrower is unable to pay a compromise or adjustment offer.

#### § 761.407 Failure to pay.

(a) Failure to pay any compromise amount approved by FSA by the date agreed will result in cancellation of the compromise agreement.

(b) Failure to pay debt adjustment amounts approved by FSA by the dates agreed will result in cancellation of the adjustment agreement.

(c) A debtor who has entered into an agreement under this subpart may request that FSA extend a repayment date for 90 days. The debtor must provide information that supports the basis for the request at the time the request is made.

(d) If a debtor is delinquent under the terms of an adjustment agreement and FSA determines the debtor is likely to be financially unable to meet the terms of the agreement, the existing agreement may be cancelled and the debtor may be allowed to apply for a different type of settlement more consistent with the debtor's repayment ability.

(e) If an agreement is cancelled, any payments received will be retained as payments on the debt owed.

#### § 761.408 Administrator authority.

On an individual case basis, the Agency may consider granting an exception to any requirement of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with this part and granting an exception would resolve or eliminate the adverse effect upon its financial interest.

#### PART 765—FARM LOAN PROGRAMS, DIRECT LOAN SERVICING—REGULAR

■ 8. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

#### Subpart D—Borrower Payments

##### § 765.155 [Amended]

■ 9. Amend § 765.155 in paragraph (d) by removing the words “attempt to settle the debt in accordance with subpart B of 7 CFR part 1956” and adding the words “service the debt in accordance with part 761, subpart F of this chapter” in their place.

#### Subpart I—Transfer of Security and Assumption of Debt

■ 10. Amend § 765.406 by revising paragraph (b)(3) to read as follows:

##### § 765.406 Release of transferor from liability.

\* \* \* \* \*

(b) \* \* \*

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with part 761 subpart F of this chapter. If the transferor does not resolve the debt by paying the remaining balance or submitting a debt settlement offer that is acceptable to the Agency, the Agency will service the debt in accordance with part 3 of this title using all applicable collection tools including, but not limited to, administrative offset, AWG, cross-servicing, Federal salary offset, and TOP.

\* \* \* \* \*

#### PART 766—FARM LOAN PROGRAMS, DIRECT LOAN SERVICING—SPECIAL

■ 11. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

#### Subpart C—Loan Servicing Programs

##### § 766.101 [Amended]

■ 12. Amend § 766.101 as follows:

■ a. In paragraph (b)(1), remove the words “(Appendix A to this subpart)”;

■ b. In paragraph (b)(2), remove the phrase “FSA–2510” and add the phrase “FSA–2510 (Appendix A to this subpart) or FSA–2510–IA” in its place;

■ c. In paragraph (b)(3), remove the words “(Appendix C to this subpart)”;

■ d. In paragraph (d)(2), remove the phrase “FSA–2510” and add the phrase “FSA–2510 or FSA–2510–IA” in its place.

##### § 766.102 [Amended]

■ 13. Amend § 766.102 in paragraph (c) by removing the words “subpart B of 7 CFR part 1956” and adding the words “part 761, subpart F of this chapter” in their place.

##### § 766.103 [Amended]

■ 14. Revise § 766.103 in paragraph (b) introductory text by removing the phrase “FSA–2510” and adding the phrase “FSA–2510 or FSA–2510–IA” in its place.

■ 15. Revise appendix A to subpart C to read as follows:

#### Appendix A to Subpart C of Part 766—FSA–2510, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

This appendix contains the notification (form letter) that the Farm Service Agency will send to borrowers who are at least 90 days past due on their loan payments. It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

BILLING CODE 3410-KS-P

This form is available electronically.

**FSA-2510**  
(April 2020)

U.S. DEPARTMENT OF AGRICULTURE  
Farm Service Agency

Position 4

**NOTICE OF AVAILABILITY OF LOAN SERVICING  
TO BORROWERS WHO ARE 90 DAYS PAST DUE**

**Date**

[Borrower's Name]

[Borrower Name/Address]

[Borrower Address]

[City, State, Zip Code]

[MAILING INSTRUCTIONS]

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U.S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

**Paperwork Reduction Act:** This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.

Included with this notice you will find information on:

- (a) Primary loan servicing programs;
- (b) Conservation Contract Program;
- (c) Current market value buyout;
- (d) Homestead Protection Program;
- (e) Debt settlement programs;
- (f) Forms, documentation, and information needed to apply;
- (g) How to get copies of Agency handbooks and forms;
- (h) Reconsideration, mediation, and appeal to NAD;
- (i) Challenging the Agency appraisal;
- (j) Acceleration and foreclosure;
- (k) The right not to be discriminated against.

**(a) Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

- (1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:
  - (i) Illness, injury, or death of a borrower or other individual who operates the farm;
  - (ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
  - (iii) Widespread economic conditions such as low commodity prices;
  - (iv) Damage or destruction of property essential to the farming operation; or
  - (v) Loss of, or reduction in, your or your spouse's essential non-farm income.
- (2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.
- (3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.
- (4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, accrued interest becomes principal and interest is charged on the new principal balance. The interest rate will be the lesser of:

- (1) The interest rate for that type of loan on the date a complete servicing application was received;
- (2) The interest rate for that type of loan on the date of restructure; or
- (3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms. This means that operating loans, including carry over annual operating and family living expenses may have repayment terms of up to 15 years.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

### Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

- (1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or reposessed, and sold the collateral;
- (2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
- (3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

### Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

- (1) Sell or convey the real estate;
- (2) Stop farming;
- (3) Pay off your entire FLP debt; or
- (4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

### Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

### Method of payment

To buyout your FLP debt at the current market value, you must pay by cashier's check or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

**(b) Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

**(c) Current Market Value Buyout**

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

- (1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
- (2) The maximum debt to be written off with buyout does not exceed \$300,000; and
- (3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

- (1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
- (2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

**(d) Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cashier's check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

### Eligibility requirements

- (1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
- (2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
- (3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
- (4) You must be the owner of the property immediately prior to the Agency obtaining title.

### Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

### Leasing the homestead property

- (1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
- (2) You must maintain the property in good condition during the term of the lease.
- (3) You may lease the property for up to 5 years but no less than 3 years.
- (4) You cannot sublease the property.
- (5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
- (6) Lease payments are not applied toward the final purchase price of the property.

### Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

## **(e) Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, any FLP loan account balance remaining after liquidation of loan collateral will be forwarded to the Department of Treasury for cross-servicing and administrative wage garnishment.

### Settlement alternatives

Settlement alternatives include:

- (1) Compromise: A lump-sum payment of less than the total FLP debt owed;
- (2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
- (3) Cancellation: Satisfaction of Agency debt without payment.

**Note:** The Agency will not finance these alternatives.

### Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

### **(f) Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

- (1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing-For Borrowers who Received FSA-2510," signed by all borrowers.
- (2) FSA-2001, "Request for Direct Loan Assistance."
- (3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
- (4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
- (5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
- (6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
- (7) FSA-2037, "Farm Business Plan Worksheet - Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
- (8) FSA-2038, "Farm Business Plan Worksheet -Projected/Actual Income and Expenses," or other acceptable farm operating plan.

- (9) AD-1026, "Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
- (10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.
- (11) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
- (12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

#### Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

- (1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;
- (2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
- (3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

#### **(g) How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

#### **(h) Reconsideration, mediation, and appeal to NAD**

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA's appeal procedures in 7 CFR part 780.

Mediation – according to FSA's appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

**(i) Challenging the Agency appraisal**

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your request, you may 1.) obtain a USPAP compliant technical appraisal review by a State Certified General Appraiser of the Agency appraisal and submit it to the Agency prior to reconsideration or an appeal hearing, 2.) obtain an independent appraisal, and 3.) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, the Agency will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

**(j) Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

- (1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
- (2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
- (3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

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If the Agency determines that you cannot qualify for debt settlement, you can:

- (1) Pay your FLP loan accounts current;
- (2) Pay your FLP loan accounts in full;
- (3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

**(k) The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [phone number].

IA. Authorized Agency Official Name	IB. Signature	IC. Title
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- 16. Revise appendix B to subpart C to read as follows:

**Appendix B to Subpart C of Part 766—  
FSA-2510-IA, Notice of Availability of  
Loan Servicing to Borrowers Who Are  
90 Days Past Due (For Use in Iowa  
Only)**

This appendix contains the notification (form letter) that the Farm Service Agency

will send to borrowers with loans in Iowa who are at least 90 days past due on their loan payments. It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

This form is available electronically.

**FSA-2510-IA**  
(April 2020)

U.S. DEPARTMENT OF AGRICULTURE  
Farm Service Agency

Position 4

**NOTICE OF AVAILABILITY OF LOAN SERVICING  
TO BORROWERS WHO ARE 90 DAYS PAST DUE  
(For Use in Iowa Only)**

Date

[Borrower's Name]

[Borrower Name/Address]

[Borrower Address]

[City, State, Zip Code]

[MAILING INSTRUCTIONS]

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U.S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

**Paperwork Reduction Act:** This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.

Included with this notice you will find information on:

- (a) Primary loan servicing programs;
- (b) Conservation Contract Program;
- (c) Current market value buyout;
- (d) Homestead Protection Program;
- (e) Debt settlement programs;
- (f) Forms, documentation, and information needed to apply;
- (g) How to get copies of Agency handbooks and forms;
- (h) Reconsideration, mediation, and appeal to NAD;
- (i) Challenging the Agency appraisal;
- (j) Acceleration and foreclosure;
- (k) The right not to be discriminated against.

**(a) Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

- (1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:
  - (i) Illness, injury, or death of a borrower or other individual who operates the farm;
  - (ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
  - (iii) Widespread economic conditions such as low commodity prices;
  - (iv) Damage or destruction of property essential to the farming operation; or
  - (v) Loss of, or reduction in, your or your spouse's essential non-farm income.
- (2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.
- (3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.
- (4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, accrued interest becomes principal and interest is charged on the new principal balance. The interest rate will be the lesser of:

- (1) The interest rate for that type of loan on the date a complete servicing application was received;
- (2) The interest rate for that type of loan on the date of restructure; or
- (3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms. This means that operating loans, including carry over annual operating and family living expenses may have repayment terms of up to 15 years.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

### Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

- (1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or reposessed, and sold the collateral;
- (2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
- (3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

### Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

- (1) Sell or convey the real estate;
- (2) Stop farming;
- (3) Pay off your entire FLP debt; or
- (4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

### Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

### Method of payment

To buyout your FLP debt at the current market value, you must pay by cashier's check or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

**(b) Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

**(c) Current Market Value Buyout**

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

- (1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
- (2) The maximum debt to be written off with buyout does not exceed \$300,000; and
- (3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

- (1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
- (2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

**(d) Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 40 acres of land. If you cannot pay cashier's check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

### Eligibility requirements

- (1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
- (2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
- (3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
- (4) You must be the owner of the property immediately prior to the Agency obtaining title.

### Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

### Leasing the homestead property

- (1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
- (2) You must maintain the property in good condition during the term of the lease.
- (3) You may lease the property for up to 5 years but no less than 3 years.
- (4) You cannot sublease the property.
- (5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
- (6) Lease payments are not applied toward the final purchase price of the property.

### Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

## **(e) Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, any FLP loan account balance remaining after liquidation of loan collateral will be forwarded to the Department of Treasury for cross-servicing and administrative wage garnishment.

Settlement alternatives

Settlement alternatives include:

- (1) Compromise: A lump-sum payment of less than the total FLP debt owed;
- (2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
- (3) Cancellation: Satisfaction of Agency debt without payment.

**Note:** The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

**(f) Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

- (1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing-For Borrowers who Received FSA-2510-IA," signed by all borrowers.
- (2) FSA-2001, "Request for Direct Loan Assistance."
- (3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
- (4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
- (5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
- (6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
- (7) FSA-2037, "Farm Business Plan Worksheet - Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
- (8) FSA-2038, "Farm Business Plan Worksheet -Projected/Actual Income and Expenses," or other acceptable farm operating plan.

- (9) AD-1026, "Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
- (10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.
- (11) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
- (12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

#### Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

- (1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;
- (2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
- (3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

#### **(g) How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

#### **(h) Reconsideration, mediation, and appeal to NAD**

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA’s appeal procedures in 7 CFR part 780.

Mediation – according to FSA’s appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

**(i) Challenging the Agency appraisal**

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your request, you may 1.) obtain a USPAP compliant technical appraisal review by a State Certified General Appraiser of the Agency appraisal and submit it to the Agency prior to reconsideration or an appeal hearing, 2.) obtain an independent appraisal, and 3.) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, the Agency will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

**(j) Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

- (1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
- (2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
- (3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

- (1) Pay your FLP loan accounts current;
- (2) Pay your FLP loan accounts in full;
- (3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

**(k) The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [phone number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

**BILLING CODE 3410-KS-C**

**Appendix C to Subpart C of Part 766 [Removed]**

- 17. Remove appendix C to subpart C.

**Subpart H—Loan Liquidation**

**§ 766.352 [Amended]**

- 18. Amend § 766.352 in paragraph (a)(5) by removing the words “subpart B of 7 CFR part 1956” and adding the words “part 761, subpart F of this chapter and part 3 of this title” in their place.

**§ 766.353 [Amended]**

- 19. Amend § 766.353 in paragraph (a)(8) by removing the words “subpart B of 7 CFR part 1956 before or in conjunction with the” and adding the words “part 761, subpart F of this chapter before, or in conjunction with, the” in their place.

- 20. Amend § 766.354 by revising paragraph (a)(6) to read as follows:

**§ 766.354 Voluntary conveyance of chattel.**

- (a) \* \* \*  
 (6) Complete debt settlement application in accordance with part 761, subpart F of this chapter before, or in conjunction with, the voluntary

conveyance offer if the value of the property to be conveyed is less than the FLP debt.

\* \* \* \* \*

- 21. Amend § 766.357 by revising paragraphs (b)(5) and (c)(3) to read as follows:

**§ 766.357 Involuntary liquidation of real property and chattel.**

\* \* \* \* \*

(b) \* \* \*

(5) If an unpaid balance on the FLP loan remains after the foreclosure sale of the property, the Agency will service the account in accordance with part 761, subpart F of this chapter and part 3 of this title.

(c) \* \* \*

(3) If an unpaid balance on the FLP loan remains after the sale of the repossessed property, the Agency will service the account in accordance with part 761, subpart F of this chapter and part 3 of this title.

**PART 772—FARM LOAN PROGRAMS, SERVICING MINOR PROGRAM LOANS**

- 22. The authority citation for part 772 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

- 23. Amend § 772.9 by revising paragraph (c) to read as follows:

**§ 772.9 Releases.**

\* \* \* \* \*

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after the sale or liquidation of the security will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

- 24. Revise § 772.13 to read as follows:

**§ 772.13 Delinquent account servicing.**

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account in accordance with § 772.16. Delinquent AMP loans will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

(b) *IMP loans.* Delinquent IMP loans will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

**PART 792—[REMOVED]**

■ 25. Under the authority of 31 U.S.C. 3717, remove part 792.

**PART 1403—[REMOVED]**

■ 26. Under the authority of 15 U.S.C. 714b, remove part 1403.

**PART 1951—SERVICING AND COLLECTIONS**

■ 27. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

**Subpart C [Removed and Reserved]**

■ 28. Remove and reserve subpart C, consisting of §§ 1951.101 through 1951.150.

**PART 1956—DEBT SETTLEMENT**

■ 29. The authority citation for part 1956 continues to read as follows:

**Authority:** 5 U.S.C. 301; and 7 U.S.C. 1989.

**Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing**

■ 30. Amend § 1956.51 in the first sentence by removing the words “the Farm Credit loan programs of the Farm Service Agency (FSA) and” and adding a sentence at the end of the section.

The addition reads as follows.

**§ 1956.51 Purpose.**

\* \* \* The provisions of this subpart do not apply to any program administered by the Farm Service Agency as of June 17, 2020.

**Subpart C—Debt Settlement—Community and Business Programs**

■ 31. Amend § 1956.101 by adding a sentence at the end of the section to read as follows.

**§ 1956.101 Purpose.**

\* \* \* The provisions of this subpart do not apply to any program administered by the Farm Service Agency as of June 17, 2020.

**Robert Johansson,**

*Chairman, Federal Crop Insurance Corporation Board.*

**Stephen L. Censky,**

*Vice Chairman, Commodity Credit Corporation, and Deputy Secretary of Agriculture.*

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