

not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

[68 FR 37720, June 25, 2003]

Subpart K—Debt Management— Regulations for the 1986 and Succeeding Crop Years

AUTHORITY: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 17316, May 12, 1986, unless otherwise noted.

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Crop Insurance Corporation (FCIC) to credit reporting agencies of information with respect to current and delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *Credit reporting agency* means (1) a reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with USDA concerning the referral of credit information.

(b) *Collection agency* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *Comptroller* means the employee of FCIC filling that position or the person

designated by the Comptroller to perform that function.

(d) *Debt and claim* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions.

The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good faith reliance provisions, or other causes.

(e) *Delinquent debt* means (1) any debt owed to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *System of records* means a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *Request for review* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§ 400.117 Determination of delinquency.

Prior to disclosing information about a debt to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall review the claim and determine that the claim is valid and overdue.

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§ 400.118 Demand for payment.

The Comptroller who is responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.

§ 400.119 Notice to debtor; credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller who is responsible for disclosure of information with respect to delinquent debts to a credit reporting agency shall send written notice to the delinquent debtors that FCIC intends to disclose credit information to a credit reporting agency on a regular basis. In addition, delinquent debtors are to be informed:

- (1) Of the basis for the indebtedness;
- (2) That the payment is overdue;
- (3) That FCIC intends to disclose to a credit reporting agency that the debtor is responsible for the debt and with respect to an individual, that such disclosure shall be made not less than 60 days after notification to such debtor;
- (4) Of the specific information intended to be disclosed to the credit reporting agency;
- (5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the system of records of FCIC concerning the claim;
- (6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and
- (7) Of the date after which the information will be reported to the credit reporting agency.

(b) The content and standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§ 400.120 Subsequent disclosure and verification.

(a) FCIC shall promptly notify each credit reporting agency to which the original disclosure of debt information was made of any substantial change in the condition or amount of the claim. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payments received, additional amounts due, or offsets made with respect to the debt.

(b) FCIC shall promptly verify or correct, as appropriate, information about the claim or request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

(c) FCIC shall obtain satisfactory assurances from each reporting agency to which information will be provided that the agency is in compliance with the provisions of all laws and regulations of the United States relating to providing credit information.

§ 400.121 Information disclosure limitations.

FCIC shall limit delinquent debt information disclosed to credit reporting agencies to:

- (a) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;
- (b) The amount, status, and history of the claim; and
- (c) The FCIC program under which the claim arose.

§ 400.122 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, FCIC shall take reasonable action to locate a debtor for whom FCIC does not have a current address in order to send the notification in accordance with § 400.119 of this subpart.

§ 400.123 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, FCIC shall, upon request of the debtor, provide for a review of the

claim, including an opportunity for re-consideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable administrative appeal procedures.

(b) Upon receipt of a timely request for review, FCIC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on the request.

(c) Upon completion of the review, the reviewing office shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

§ 400.124 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller or designated manager of the systems of records shall disclose to credit reporting agencies the information specified in § 400.121.

(b) Disclosure of information to credit reporting agencies shall be made on or after the date specified in §§ 400.119(a)(3) and 400.125 and shall be comprised of the information set forth in the initial determination or any modification thereof.

(c) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to a repayment agreement for such debt and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or designee has not issued a decision on the review.

§ 400.125 Notice to debtor, collection agency.

FCIC shall provide 30 days written notice to the debtor, mailed to the debtor's last known address, of FCIC's intent to forward the debt to a collection agency for further collection action.

§ 400.126 Referral of delinquent debts to contract collection agencies.

(a) FCIC shall use the services of a contract collection agency which has entered into a contract with the General Services Administration to recover debts owed to FCIC.

(b) If FCIC's collection efforts have been unsuccessful on a delinquent debt, and the delinquent debt remains unpaid, FCIC may refer the debt to a contract collection agency for collection.

(c) FCIC shall retain the authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation.

§ 400.127 [Reserved]

§ 400.128 Definitions.

(a) *Agency* means (1) An Executive Agency as defined by 5 U.S.C. 105, the United States Postal Service, and the United States Postal Rate Commission, or (2) A Military Department, as defined by section 102 of Title 5 U.S.C.

(b) *Debt* means:

(1) An amount owed to the United States from sources including, but not limited to, insured or guaranteed loans, fees, leases, insurance premiums, interest (except where prohibited by law), rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable because of such employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel reimbursement;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

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(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(c) *Department* or *USDA* means the United States Department of Agriculture.

(d) *Disposable salary (pay)* means any pay due an employee which remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions as may be required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *FCIC Official* means the Manager, or the Manager's designee.

(g) *Hearing Officer* means an Administrative Law Judge of the Department of Agriculture or another person not under the control of the USDA, designated by the FCIC Official to review the determination of the alleged debt.

(h) *Salary Offset* means a deduction of a debt due the U.S. by deduction from the disposable salary of an employee without the employee's consent.

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

[53 FR 3, Jan. 4, 1988]

§ 400.129 Salary offset.

(a) Debt collection by salary offset is feasible if: the cost to the Government of collection by salary offset does not exceed the amount of the debt; there are no legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court or the expiration of a statute of limitations; or, other such legal restrictions. The Debt Collection Act permits collections of debts by offset for claims that have not been outstanding for more than 10 years.

(b) The salary offset provisions contained herein provide procedures which must be followed before FCIC may request another Federal agency to offset any amount from the debtor's salary. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in part 400, subpart J of this title.

(c) These regulations will not apply to any case where collection of a debt by salary offset is explicitly provided for by another statute as noted by the Comptroller General in 64 Comp. Gen. 142 (1984), including 5 U.S.C. 5512(a), 5 U.S.C. 5513, 5 U.S.C. 5522(a) (1), 5 U.S.C. 5705 (1) and (2), and 5 U.S.C. 5724(f).

(d) Salary offset may be used by FCIC to collect debts which arise from delinquent FCIC premium payments or delinquent repayment plans and other debts arising from, but not limited to, such sources as program theft, embezzlement, fraud, salary overpayments, underwithholding of any amounts due and payable for life and health insurance, advance travel payments, overpaid indemnities, and any amount owed by present or former employees from loss of federal funds through negligence and other matters. The debt does not have to be reduced to judgment and does not have to be covered by a security instrument.

(e) FCIC may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Salary offset will not be initiated until after other servicing options available to the requesting agency have been utilized, and due process has been afforded to the FCIC employee. When salary offset is utilized, payment for the debt will be deducted from the employee's salary and sent directly to the creditor agency. Not more than fifteen percent (15%) of the employee's disposable salary can be offset in any one pay period, unless the employee agrees in writing to the deduction of a larger amount.

(f) When FCIC is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until FCIC provides the agency with a written certification that the debtor owes FCIC a debt (including the amount and basis of the debt and the due date of the payment), and that

FCIC has complied with Department regulations. If a repayment schedule is elected by the employee, interest will be charged in accordance with Departmental Regulation 2520-1, Interest Rate on Delinquent Debts; USDA Debt Collection Regulations in 7 CFR part 3; and 4 CFR 102.13.

(g) For the purposes of this section, the Manager, FCIC, or the Manager's designee, is delegated authority to:

(1) Certify to the debtor's employing agency that the debt exists and the amount of the debt or delinquent balance;

(2) Certify that, with respect to debt collection, the procedures and regulations of FCIC and the Department have been complied with; and

(3) Request that salary offset be initiated by the debtor's employing agency.

[53 FR 3, Jan. 4, 1988]

§ 400.130 Notice requirements before offset.

Salary offset will not be made unless the employee receives 30 calendar days written notice. The notice of intent to offset salary (notice of intent) will state:

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

(b) That FCIC intends to deduct an amount not to exceed 15% of the employees current disposable salary until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the requirements concerning interest, penalties, and administrative costs, including a statement that these assessments will be made unless waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34;

(e) That FCIC's records concerning the debt are available to the employee for inspection and that the employee may request a copy of such records;

(f) That the employee has a right to voluntarily enter into a written agreement with FCIC for a repayment schedule with FCIC, which may be different from that proposed by FCIC, if the

terms of the repayment agreement are agreed to by FCIC;

(g) That the employee has the right to a hearing conducted by an Administrative Law Judge of USDA, or a hearing official not under the control of USDA, concerning the determination of the debt, the amount of the debt, or the percentage of disposable salary to be deducted each pay period, if the petition for a hearing is filed by the employee as prescribed by FCIC;

(h) The method and time period allowable for a petition for a hearing;

(i) That the timely filing of a hearing petition will stay the offset collection proceedings;

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

(k) That any knowingly false or frivolous statement, representation, 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 Statutes 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;

(l) Any other rights or remedies available to the employee under any statute or regulations governing the program for which collection is being made;

(m) That the employee may request waiver of salary overpayment under applicable statutory authority (5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C 716, or 5 U.S.C 8346(b)), or may request waiver in the case of general debts and if waiver is available under any statutory provision pertaining to the particular debt being collected. The employee may question the amount or validity of the salary overpayment or general debt by submitting a claim to the Comptroller General in accordance with General Accounting Officer procedure.

(n) That amounts paid on or deducted for the debt which are later waived or

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found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(o) The name and address of an official of FCIC to whom the employee should direct any communication with respect to the debt.

[53 FR 4, Jan. 4, 1988]

§ 400.131 Request for a hearing and result if an employee fails to meet deadlines.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for hearing that is received by the FCIC Official not later than 30 calendar days from the date of the notice of intent to collect a debt by salary offset, if the employee wants a hearing concerning:

- (1) The existence or amount of the debt; or
- (2) The FCIC Official's proposed offset schedule, including the percentage of deduction.

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

(c) If the employee files a petition for hearing later than the 30 days provided in paragraph (a) of this section, the FCIC Official may accept the petition if the employee is able to show that the delay caused by conditions beyond his or her control, or because the employee failed to received the notice of the filing deadline (unless the employee has actual notice of the deadline).

(d) An employee will not be granted a hearing and will have his or her disposable salary offset in accordance with the FCIC Official's announced schedule if the employee:

- (1) Fails to file a petition for hearing as set forth in this subsection; or
- (2) Is scheduled to appear and fails to appear at the hearing.

[53 FR 4, Jan. 4, 1988]

§ 400.132 Hearings.

(a) If an employee timely files a petition for a hearing, the FCIC Official will select the date, time, and location for the hearing.

(b) The hearing shall be conducted by an appropriately designated Hearing Official.

(c) Rules of evidence shall not be observed, but the hearing officer will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing, and weigh all such evidence accordingly, given all the facts and circumstances surrounding the debt.

(d) The burden of proof with respect to the existence of the debt rests with FCIC.

(e) The employee requesting the hearing shall 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.

[53 FR 5, Jan. 4, 1988]

§ 400.133 Written decision following a hearing.

(a) At the conclusion of the hearing, a written decision will be provided which will include:

- (1) A statement of the facts presented at the hearing supporting the nature and origin of the alleged debt and those presented to refute the debt;
- (2) 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;
- (3) The amount and validity of the alleged debt determined as a result of the hearing;
- (4) The payment schedule (including the percentage of disposable salary), if applicable; and
- (5) The determination of the amount of the debt at this hearing is the final agency action on this matter.

(b) [Reserved]

[53 FR 5, Jan. 4, 1988]

§ 400.134 Review of FCIC record related to the debt.

An employee who intends to inspect or copy FCIC records related to the debt must send a letter to the FCIC official (designated in the notice of intent) stating his or her intentions. The letter must be received by the FCIC official within 30 calendar days of the date of the notice of intent. In response to the timely notice submitted by the debtor, the FCIC official will notify the employee of the location and time when the employee may inspect and copy FCIC records related to the debt.

[53 FR 5, Jan. 4, 1988]

§ 400.135 Written agreement to repay debt as an alternative to salary offset.

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of the notice of intent. The FCIC official will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The FCIC official may accept a repayment agreement instead of proceeding by offset. In making this determination, the FCIC official will balance the FCIC 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, the FCIC official will accept a repayment agreement, instead of offset, for good cause such as, if the employee establishes that offset would result in undue financial hardship, or would be against equity and good conscience.

[53 FR 5, Jan. 4, 1988]

§ 400.136 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be made by the method and in the amount outlined in the Notice of Intent to collect from the employee's salary, as provided for in § 400.130.

(b) If the employee files a petition for a hearing before the expiration of the period provided for in § 400.130, then de-

ductions will begin after the hearing officer has provided the employee with a final written decision in favor of FCIC.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected in accordance with procedures for administrative offset.

[53 FR 5, Jan. 4, 1988]

§ 400.137 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 the disposable pay for an ordinary pay period. In these cases, deduction will be by installments as set forth in § 400.138.

[53 FR 5, Jan. 4, 1988]

§ 400.138 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 the hearing official agree to alternative arrangements for repayment under § 400.135.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of the installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$25.00 per pay period, or \$50.00 per month, will be accepted only in the most unusual circumstances.

[53 FR 5, Jan. 4, 1988]

§ 400.139 Nonwaiver 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

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any rights that the employee may have under the provisions of 5 U.S.C. 5514.

[53 FR 5, Jan. 4, 1988]

§ 400.140 Refunds.

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

(a) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

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

[53 FR 5, Jan. 4, 1988]

§ 400.141 Internal Revenue Service (IRS) Tax Refund Offset.

Under the provisions of 31 U.S.C. 3720A, the (IRS) may be requested to collect a legally enforceable debt owing to any Federal agency by offset against a taxpayer's Federal income tax refund. This section provides policies and procedures to implement IRS tax refund offsets in accordance with the provisions set forth in §301.6402-6T of 26 CFR chapter I.

(a) Any person who is indebted to the Federal Crop Insurance Corporation (FCIC) is entitled to the extent of FCIC's administrative due process including review and appeal of the debt under the Appeal Regulations in 7 CFR part 400, subpart J.

(b) If, after such administrative due process is exhausted, the debt is still outstanding with no other means of collection, the debtor will be notified by letter of FCIC's intention to refer such debt to the IRS for collection by tax refund offset. The notification letter will inform the debtor that their account is delinquent and that IRS will be requested to reduce the amount of any tax refund check due the debtor by the amount of the delinquency. The debtor will be given 60 days in which to write to the Manager, FCIC, providing written evidence that the debt is not legally enforceable. FCIC will refer the debt to IRS for collection by offset after the 60-day period if no response is received from the debtor. Decisions made under the provisions of this section are not appealable under the pro-

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visions of the Appeal Regulations in 7 CFR part 400, subpart J.

(c) If the debtor has requested a review, and has provided written evidence that the debt is not legally enforceable, the Manager, with the assistance of the Office of General Counsel, USDA, will review the debtor's reasons for believing that the debt is not legally enforceable. The debtor will then be notified of the results of the review.

(d) FCIC will notify IRS of those accounts against which offset action is to be taken.

(e) If, during the period of review, the debtor pays the debt in full, the collection of the debt by tax refund offset procedure will be halted. Changes in debtor status that eliminate the debtor from IRS offset will be reported to IRS by FCIC and the debtor's refund will not be offset.

(f) Amounts offset for delinquent debt which are later found to be not owed to FCIC, will be promptly refunded.

(g) Debtors will not be subject to IRS offset for any of the following reasons:

(1) Debtors who are discharged in bankruptcy or who are under the jurisdiction of a bankruptcy court;

(2) Debtors who are employed by the Federal Government;

(3) Debtors whose cases are in suspense because of actions pending by or taken by FCIC;

(4) Debtors who have not provided a Social Security Number (SSN) and no SSN can be obtained;

(5) Debtors whose indebtedness is less than \$25;

(6) Debtors whose account is more than ten (10) years delinquent; except in the case of a judgment debt; or

(7) Debtors whose account has not been first reported to a consumer credit reporting agency.

[53 FR 5, Jan. 4, 1988]

§ 400.142 Past-due legally enforceable debt eligible for refund offset.

For purposes of this section, a past-due, legally enforceable debt which may be referred by FCIC to IRS for offset is a debt which:

(a) Except in the case of a judgement debt, has been delinquent for at least

three months but has not been delinquent for more than 10 years at the time the offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(d) With respect to which the agency has given the employee at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such employee, and has determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by FCIC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to IRS after June 30, 1986;

(f) With respect to which that FCIC has notified, or has made a reasonable attempt to notify, the employee that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, will be referred to IRS for offset against any overpayment of tax; and

(3) Which is at least \$25.00.

[53 FR 6, Jan. 4, 1988]

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 52 FR 17543, May 11, 1987, unless otherwise noted. Redesignated at 53 FR 3, Jan. 4, 1988, and further redesignated at 53 FR 10527, Apr. 1, 1988.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Prin-

ciples and submitted to the state insurance department if required by any state in which the insurer is licensed.

(b) *Company* means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(c) *Corporation* means the Federal Crop Insurance Corporation.

(d) *FCIC* means the Federal crop Insurance Corporation.

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

(f) *Guaranty fund assessments* means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(g) *Insurer* means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(h) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(i) *Obligations* mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(j) *Plan of operation* means a statement submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(l) *Reinsurance agreement* means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(m) *Reinsured* means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.