

§ 3.43

7 CFR Subtitle A (1-1-23 Edition)

§ 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

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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.