

applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized offset so simultaneous referrals are not always the norm. This subpart sets forth rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized offset are set forth 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 shall 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.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies shall 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 is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days or more 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.

(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 385.12(d)(2) for definition);
- (2) Will be disposed of under an approved asset sale program (*see* 31 CFR 285.12(d)(3) 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 internal offset procedures within three 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 best 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 Chief Financial Officer.

(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 statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F 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 should consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through internal administrative offset under § 3.43.

§ 3.33 Required certification.

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

- (a) The debts being transferred are valid and legally enforceable;
- (b) There are no legal bars to collection; and
- (c) That 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 sets forth the procedures to be used by agencies in collecting debts by administrative offset. The term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) This section does not apply to:

- (1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;
 - (2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);
 - (3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;
 - (4) Offsets against Federal salaries (such offsets are covered by subpart F 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 statutes specifically prohibiting offsets or recoupments of particular types of debts;
 - (7) Offsets in the course of judicial proceedings, including bankruptcy; or
 - (8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contracts Disputes Act, 41 U.S.C. 601–613.
- (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) Supplemental provisions related to offsets by CCC may be found at 7 CFR part 1403 and for the Farm Service Agency (FSA) at 7 CFR part 792.
- (e) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.