

(f) In bankruptcy cases, agencies should seek 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 internal administrative offset) to collect the debt 30 calendar 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 offset, the intent to refer the debt to Treasury for collection through centralized offset (including possible offset of tax refunds) 60 calendar 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 set forth 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) 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 shall give the debtor such notice and an opportunity for review as soon as practicable and shall 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, e.g.,* § 3.11).

(c) The Notice of Intent to Collect by Administrative Offset should be

included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency will seek to 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 20 calendar days of receipt of the Notice of Intent to Collect by Administrative Offset by the debtor. 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.

(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 20 calendar days of the date the notice was received by the debtor. 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.

(c) A debtor must request an administrative review of the debt under subpart F of this part within 30 days for purposes of a proposed collection by non-centralized administrative offset and within 60 days for purposes of a proposed collection by referral to Treasury for offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) *Scope.* 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. Also, non-centralized offsets include USDA internal administrative offsets, for example, of CCC payments to pay FSA delinquent debts. 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) *Effectuation of offset.* A non-centralized offset may be effected 31 days after the debtor receives a 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(c) is not acceptable if the 30-day period for the debtor to seek 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) *Certification.* 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 set forth 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) *Responsibilities of payment authorizing agencies.* Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests 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) *Application of recovered amounts to satisfaction of debts.* When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 3.44 Centralized administrative offset.

(a) *Mandatory referral.* After the notice and review opportunity requirements of § 3.41 are met, an agency shall refer debts which are over 180 days delinquent to Treasury for collection through centralized offset 60 days after the agency has provided the