

**DEPARTMENT OF AGRICULTURE****Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency****CFR Part 1951****RIN 0560-AE93****Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Loan Program Borrowers**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The issuing USDA agencies are revising their regulations for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration (FmHA). This action will eliminate the provisions currently contained in the regulation and provide that the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service Agency, Farm Loan Programs (the Agencies) will instead adhere to the requirements in the existing United States Department of Agriculture administrative offset regulations. This rule eliminates the requirement that a borrower's account be accelerated prior to offset of payments from a Federal agency to delinquent borrowers. This rule will improve collection procedures through an increase in the use of administrative offset to collect delinquent debts owed the Federal government. However, the changes primarily affect Farm Loan Program borrowers of the FSA. The Agencies Internal Revenue Service (IRS) and Federal salary offset regulations are not revised by this rule.

**DATES:** The effective date of this interim final rule is August 1, 1997. Comments on the interim final rule, or comments on alternatives to this rule, or the revision and extension of the information collection requirements must be received on or before September 30, 1997.

**ADDRESSES:** Send comments on the interim final rule to: Director, Farm Loan Programs Loan Servicing and Property Management Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW, Washington, D.C. 20250-0523. All written comments received in

connection with this rule will be available for public inspection during regular working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jerry P. Wishall, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW, Washington, D.C. 20250-0523, telephone (202) 720-1651, facsimile (202) 690-0949 or (202) 720-7686, e-mail: jwishall@wdc.usda.fsa.gov

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule has been reviewed under Executive Order 12866, has been determined to be a significant regulatory action, and has been reviewed by the Office of Management and Budget.

**Executive Order 12372**

The programs to which this Executive Order may apply are listed in the Catalog of Federal Domestic Assistance under the following:

- 10.404 Emergency Loans
- 10.405 Farm Labor Housing Loans and Grants
- 10.406 Farm Operating Loans
- 10.407 Farm Ownership Loans
- 10.410 Very Low to Moderate Income Housing Loans
- 10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
- 10.415 Rural Rental Housing Loans
- 10.416 Soil and Water Loans
- 10.417 Very Low-Income Housing Repair Loans and Grants
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.421 Indian Tribes and Tribal Corporation Loans
- 10.427 Rural Rental Assistance Payments
- 10.433 Rural Housing Preservation Grants
- 10.435 Certified Mediation Program

Programs listed under the numbers 10.405, 10.411, 10.415, 10.416, 10.420, 10.427, and 10.433 are subject to and have complied with the provisions of Executive Order 12372. (See the notices related to 7 CFR 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

**Environmental Impact Statement**

It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement has not been prepared.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988,

Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780, as applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Regulatory Flexibility Act**

The Farm Service Agency (FSA) certifies that this rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601). No actions are being taken under this rule that would favor large entities over small entities. According to the 1992 Census of Agriculture, 1.9 million farmers or over 99 percent of all farms in the United States are small entities as defined by the Small Business Administration (SBA). Under the SBA definition, few if any large entities are operators of family-sized farms who would be eligible for FSA credit. This rule is expected to result in the offset of payments from an average of approximately 4,000 borrowers per year which is less than 1 percent of 1.9 million farmers. Also, this rule requires small entities to do no more than large entities to participate in the affected programs. Therefore, a Regulatory Flexibility Analysis has not been prepared.

**Paperwork Reduction Act**

The amendments to 7 CFR part 1951 contained in this rule involve a change in existing information collection requirements that were previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and assigned OMB control number 0575-0119. Emergency clearance for revision and extension of the information collection has been approved. In the proposed rule published on August 30, 1996, FSA provided notice of its intent to request approval of the information collection under a new OMB control number in order to accommodate the separation of programs resulting from the reorganization of USDA. FSA however continues to share 7 CFR 1951-C with Rural Development and therefore is now providing notice of the intent to request approval of the revision and extension of information collected under OMB control number 0575-0119.

OMB Control Number 0575-0119.

Title: Offset of Federal Payments to USDA Agency Borrowers.

**Type of Request:** Revision and extension of Currently Approved Information Collection.

**Abstract:** 7 CFR part 1951, subpart C, requires that a borrower's account be accelerated and the borrower's appeal rights be exhausted before offsetting any payments to be received by the borrower. The Department of Agriculture Reorganization Act combined the farm loan program functions of FmHA and the former Agricultural Stabilization and Conservation Service (ASCS), into the Farm Service Agency (FSA). This results in FSA making payments generated from participation in the former ASCS programs to the same farmer or rancher that is delinquent on his debts to the Agency. Acceleration of a borrower's account is one of the last steps FSA takes before liquidating the account. This process may take years while the borrower continues to receive payments from FSA.

This rule removes the existing administrative offset regulation which was used by the Agencies when they were a part of the former Farmers Home Administration (FmHA). The Department of Agriculture has a existing administrative offset regulation at 7 CFR subpart 3, subpart B and the administrative offset regulation of the former FmHA in 7 CFR part 1951, subpart C is redundant. The Department of Agriculture regulation complies with the requirements of 31 U.S.C. 3716, as amended by the Debt Collection Improvement of 1996, ch. 10 of Pub. L. 104-134 (April 26, 1996).

One intended effect of using the existing Department of Agriculture administrative offset procedure is that the Department procedure does not contain the restrictive provision of the former FmHA offset regulation which requires the account to have been accelerated prior to using administrative offset. There is no statutory basis for delaying offset until after a loan has been accelerated and the Department administrative offset procedure will permit offset to be utilized for debts which are past due. The information collection requirements for this type of internal agency offset will decrease, due to the development of a shortened notification letter, streamlining of the offset process, and the reduction of the number of notices and number of meetings offered. However, the easing of the offset procedures will greatly increase the number of FSA borrowers that receive notices and accounts that are offset. For example as of March 30, 1996, 1,588 FSA borrowers were accelerated, whereas 27,180 borrowers were past due.

**Estimate of Burden:** Public reporting burden for this information collection is expected to average .6 hours per response.

**Respondents:** Program borrowers that are over 30 days past due.

**Estimated Number of Respondents:**

9,350.

**Estimated Number of Responses per Respondent:** .6.

**Estimated Total Annual Burden on Respondents:** 5,493 hours.

The subject regulation is published for public review and comment. Additional copies of the interim final rule or copies of the referenced forms may be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 720-9734. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Housing Service, STOP 0743, 1400 Independence Avenue, SW., Washington, D.C. 20250-0743. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies must prepare a written

statement, including a cost benefit assessment, before promulgating a notice of proposed rule making that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Discussion of the Interim Final Rule

This rule involves the credit programs formerly administered by FmHA. The Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354, abolished FmHA on October 20, 1994, and its functions were transferred to the Agencies.

FSA is taking this action for several reasons. Most importantly, this change is being made to increase the tools available to the Agency to collect delinquent debts to the government. Administrative offset is currently underutilized because Agency administrative offset regulations require that a borrower's promissory notes be accelerated before offset can be used to collect the debt. This restricts the Agency's ability to collect from producers that have defaulted on a debt to the Agency by delaying the offset of FSA program payments such as those derived from the Conservation Reserve Program (CRP) or Production Flexibility Contracts (PFC). Due to the procedures required for FSA to accelerate notes, an account may have been in default for many months while the borrower continues to receive income from the Agency. For example, FSA records indicate that in the Agency's fiscal years 1994 and 1995, 711 CRP contract payments totaling over \$5.5 million were made to seriously delinquent borrowers that were not subject to offset. It is fiscally irresponsible for a Federal agency to continue making substantial contract payments to someone who is seriously delinquent on his or her government debts.

Also, the Agency must make this change because Congress has amended the Federal Claims Collection Act (31 U.S.C. 3716) through passage of the Debt

Collection Improvement Act of 1996 (DCIA) (Chapter 10 of Pub. L. 104-134, April 26, 1996). This Act requires Federal agencies to attempt administrative offset before making Federal payments to someone that has defaulted on a government debt. Under the current constraints of 7 CFR part 1951, subpart C, FSA cannot consider offsets and must continue to make payments to a defaulted borrower in violation of DCIA until the account is accelerated.

The Agency is making this change by removing the existing administrative offset regulation used by the Agencies when they were a part of FmHA. The Department of Agriculture has an existing administrative offset regulation at 7 CFR part 3, subpart B that satisfies the administrative offset needs of the Agencies and is consistent with the requirements of DCIA. This subpart contains provisions that are very similar to the administrative offset regulation of the former FmHA contained in 7 CFR part 1951, subpart C, except it does not require a borrower's account to have been accelerated. Adoption of the Departmental Regulations and removal of Agency regulations will also assist in the Agency's efforts to streamline regulations and reduce FSA paperwork by removing several pages of unnecessary regulations from Chapter XVIII of the CFR. This amendment also makes the administrative offset process for FSA Farm Loan Programs more consistent with the collection procedures of the remainder of FSA.

#### **Discussion of Comments Received**

This interim rule implements the changes proposed in a rule published on August 30, 1996, (61 FR 45907) with a comment period ending September 16, 1996. Comments were received from 72 parties prior to expiration of the comment period. Nine comments were received after the deadline and were not considered. However, their comments and recommendations were very similar to others received and are probably addressed in this discussion. Comments were received from several groups representing the government, the farming community and the agricultural lending community. Comments were received from two United States Senators, two United States Representatives, 21 banks, two State banking organizations, the National Farmers Union, an FSA State office, a rural electric cooperative, six family farmer advocacy organizations, a State department of agriculture, eight State rural rehabilitation corporations and two State development authorities. Several commenters praised the

Agency's efforts to collect from delinquent borrowers; however, every commenting party expressed concerns about possible negative impacts of the rule and requested that this rule not go forward as planned.

The respondents' comments are addressed as follows in an order based on volume of responses received. Comments of a similar topic were grouped, paraphrased and addressed as one. General comments received regarding constitutionality, ethics, fairness and the general mission of the Agency's loan programs were not specifically addressed, but may be addressed in context.

#### **Extend the Comment Period**

The Agency received 44 requests for an extension of the 15-day comment period on the proposed rule. That was the only comment from 32 respondents, and 28 of these were identical form letters. The requested extensions ranged from 60 days to 6 months. Many of the commenters noted that the comment period on the proposed rule was shortened in an attempt to offset the September AMTA checks and that is now impossible. In conjunction with a request for a comment period extension, many of these parties also requested Congressional hearings, public meetings and other means to conduct a broader study of the potential impacts of this regulation change. In response to these comments, the Agency has decided to implement this change through publication of an interim final rule and request for additional comments. This method will allow further opportunity for public comment while allowing FSA to begin administrative offset of program payments due to be paid to delinquent borrowers in 1997.

#### **Adverse Effect on Agriculture Lending Community and Restriction of Credit**

Many comments were received from private lenders and banking organizations expressing concern about the potential negative impact of this rule. These commenters indicated that this rule will result in a restriction on loans to farmers for the production of crops because many of these loans are dependent upon FSA program payments for repayment. The respondents suggest that a lender will deny credit to a farm borrower due to inadequate cash flow as a result of not being able to include FSA program payments in their annual cash flow projections. Several commenters also stated that bank rating agencies, such as the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency (OCC) would rate as adverse any loans that

were dependent upon program payments for repayment. Similarly, several respondents commented that this rule may make it difficult for a borrower to pay irrigation accounts, credit accounts at farm supply dealers, and other debts. Commenters requested that the Agency honor an assignment or abide by Uniform Commercial Code (UCC) lien priorities on payments, regardless of the status of the borrower's government loan. Respondents suggested if the Agency proceeds with this change, FSA should inform creditors and suppliers of the status of an FSA borrower's loans.

As stated earlier, the intention of this rule is to increase the use of administrative offset to pay Federal debt. The Agency does not expect the availability of credit in rural areas to decrease as a result. Generally, credit decisions are based on an analysis of the total quality of an applicant's business, including the status of their government loans. A prospective borrower's cash flow projections for the upcoming production cycle are typically based on proven performance capabilities and includes all income, expenses and debt payments. Since this projection would include planned receipts from FSA program payments and payments on FSA loans, a positive projection will likely result in loan approval. If repayment is dependent on FSA program payments, it may result in the denial of an annual operating loan to a producer who is delinquent on his or her FSA farm credit loan if administrative offset is a certainty. If a borrower is delinquent on his or her loan with the Government, to the extent that offset may be made, the availability of credit from commercial sources is doubtful in any event.

FSA is in the process of amending its credit reporting procedures to conform more closely to those in the commercial and consumer lending community by reporting delinquent farm loan program borrowers to credit reporting bureaus in accordance with the requirements of DCIA. This will reduce the likelihood of a lender extending credit without knowledge of the status of a borrower's FSA loan. In the case of a borrower who is current on their FSA loan, this rule is not likely to affect their ability to obtain credit. As far as lender regulatory agencies are concerned, they are likely to view an annual production loan that was approved by a lender without a complete business projection as a potential problem loan and request appropriate corrective action, regardless of the potential for administrative offset. As one commenter indicated, OCC bases their standards on the borrower's ability

to pay and this includes all income and all debt payments. Also, the Agency's guaranteed loan program, which guarantees a lender against up to 90 percent of any loss of principal and interest, may be used by lenders to reduce their risk. This program requires a positive cash flow considering all income sources and debt payments. As stated by several commenters, FSA typically requires lenders to take an assignment of farm program payments; but we expect few if any loans to be approved with FSA income enhancement program payments as the sole planned source of repayment. If the borrower becomes delinquent on the borrower's direct loans and this payment is offset, it may be necessary to service the guaranteed loan under one or more of the authorities contained in 7 CFR part 1980, subpart B.

With regard to assignments, lien position, and bankruptcy this rule changes little. Administrative offset has been available and utilized for many years and a lien or assignment has had no effect when a debtor owes money to a Federal agency. As stated earlier, this rule will increase the use of administrative offset and lenders will have to factor this into their loan making decisions. Nevertheless, when the Agency assigns the FSA program payments that are to be paid to a borrower that is current on his or her farm loan program loan at the time of the assignment, the Agency expects the large majority of these assignments to be honored. If default occurs, the Agency will do what it can to assist the borrower in maintaining a viable operation, while taking the necessary actions to protect the government's interests. However, there is no assurance that administrative offset would not be used. In the case of bankruptcy, FSA and all creditor collection actions cease and the court will determine the uses of income, distribution of security and disposition of debt.

Aside from reporting to credit bureaus, FSA will not automatically inform another lender that a borrower has become delinquent on a loan as requested by commenters. This notification would be inconsistent with the requirements of the Privacy Act. However, as a result of farm visits and other normal servicing of the loan, it is likely that a lender that has extended operating credit will likely be aware of repayment problems that may result from a decline in production and the related risk of administrative offset. A natural disaster or unforeseen drop in sales would require a joint effort from all creditors and possibly the use of

other FSA loan servicing authorities to correct the delinquency and maintain the operation. If the borrower becomes delinquent but can work out an agreement with the Agency to make the payment, any assignment that was provided will be honored.

Furthermore, under the DCIA, a person is precluded from obtaining any Federal financial assistance in the form of a loan (other than a disaster loan), loan insurance, or a loan guarantee, while that person is delinquent on a Federal debt, unless the head of the Agency waives this prohibition. Therefore, the commenters' recommendations were not adopted. If the Agency finds that the increased use of administrative offset results in difficulty for agricultural producers to obtain loans, FSA will consider taking actions to rectify any such problems.

Several commenters addressed the Agency's plans to issue internal instructions for field office use in connection with this interim final rule. The respondents indicated that the proposed rule was vague regarding FSA's intentions to administratively allow waiver of the offset. These instructions are to provide a consistent definition of delinquency and timing of notification, a guide letter containing the requirements of 7 CFR 3.25, and the national policy regarding the documentation necessary to fulfill the requirements for a written repayment agreement under 7 CFR 3.28. This is intended to ensure that policies and paperwork requirements are uniformly applied nationwide. These instructions will be available from local FSA offices upon request.

#### **Violation of the Agriculture Credit Act of 1987 (7 U.S.C. 1985)**

Several commenters stated that this rule would violate the Agricultural Credit Act of 1987 (Ag Credit Act) as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agricultural Improvement and Reform Act of 1996 (1996 Act). This Act provides that "the Secretary shall release from the normal income security provided for such loan an amount sufficient to pay for the essential household and farm operating expenses of the borrower, until such time as the Secretary accelerates such loan." The Agency has promulgated regulations at 7 CFR 1962.17 to implement this requirement.

Administrative offset and releases for essential expenses are separate issues and the requirements of 7 CFR 1962.17 are not affected by this change. FSA program payments will be administratively offset prior to

acceleration of the loan. However, offset is not the exercise of collection from security. Offset is the administrative collection of a debt due from funds due under another Government program. FSA may not have a security interest in that payment or may have or may not have a first security interest therein. FSA payments are not subject to attachment, garnishment or lien interest until paid. Offset intercepts these payments before they are made. The amounts obtained are not normal income security and under DCIA may not be payable at all.

In another comment a respondent noted that the Agency has notified many delinquent borrowers by sending exhibit A of 7 CFR part 1951, subpart S that they would not be subject to administrative offset until their account is accelerated. Therefore, they suggested that offsets could not be employed to collect from these borrowers. This comment was not adopted by the Agency. Notification to the borrower that offset will not be used prior to acceleration does not create a binding obligation by FSA to waive the offset forever. The Agency has determined that the notification procedures under 7 CFR part 3, subpart B, will provide the borrower with adequate notice of the intent to offset and will specifically terminate the previous advice. The language informing delinquent borrowers that FSA may offset only after acceleration has been removed from the notices.

Several respondents stated that if the Agency had agreed to release program payments on Form FmHA 1962-1, Agreement for the Use of Proceeds/Release of Chattel Security, the Agency cannot alter this agreement. In addition to the fact that these funds are not security (as set out above), the Agency has authority to revise this agreement. Form FmHA 1962-1 is based on the upcoming year's projections contained on a Form FmHA 431-2, Farm and Home Plan, (farm plan) that was completed by the borrower in accordance with 7 CFR part 1924, subpart B. If the actual proceeds from the sale of chattel security are substantially different from the plan, then the Form FmHA 1962-1 may be revised. This form is revised whenever significant changes occur during the year that will affect a borrower's repayment ability. If the borrower and Agency cannot reach an agreement on revisions to the farm plan, the borrower may appeal. If the borrower refuses to execute Form FmHA 1962-1 as developed by the Agency after an appeal, the account will be serviced under 7 CFR 1962.18. If the borrower

does not appeal, the planned releases documented on the revised Form FmHA 1962-1 are binding.

#### **Effect of National Appeals Division**

Several commenters indicated that the proposed rule violated the National Appeals Division (NAD) provisions of the Department of Agriculture Reorganization Act of 1994 (1994 Act). Appeals of Agency decisions to collect by offset will be heard and decided by NAD in accordance with the offset regulations in 7 CFR part 3, subpart B, and NAD regulations at 7 CFR part 11.

#### **Effect of Federal Court Ruling**

Several respondents commented that this rule violated the Federal court ruling against USDA in the case of *Coleman v. Block* (562 F. Supp. 1353 (D.N.D. 1983); 580 F. Supp. 192 (D.N.D. 1983); 580 F. Supp. 194 (D.N.D. 1984)). This ruling requires FSA to give farmers sufficient due process notification prior to taking forced collection actions. Similarly, several commenters felt that the proposed rule was unconstitutional because it deprived borrowers of their constitutional rights of due process. The Agency agrees with the commenters that notification is required before administrative offset. We disagree that this rule violates due process provisions since under this regulation all borrowers will receive notice of, and an opportunity to, challenge the impending offset. The due process considerations required under Coleman and the Ag Credit Act are contained in 7 CFR part 1951, subpart S. The Coleman decision did not involve the Agency's administrative offset regulations and the acceleration requirement contained in 7 CFR 1951.103 was not added as a result of the subject litigation or the subsequent Ag Credit Act. In addition, 7 CFR part 3, subpart B contains certain due process requirements that must be followed before offset may be initiated. Regardless, the DCIA applies to all Federal loan programs and contains no exceptions for the loans of the former FmHA. This Act supersedes current regulations and any requirement that is legally inconsistent is rendered obsolete.

The Departmental Regulation at 7 CFR part 3, subpart B, contains similar protections for the borrower as the regulation that is being deleted, except for the acceleration requirement. The feasibility of an offset must be determined on a case by case basis; the practicality of the offset must be determined; borrowers must be given 30 days notice prior to offset; a borrower has 20 days to request a meeting after receiving notice; the borrower may

request a review of the offset by an Agency official, the borrower may review the Agency's records; and the borrower may reach a payment agreement with the Agency in lieu of the offset.

At least six respondents commented that the Agency should attempt to correct a delinquency under 7 CFR part 1951, subpart S, prior to administrative offset. This comment is related to that of others who suggested that the Agency more clearly define past due and not send the notice of intent to collect by administrative offset until the borrower is at least 90 days or up to 180 days past due. Notification requirements for administrative offset are separate from those of debt restructuring. When the necessary procedure has been completed, administrative offset will be taken regardless of the status of any request for servicing under the provisions of 7 CFR part 1951, subpart S.

The comment that requested that borrowers be allowed to become at least 90 days or up to 180 days past due before offsetting a payment was considered. Due to the notification requirements discussed above, and the statute, the application of these procedures will correspond to the request for at least a 90 day delay. Notice of offset may not occur until notice under § 331D of the Consolidated Farm and Rural Development Act has been provided. The Agency's administrative requirements will provide for the Notice of Intent to Collect By Administrative Offset simultaneously with or subsequent to the notice required by § 331D. Due to most FSA loan payments being due annually from January to May, if the recommendation that the Agency not begin offset procedures until the borrower is 180 days past due were adopted, any FSA program payments made through at least June of every year would not be subject to offset on newly delinquent accounts. Therefore, this recommendation was not adopted in this rule.

Other miscellaneous comments were received that could be paraphrased as general opposition to the proposal. At least four commenters suggested that this change is not required to expedite administrative offset. They indicated that the Agency's loan servicing and appeal regulations have required time frames for actions that, if properly followed, would result in account acceleration much earlier than the months or years cited in the proposed rule. The Agency agrees that employee oversight may result in cases of extended loan servicing. However, even

if every time frame contained in regulations is precisely followed, it may result in acceleration taking long enough to allow a seriously delinquent borrower to obtain several payments before offset could be put into place. The Agency did not adopt this comment.

Immediate implementation of the rule is needed to comply with the requirements of 31 U.S.C. 3716 as amended by the Debt Collection Improvement Act of 1996, ch. 10 of Pub. L. 104-134 (April 26, 1996). The changes are needed because as pointed out by a recent OIG Management Alert over \$65 million was paid out to delinquent farm borrowers in 1995 and 1996. Of the \$30.5 million paid to the 4,015 delinquent borrowers in calendar year 1996, \$22 million were AMTA (also known as PFC) payments and \$5.5 million were CRP payments. The Agency could collect several million dollars on delinquent farm loans if this request is approved and the new regulation is in place prior to these payments being made provided the rule is implemented immediately. The next round of FSA payments to farmers will occur in September 1997, therefore it is critical that this rule be published immediately.

#### **List of Subjects in 7 CFR Part 1951**

Accounting, Accounting servicing, Credit, Disaster assistance, Loan programs—Agriculture, Low and moderate income housing.

Accordingly, part 1951 of Chapter XVIII of Title 7 of the Code of Federal Regulations is amended as follows:

#### **PART 1951—SERVICING AND COLLECTIONS**

1. The authority citation for part 1951 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; and 42 U.S.C. 1480.

2. Section 1951.101 is revised to read as follows:

##### **§ 1951.101 General.**

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982, the Deficit Reduction Act of 1984, and the Debt Collection Amendments Act of 1996 provides for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "USDA Agency," to collect delinquent debts.

Any money that is or may become payable from the United States to a individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with §1951.102 of this subpart. This subpart does not apply to direct single family housing loans.

3. Section 1951.102 is revised to read as follows:

**§ 1951.102 Administrative offset.**

Action to effect administrative offset to recover delinquent claims may be taken in accordance with the procedures in 7 CFR part 3, subpart B.

**§§ 1951.103–1951.105 [Removed and Reserved]**

4. Sections 1951.103 through 1951.105 are removed and reserved.

5. Section 1951.111 is amended in introductory text paragraph (a) and (a)(2) by changing the words "FmHA or its successor agency under Public Law 103–354" to read "USDA Agency"; by revising the phrase "FmHA or its successor agency under Public Law 103–354's" in paragraph (a)(1) to read "USDA Agency"; by amending paragraph (b)(1) by adding the words "State Executive Directors;" after the words "State Directors;" and by revising the introductory text to read as follows:

**§1951.111 Salary offset.**

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquencies or debts owed to them by employees of the USDA Agency, excluding County Committee members. Administrative offset, rather than salary offset, will be used to collect money from federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm

Loan Programs loans, salary offset will not be instituted if the federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount. Decisions made under this section are subject to the appeal procedures of 7 CFR part 11.

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Signed in Washington, D.C., on July 25, 1997.

Dated: July 25, 1997.

**James W. Schroeder,**

*Acting Under Secretary for Farm and Foreign Agricultural Services.*

**Jill Long Thompson,**

*Under Secretary for Rural Development.*

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