

PART 1951 - SERVICING AND COLLECTIONS

Subpart C - Offsets of Federal Payments to USDA Agency Borrowers

Table of Contents

<u>Sec.</u>		<u>Page</u>
1951.101	General.	1
1951.102	Standards and procedures for administrative offset.	1
	(a) General.	1
	(b) Definitions.	1
	(c) Collection by administrative offset.	3
	(d) Coordinating administrative offset with other Federal agencies.	4
1951.103	Standards for USDA Agency-initiated administrative offset.	5
	(a) Notice requirements before offset.	5
	(b) Exceptions to notice requirements.	6A
	(c) Inspection of USDA records related to the debt.	6B
	(d) Written agreements to repay debt as an alternative to administrative offset.	6B
	(e) Reviews.	6C
	(f) Appeals.	6E
	(g) Additional stay of offset.	6E
1951.104	Procedures for administrative offset of FSA program payments to collect past due Farm Loan Programs (FLP) debts.	6E
	(a) State office responsibility.	6E
	(b) Credit reporting.	6G
	(c) Exceptions.	6G
	(d) Cancellation of administrative offset.	6H
1951.105	[Reserved]	6H
1951.106	Offsets of payments to entities related to debtors.	6H
	(a) General.	6H
	(b) Offsetting entities.	6H
	(c) Other remedies.	6I

RD Instruction 1951-C  
Table of Contents  
Page 2  
(Revision 1)

<u>Sec.</u>	<u>Page</u>
(d) Factual and legal determinations.	6I
(e) Notifying entities.	6K
1951.107 - 1951.110 [Reserved]	6K
1951.111 Salary offset.	6K
(a) Authorities.	6L
(b) Definitions.	6L
(c) Feasibility of salary offset.	8
(d) Notice to debtor.	9
(e) Notice requirement before salary offset.	9
(f) Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.	11
(g) Hearings.	12
(h) Processing delinquent debts.	14
(i) Deduction percentage.	15
(j) Agency/NFC responsibility for other debts.	15
(k) Establishing employees or former employees defalcation accounts and non-cash credits to borrower accounts.	16
(l) Application of payments, refunds and overpayments.	17
(m) Cancellation of offset.	17
(n) Intra-departmental transfer.	18
(o) Liquidation from final checks.	18
(p) Coordination with other agencies.	18
(q) Deductions by the National Finance Center (NFC).	19
(r) Interest, penalties and administrative costs.	19
(s) Adjustment in rate of repayment.	19
1951.112 - 1951.120 [Reserved]	19
1951.121 Treasury Offset Program (TOP).	19
1951.136 Kansas City Finance Office/Saint Louis (KCFO/STL) screening.	20 20
1951.123 Initial Servicing Office screening.	20

<u>Sec.</u>		<u>Page</u>
1951.124	Notice to borrowers.	20
1951.125	Processing borrower's requests not to exercise TOP offset.	20
1951.126	Final servicing office screening.	21
1951.127	Referral to TOP.	21
1951.128	Processing of Offset Amounts.	21
1951.129	- 1951.132 [Reserved]	
1951.133	Establishment of Federal Debt.	21
1951.134	Form RD 389-764, Weekly Offset Report (Cash Collections) Treasury Offset Program, Report Code 222-C.	22
1951.135	Form RD 389-763, Weekly Claims Report Treasury Offset Program, Report Code 222-D.	22
1951.136	Procedures for Offset and Cross-Servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service.	22
1951.137	Procedures for Treasury Offset and Cross-Servicing for the Farm Service Agency (FSA) Farm Loan Program	23
1951.138	- 1951.149 [Reserved].	24
1951.150	OMB control number.	24

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PART 1951 - SERVICING AND COLLECTIONS

Subpart C - Offset of Federal Payments to USDA Agency Borrowers

§ 1951.101 General. (Revised 12-18-02, PN 354.)

Federal debt collection statutes provide 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) for its community facility program, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency," to collect delinquent debts. Any money that is or may become payable from the United States to an 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, direct multi-family housing loans, and the Rural Utilities Service. Section 1951.136 of this subpart only applies to the RHS for its community facility program and the RBS for the offset of Federal payments. Nothing in this subpart affects the common law right of set off available to USDA Agencies.

§ 1951.102 Standards and procedures for administrative offset.  
(Revised 10-20-00, SPECIAL PN.)

(a) General. Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) Definitions. In this subpart:

(1) "Agency" means Farm Service Agency, Farm Loan Programs; Rural Housing Service, except direct Single Family Housing loans and direct Multi-Family Housing loans; and Rural Business-Cooperative Service, or any successor agency.

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§ 1951.102(b) (Con.)

(2) "Contracting officer" is any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) "County Committee" means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) "Creditor agency" means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) "Debt management officer" means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) "Delinquent or past due" means a payment that was not made by the due date. (Revised 04-07-04, PN 373.)

(7) "Entity" means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) "FP" means Farm Programs.

(9) "FLP" means Farm Loan Programs.

(10) "FSA" means Farm Service Agency.

(11) "National Appeals Division" means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

§ 1951.102(b) (Con.)

(12) "Offsetting agency" means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) "Propriety" means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 90 days past due or the borrower must be in default of other obligations to the Agency, which can be cured by the payment.  
(Revised 04-07-04, PN 373.)

§ 1951.102 (b) (Con.)

(14) "Reviewing officer" means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are designated to conduct the hearings or reviews.

(15) "TOP" means Department of Treasury Offset Program established pursuant to 31 U.S.C. §3716(c) (6).

(16) "USDA" means United States Department of Agriculture.

(c) Collection by administrative offset.

(1) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in accordance with 31 U.S.C. 3716 and any Government wide regulations requiring administrative offset to collect debts due the United States. The debt need not be reduced to judgment or be undisputed.

(2) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(i) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim;

(ii) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt;

(iii) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires; and

(iv) Whether the agency has substantiated the existence of the debt and that it is 90 days past due. Because § 331D(d) of the Consolidated Farm and Rural Development Act requires that loan servicing notices must be sent before any collection is taken, notices under § 1951.907 of subpart S of this part must be sent before the notice of intent to offset.

(3) The offset will be effected 31 calendar days after the debtor receives RD Form Letter 1951-C-1, or when a stay of offset expires, unless the agency determines under § 1951.103(b) of this subpart that immediate action is necessary, and has sent RD Form Letter 1951-C-2 to the debtor. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to them in any order determined by the creditor agency if the loan is delinquent and is not barred by the 10 year statute of limitation. In the case of debt to the FSA, the priority of the delinquent FSA debts to be paid by administrative offset will be in accordance with FSA Handbook 58-FI. The Federal Claims Collection Act specifies a 10 year statute of limitations for administrative offsets unless facts material to collecting the claim were not known and could not reasonably been known. The statute of limitations begins running 10 years from when FLP's right to collect the claim first accrued.

(4) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts, but not including intracontractual claims or intracontractual disputes. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601-613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(5) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(6) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

(d) Coordinating administrative offset with other Federal agencies.

(1) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

§ 1951.102(d) (Con.)

(2) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 have been met.

(3) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor's agency certification.

(4) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(5) A USDA agency which is requested by another agency to effect administrative offset may decline for good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be provided to the creditor agency in writing.

§ 1951.103 Standards for USDA Agency-initiated administrative offset.  
(Revised 08-01-97, SPECIAL PN.)

**NOTE: FOR BORROWERS THAT ARE 90 DAYS PAST DUE, SEND NOTICES PER § 1951.104(a) (1) OF THIS SUBPART AFTER THE APPROPRIATE NOTICES ARE SENT UNDER RD INSTRUCTION 1951-S. (THE RD Instruction 1951-C NOTICES AND RD Instruction 1951-S NOTICES MUST BE SEPARATE MAILINGS.)** (Added 10-20-00, SPECIAL PN.)

(a) Notice requirements before offset.

(1) Before an agency effects administrative offset, the creditor agency must provide the debtor with written notice of a minimum of 30 calendar days that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under paragraph (b) of this section or

the debtor enters into a repayment agreement or requests review.  
(Revised 10-20-00, SPECIAL PN.)

(2) A RD Form Letter 1951-C-1 must be served on the debtor first by certified mail. If the letter is returned, then the servicing official should use either personal delivery or first class mail. RD Form Letter 1951-C-1 will state: (Revised 10-20-00, SPECIAL PN.)

(i) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(ii) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter and the amount of any other penalties or administrative costs added to the principal debt.

(iii) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(iv) The date on which administrative offset will be effected, unless the Agency determines immediate action is necessary under paragraph (b) of this section or the debtor enters into a repayment agreement or requests a review.

(v) That the debtor has a right to inspect and copy USDA records related to the debt. The Agency will pay copying costs for one copy.

(vi) That the borrower may enter into a written agreement to repay the debt, which must be approved by the Agency.

(vii) That the debtor has a right to obtain review by an Agency reviewing officer of the Agency's determination that the debt exists and the propriety of administrative offset.

(viii) That a repayment agreement or request for review of the existence of the debt, the status of the delinquency, the amount of the debt or delinquency, may be sought only from the creditor agency and not the offsetting agency. (Revised 10-20-00, SPECIAL PN.)

§ 1951.103(a)(2) (Con.)

(ix) Time limitations and other procedures or conditions imposed by the Agency.

(x) The address to which the debtor should send all correspondence relating to the offset.

(3) Any demand for payment will include RD Form Letter 1951-C-1 even if the scheduled payments on the debt are current but the borrower is in default of other obligations to the Agency, which can be cured by the payment of money. Some examples are: a delinquent lease payment, conversion, prior lien foreclosure, security abandonment, delinquent real estate taxes and court ordered actions. (Revised 10-20-00, SPECIAL PN.)

(b) Exceptions to notice requirements.

(1) When the procedural requirements of paragraph (a) of this section have been met by the creditor agency or under some other statutory or regulatory authority, an agency need not duplicate the notice before effecting administrative offset.

(2) A USDA agency may effect administrative offset, by notifying the debtor with RD Form Letter 1951-C-2, against a payment to be made to a debtor before completion of the procedures in paragraph (a) of this section when the Agency finds, that: (Revised 10-20-00, SPECIAL PN.)

(i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds, or where expiration of a statute of limitations is imminent; and

(ii) The time before the payment is to be made does not reasonably permit the completion of these procedures.

(3) The finding required by paragraphs (b)(2)(i) and (ii) of this section must be furnished (by the Agency) to the debtor in writing as soon as reasonably possible after the offset is effected. A narrative justification outlining why the failure to effect an emergency offset would be financially detrimental to the government must be inserted in paragraph 2 of Form Letter 1951-C-2. Some examples of financial detriment are: loans are seriously undersecured, loans are seriously delinquent with little attempt to make payments, the statute of limitations is imminent, the borrower has a history of unauthorized disposition of security, and borrower has a history of paying unsecured accounts or junior lien holders

first and failure to collect the payments would result in additional financial losses to the Government. Promptly after administrative offset is effected under this section, the creditor agency must give the debtor the notice required by paragraph (a) of this section. (Revised 10-20-00, SPECIAL PN.)

(c) Inspection of USDA records related to the debt.

(1) A debtor who intends to inspect or copy Agency or Departmental records with respect to the claim action must notify the agency in writing within 20 calendar days of the date RD Form Letter 1951-C-1 was delivered to the debtor. In response, the Agency must notify the debtor of the location, time, and any other conditions, consistent with applicable Freedom of Information Act requirements for inspecting and copying. The Agency will pay copying costs for one copy. If a debtor requests to inspect or copy Agency records after the 20 day time frame, access will be provided in accordance with RD Instruction 2018-F; however no stay of administrative offset will occur. (Revised 10-20-00, SPECIAL PN.)

(2) Unless otherwise arranged by mutual written agreement between the debtor and the Agency when an agency receives a debtor's request for inspection of Agency records, the offset is stayed for no longer than 10 calendar days beyond the date set by the creditor agency for the record inspection.

(d) Written agreements to repay debt as an alternative to administrative offset.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset 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 delivered to 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. (Revised 10-20-00, SPECIAL PN.)

(2) When an agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, the offset will be taken after 30 days, even when a review is requested. The amount of the debt and interest will be withheld from payment to the debtor, but not applied against the debt until the stay expires. If withheld funds are later

§ 1951.103(d) (2) (Con.)

determined not to be subject to offset, they will promptly be paid to the debtor. Administrative offsets will be taken against delinquent debtors requesting reviews which are pending final determination by the Review Officer, without new grants of appeal rights. However, a review and appeal will also include the adequacy of any proposed written repayment agreement. (Revised 10-20-00, SPECIAL PN.)

(e) Reviews. Reviews will be conducted by the Reviewing Officer designated by the State Executive Director. Reviews will be face to face hearings or documentary reviews. The debtor can select either type of review. Reviews will be limited to: the existence of the debt, the status of the delinquency, the amount of the debt or delinquency, and the propriety of the offset. (Revised 10-20-00, SPECIAL PN.)

(1) A debtor who receives a RD Form Letter 1951-C-1 may request a hearing or documentary review of the Agency's determination that the debt exists and the propriety of administrative offset. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

(2) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. If the debtor requests a hearing and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The Agency must also advise the debtor of the procedures to be used in reviewing the documentary record or of the date, location and procedures to be used if review is by a hearing.

(3) Unless otherwise arranged by mutual written agreement between the debtor and the Agency, any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.

(4) Unless otherwise arranged by mutual written agreement between the debtor and the Agency, a documentary review or hearing will be based on Agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 calendar days after the request for review is received.

(5) Hearings will be conducted as:

(i) Informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer will not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be considered, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(ii) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(iii) The substance of all significant matters discussed must be recorded during the hearing. No official record or transcript of the hearing need be created, but if a debtor requests that a transcript be made, it will be at the debtor's expense.

(6) After the hearing or documentary review the reviewing officer will:

(i) Within no more than 30 calendar days after the hearing or the documentary review, issue a written decision to the debtor and the Agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days, and beyond the additional 30 calendar days only with the consent of the debtor. The decision need not be lengthy or formal in style, but must address the substantive issues. The decision should address any significant procedural matter which was in dispute before or during the hearing or documentary review.

(ii) Give the borrower appeal rights to the National Appeals Division, if there is not an appeal to the National Appeals Division the FSA reviewing officer's decision is final. Prior to any appeal hearing to the National Appeals Division the reviewing officer's decision constitutes final informal Agency decision as to the following issues:

(A) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been offered due process; and

§ 1951.103 (e) (6) (ii) (Con.)

(B) The existence of the debt and the propriety of the administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(iii) Promptly distribute copies of the decision to the Assistant Secretary for Administration, USDA, the debtor and the debtor's representative.

(f) Appeals. Appeals will be conducted by the National Appeals Division (NAD) under the regulations published at 7 CFR part 11. When a borrower appeals the Agency's administrative offset to NAD, their right to request a review by the Agency will be deemed waived.  
(Added 10-20-00, SPECIAL PN)

(g) Additional stay of offset. Offset will only be stayed when a debtor requests a review and will not be stayed when a debtor appeals to NAD. When administrative offset is stayed, the creditor agency will immediately notify an offsetting agency to withhold the payment pending termination of the stay. If a payment must be made before the end of the fiscal year and the review is not yet completed, the offset will be taken after 30 days, even when a review is requested. The amount of the debt and interest will be withheld from payment to the debtor, but not applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset they will be promptly paid to the debtor. When a debtor cannot, for a good reason, meet the time limits set out in this section, the Agency can in its discretion, extend the time. (Renumbered and Revised 10-20-00, SPECIAL PN.)

§ 1951.104 Procedures for administrative offset of FSA program payments to collect past due Farm Loan Programs (FLP) debts. (Revised 08-01-97, SPECIAL PN.)

(a) State office responsibility. Any FSA Farm Programs payments or commodity loans due to a producer, except those listed in paragraph (c) of this section, will be offset for the collection of a delinquent debt owed to the Agency. The FSA Executive State Director will ensure that no FSA payments including Conservation Reserve Program (CRP) (except for the initial payment for planting expenses), Production Flexibility Contract (PFC), Loan Deficiency Program (LDP), Market Loan Payments (MLP), Environmental Quality Incentives Program (EQIP), Livestock Indemnity (LIP), Stewardship Incentive Program (SIP), Emergency Conservation Program (ECP) payments, any other disbursements, and commodity loans are made to a producer that is also a past due FLP borrower, unless the requirements of this section are met. Action to offset FSA payments to collect delinquent debts will be as follows:  
(Revised 10-20-00, SPECIAL PN.)

RD Instruction 1951-C  
§ 1951.104(a) (Con.)

(1) The responsible Agency official will notify all borrowers that are 90 days past due (60 days delinquent) on their FLP loans, by sending RD Form Letter 1951-C-1 and that if the account remains in default, any Federal payment to them, including those from the Agency, will be offset and applied on their debt. Also entities in which the delinquent borrower participates either directly or indirectly will be notified in accordance with § 1951.106(e) of this subpart. The notice to the borrower will be sent by certified mail, return receipt requested, independent of any other Agency notice. In those instances where the applicable notice is sent by certified mail, and the certified mail is not accepted by the borrower, the servicing official will immediately send the documents from the certified mail package to the borrower's last known address by first-class mail. The 30 day response time will commence 3 calendar days following the date of first-class mailing. The SED will ensure that the Agency employees responsible for servicing Farm Loan Program loans notify all County Offices where the delinquent borrower receives federal payments that these payments are to be offset. District Directors will ensure that the offset notification list is updated monthly, that the lists are being provided to all county offices and that delinquent borrowers' payments are being offset.

(2) The borrower may avoid administrative offset by:

(i) Paying the account current; or

(ii) Presenting an acceptable, completed Form FSA 431-2, "Farm and Home Plan," or other written repayment agreement that documents the ability to bring the account current.

(3) If the offsetting Agency is required to issue the payment on a date that is less than 31 calendar days from the date RD Form Letter 1951-C-1 is delivered, the FSA loan servicing official will determine if the payment should be offset in accordance with § 1951.103(b)(2) of this subpart before expiration of the notice period. If the payment date is discretionary, payment will be delayed until all review procedures are completed or until the 30 calendar day period has passed whichever is later. The local loan servicing official will request concurrence from the State Executive Director to offset any payment or disbursement before the 30 calendar day notification period has lapsed.

(4) After compliance with this section and the conclusion of any applicable reviews, the local loan servicing official will notify the State office of those borrowers in their area who are subject to

## § 1951.104(a)(4) (Con.)

offset, including individually liable members of entities and entities which meet the requirements of § 1951.106 of this subpart. See § 1951.106(e) for procedures for notifying nonborrower entities.

(5) As long as the borrower's account remains in default, a subsequent notice is not required to continue offsetting payments or disbursements.

(6) Amounts that are delinquent will be collected and applied to the debtor accounts as regular payments. Refunds of amounts offset, plus interest, will be made within 45 days if the Agency determines that an amount should not have been offset or that the debtor has prevailed in an administrative appeal. The State Executive Director (SED) shall approve and submit refund requests to the Finance Office, Loan Operations Division, St. Louis, MO. The 90 day Treasury bill rate will be used to calculate interest payable to the debtor. (Revised 01-21-04, PN 369.)

(7) 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 subpart S of part 1951 of this chapter, provided the appropriate notices under § 1951.907 of subpart S of this part have been sent.

(b) Credit reporting. If an inquiry about an FSA, FLP borrower's credit status is received, information will be disclosed in the following manner:

(1) Complete information on a person's or entity's responsibility for a debt owed the Agency will be disclosed to consumer or commercial credit reporting agencies.

(2) Complete information on a person's or entity's responsibility for a debt owed the Agency may be disclosed to any party if prior to the disclosure the borrower has provided the Agency with valid written permission to disclose the information. The requested information may be provided verbally. Documentation of the information provided and the signed authorization will be placed in the borrower's case file.

(c) Exceptions. The following debts, debtors, payments, payment types or fund sources, are not subject to administrative offset.

(1) The initial payment for planting expenses under the Conservation Reserve Program (CRP).

(2) Loan funds from FLP loans or other Federal loan programs.

RD Instruction 1951-C  
§ 1951.104(c) (Con.)

- (3) Catastrophic Risk Protection Insurance (CAT) indemnity payments.
- (4) Debts owed by any State or local governments.
- (5) Payments made under the Social Security Act except as provided by the National Office. (Revised 10-20-00, SPECIAL PN.)

(d) Cancellation of administrative offset. The local Agency servicing official will take the necessary actions to promptly cancel administrative offset by written notification to the State office if, for any reason, the Agency is no longer entitled to administrative offset.

§ 1951.105 [Reserved]. (Revised 10-08-03, PN 364.)

§ 1951.106 Offsets of payments to entities related to debtors.  
(Added 10-20-00, SPECIAL PN.)

(a) General. Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) Offsetting entities. Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA, FLP has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(1) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency that have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

§ 1951.106(b) (Con.)

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, in the entity as determined by FSA.

(c) Other remedies. Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

(d) Factual and legal determinations. The credit official will consult the Regional Office of the General Counsel (OGC) to determine whether FSA has a legally enforceable right under state or Federal law, including common law to pursue payment from the entity. The running case record will document the basis of FSA's right to pursue the entity payment. The following guidelines will be used to explain the situation to the Regional OGC:

(1) When was the entity formed? [Note: If it appears that the entity was formed in order to avoid the collection of the individual's FSA debts, then this may be an indication that the entity may be the alter ego of the debtor. This determination is however not the controlling factor because pre-existing entities may be utilized as alter egos. The formation of an entity to avoid an offset is unacceptable and the debtor's pro rata share of any payments due the entity will be offset.

(2) After the entity is formed or after the entity has taken over the farming operation, has the farming operation really changed? In other words, is the entity just a new front for the individual's ongoing farming operation? Compare the information on the FSA payment limitation forms. Is the borrower still performing the labor or management of the farming operation as before when there was no entity?

(3) Does the borrower own all or a major portion of the stock of the entity?

(4) Is the borrower an officer, director, or general manager of the entity?

(5) Do the borrower and entity have the same business offices?

(6) Did the borrower provide for or arrange for the financing of the entity?

(7) Is the borrower or entity adequately capitalized to run the farming operation?

(8) Where does the entity's capital come from?

(9) What are the entity's assets? Does it have a bank account, financial reserves, farm equipment, land or leased land or other assets needed to operate a farm?

(10) Did the stockholders or partners in the entity actually make capital investments in the entity in exchange for the stock, or ownership interest, which they received? Is the ownership in the same proportion as the capital investments made?

(11) Does the borrower keep his property and business separate from that of the entity? Are the offices separate? Are there separate bank accounts? How are the entity funds, if any, used? Are they used to pay the expenses of the borrower? How does the borrower use the funds? Does the borrower pay the expenses of the entity? If so, are these loans formally documented with notes and security instruments? Does the entity repay the loans with interest at the current market rate?

(12) Does the borrower and the entity observe corporate formalities, such as keep separate books and records, hold shareholder and board meetings, and have a corporate resolution authorizing the corporate representative to borrow money and otherwise conduct the business of the entity?

(13) Did the entity pay the state franchise taxes for corporations? Did the entity file a separate corporate or partnership income tax return? Did the entity pay salaries or other compensation to its officers? Did the entity ever declare a dividend? Does the borrower make all of the corporate decisions?

§ 1951.106 (Con.)

(e) Notifying entities. All debtors subject to offset will be separately notified in accordance with § 1951.104(a) of this subpart. Notice should also be given to a non-debtor who is subject to a pro rata offset for a debt in accordance with this section where practicable to do so. When the local office determines that it is not practicable to notify the nonborrower entity, it must obtain the written concurrence of the state office. This notice should be given at the same time the debtor is notified. The notice should contain no specific debtor information other than sufficient information to identify the debtor (usually the name is sufficient) and the amount of the debtor's deficiency. See RD Form Letter 1951-C-1 or 1951-C-2 for the optional language to insert. Appeal rights to the National Appeals Division will be provided so the entity has an opportunity to challenge the extent of the debtor's interest in the non-debtor entity. **NOTE: NOTICE SHALL BE MAILED TO ANY PERSON WHO IS AUTHORIZED BY STATE LAW TO RECEIVE SERVICE ON BEHALF OF THE ENTITY. FOR INSTANCE, IN MOST STATES NOTICE PROVIDED THE REGISTERED AGENT IS SUFFICIENT NOTICE FOR A CORPORATION. EACH STATE SHOULD REQUEST ASSISTANCE FROM THEIR RESPECTIVE REGIONAL ATTORNEY TO DETERMINE WHAT NOTICE IS SUFFICIENT FOR THE ENTITY INVOLVED.**

§§ 1951.107 - 1951.110 [Reserved]

§ 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 delinquent 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. For delinquent FLP direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR 1951.907. In addition, for FLP direct 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. For FLP guaranteed debtors, salary offset can not begin until a final loss claim has been paid. 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 against an employee's salary. (Revised 12-18-02, PN 354.)

(a) Authorities. The following authorities are granted to USDA Agency employees in order that they may initiate and implement salary offset:

(1) Certifying Officials are authorized to certify to the debtor's employing agency that the debt exists, the amount of the delinquency or debt, that the procedures in the United States Department of Agriculture's (USDA's) regulations regarding salary offsets have been followed, that the actions required by the Debt Collection Act have been taken; and to request that salary offset be initiated by the debtor's employing agency. This authority may not be redelegated.

(2) Certifying Officials are authorized to advise the Finance Office to establish employee defalcation accounts and non-cash credits to borrower accounts in cases involving other debts, such as those arising from theft, fraud, embezzlement, loss of funds through negligence, and similar actions involving Agency employees.

(3) The Finance Office is authorized to establish defalcation accounts and non-cash credits to borrower accounts upon receipt of requests from the Certifying Officials.

(b) Definitions.

(1) Certifying Officials - State Directors; State Executive Directors; the Assistant Administrator, Finance Office; Financial Management Director, Financial Management Division; and the Deputy Administrator for Management, National Office. (Revised 10-20-00, SPECIAL PN.)

(2) Debt or debts - A term that refers to one or both of the following:

(i) Delinquent debts - A past due amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(ii) Other debts - An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

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

(B) False claims for services and travel;

(C) Illegal, unauthorized obligation and expenditures of Government appropriations;

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

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

(F) Erroneous entries on accounting record or reports; and,

(G) 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.

(3) Defalcation account - An account established in the Finance Office for other debts owed the Federal government in the amount missing due to the action of an employee or former employee. (Renumbered 11-2-88, PN 97)

(4) Disposable pay - Pay due an employee that 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 required by law to be withheld. (Renumbered 11-2-88, PN 97)

(5) Hearing Officer - An Administrative Law Judge of the USDA or another individual not under the control of the USDA, designated by the Certifying Official to review the determination of the alleged debt. (Revised and renumbered 11-2-88, PN 97)

(6) Non-cash credit - The accounting action taken by the Finance Office to credit and make a borrower's account whole for funds paid by the borrower but missing due to an employee's or former employee's actions. (Renumbered 11-2-88, PN 97)

(7) Salary offset - The collection of a debt due to the United States by deducting a portion of the disposable pay of a Federal employee without the employee's consent. (Revised and renumbered 11-2-88, PN 97)

(c) Feasibility of salary offset. The first step the Certifying Official must take to use this offset procedure is to decide, on a case by case basis, whether offset is feasible. If an offset is feasible, the directions in the following paragraphs of this section will be used to collect by salary offset. If the official making this determination decides that salary offset is not feasible, the reasons supporting this decision will be documented in the borrower's running case record in the case of delinquent debts, or the "For Official Use Only" file in cases of other debts. Ordinarily, and where possible, debts should be collected in one lump-sum; but payments may be made in installments. Installment deductions can be made over a period not greater than the anticipated period of employment. However, the amount deducted for a period will not exceed 15 percent of the disposable pay from which the deduction is made. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. Based on the Comptroller General's decisions, other debts by employees cannot be forgiven. If the employee retires or resigns, or if employment ends before collection of the debt is completed, final salary payment, lump sum leave, etc. may be offset to the extent necessary to liquidate the debt. Salary offset is feasible if:

(1) The cost to the Government of collecting salary offset does not exceed the amount of the debt. County Committee members are exempt from salary offset because the amount collected by salary offset would be so small as to be impractical.

(2) There are not any legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years. (Revised 11-2-88, PN 97)

§ 1951.111 (Con.)

(d) Notice to debtor.

(1) After the Certifying Official determines that collection by salary offset is feasible, the debtor should be notified within 15 calendar days after the salary offset determination. This notice will notify the debtor of intended salary offset at least 30 days before the salary offset begins. For FLP direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR § 1951.907 of this subpart. For FLP guaranteed debtors, this notice will be sent after a final loss claim has been paid. The salary offset determination notice will be delivered to the debtor by regular mail. (Revised 12-18-02, PN 354.)

(2) The Debt Collection Act of 1982 requires that the hearing officer issue a written decision not later than 60 days after the filing of the petition requesting the hearing; thus, the evidence upon which the decision to notify the debtor is based, to the extent possible, should be sufficient for the Agency to proceed at a hearing, should the debtor request a hearing under paragraph (f) of this section.

(e) Notice requirement before salary offset. Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (Guide Letter 1951-C-4) will be addressed to the debtor or the debtor's representative. The Notice of Intent must be modified if it is addressed to the debtor's representative. In either case, the Notice of Intent will state: (Revised 6-28-89, PN 111)

(1) It has been determined that the debt is owed, the amount of the delinquency or debt, and the facts giving rise to the debt;

(2) The cost to the Government of collecting salary offset does not exceed the amount of the debt; (Added 11-2-88, PN 97)

(3) There are not any legal restrictions that would bar collecting the debt; (Added 11-2-88, PN 97)

(4) The debt will be collected by means of deduction of not more than 15 percent from the employee's current disposable pay until the debt and all accumulated interest are paid in full; (Renumbered 11-2-88, PN 97)

RD Instruction 1951-C  
§ 1951.111(e) (Con.)

- (5) The amount, frequency, approximate beginning date, and duration of the intended deductions; (Renumbered 11-2-88, PN 97.)
- (6) An explanation of the requirements concerning interest, penalties and administrative costs, unless such payments are waived; (Renumbered 11-2-88, PN 97.)
- (7) The employee's right to inspect and request a copy of records relating to the debt; (Renumbered 11-2-88, PN 97.)
- (8) The employee's right to voluntarily enter into a written agreement for a repayment schedule with the agency different from that proposed by the Agency, if the terms of the repayment proposed by the employee are agreeable with the agency; (Renumbered 11-2-88, PN 97.)
- (9) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by the Agency; (Revised and renumbered 11-2-88, PN 97.)
- (10) The timely filing of a petition for hearing will stay the collection proceedings; (Renumbered 11-2-88, PN 97.)
- (11) That a final decision will be issued at the earliest practical date, but not later than 60 calendar days after the filing of petition requesting the hearing; (Renumbered 11-2-88, PN 97.)
- (12) That any knowingly false or frivolous statements may subject the employee to disciplinary procedures, or penalties, under the applicable statutory authority; (Renumbered 11-2-88, PN 97.)
- (13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; (Renumbered 11-2-88, PN 97.)
- (14) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee unless there are provisions to the contrary; (Renumbered 11-2-88, PN 97.)
- (15) The method and time period for requesting a hearing; and (Renumbered 11-2-88, PN 97.)

(16) The name and address of an official of USDA to whom communications should be directed. (Renumbered 11-2-88, PN 97)

(f) Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.

(1) If a debtor responds to RD Guide Letter 1951-C-4 by asking to review and copy USDA Agency's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's USDA Agency files and that the files may be reviewed and copied within the next 30 days. Copying costs (see RD Instruction 2018-F) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have USDA Agency copy the records, a copy will be made within 30 days of the request. (Revised 6-28-89, PN 111)

(2) If a debtor responds to RD Guide Letter 1951-C-4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the Government. RD Form Letter 1951-8 will be used if a repayment offer for an USDA Agency loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay institution of a hearing proceeding until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide whether to accept or reject the offer. This decision will be documented in the running case record or the "For Official Use Only" file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. If the offer is rejected, it should be based upon a realistic budget or Farm and Home Plan and according to the servicing regulations for the type of loan(s) involved. (Revised 6-28-89, PN 111)

(3) If a debtor responds to RD Guide Letter 1951-C-4 by asking for a hearing on USDA Agency's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with paragraph (g)(3) of this section and request the debtor's case file or the "For Official Use Only" file. (Revised 6-28-89, PN 111)

(4) If a debtor is willing to have more than 15 percent of the disposable pay sent to USDA Agency, a letter prepared and signed by the debtor clearly stating this must be placed in the debtor's case file or the "For Official Use Only" file.

(5) If a debtor who is an USDA Agency borrower requests debt settlement, the account must be in collection-only status or be an inactive account for which there is no security. The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) The time limits set in RD Guide Letter 1951-C-4 and in paragraphs (1), (2), and (3) of this section run concurrently. In other words, if a debtor asks to review the USDA Agency file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter. (Revised 6-28-89, PN 111)

(7) If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the negotiated procedure. Employees who are not covered by a negotiated procedure must utilize the salary offset proceedings as outlined in RD Guide Letter 1951-C-4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement. (Revised 6-28-89, PN 111)

(g) Hearings.

(1) A hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee. In order to ensure that a hearing officer will be available promptly when needed, Certifying Officials need to make appropriate arrangements with officials of nearby federal agencies for the use of each other's employees as hearing officers.

(2) Not later than 30 days from the date the debtor receives the Notice of Intent, (RD Guide Letter 1951-C-4), the employee must file with the Certifying Official issuing the notice, a written petition establishing his/her desire for a hearing on the existence and amount of the debt or the proposed offset schedule. The employee's petition must fully identify and explain all the information and evidence that supports his/her position. In addition, the petition must bear the employee's original signature and be dated upon receipt by the Certifying Official.

(3) Certifying Officials are responsible for determining if the employee's petition for a hearing has been submitted in a timely fashion. Petitions received from employees after the 30-day time limitation expires will be accepted only if the employee can show the delay was because of circumstances beyond his/her control or because of failure to receive notice of the time limitation. Certifying Officials are required to provide written notification to the employee of the acceptance or non-acceptance of the employee's petitions for hearing.

(4) For those petitions accepted, USDA Agency will arrange for a hearing officer and notify the employee of the time and place of the hearing. The hearing location should be convenient to all parties involved. The employee will also be notified that the acceptance of the petition for hearing will stay the commencement of collection proceedings. Any payments collected in error due to untimely or delayed filing beyond the employee's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

(5) The hearing will be based on written submissions and documentation provided by the debtor and USDA Agency unless:

(i) A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or truth.

(ii) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or truth.

(iii) The hearing officer determines that an oral hearing is appropriate.

(6) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(7) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the Certifying Official grants a delay in the proceedings. The written decision will state

the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the employee and USDA Agency will be provided with a copy of the hearing officer's written decision on the debt.

(h) Processing delinquent debts.

(1) Form AD-343, "Payroll Action Request," and RD Form Letter 1951-6 will be prepared and submitted by the Certifying Official to the National Office, Financial and Management Analysis Staff (FMAS), for coordination and forwarding to the debtor's employing agency if:  
(Revised 6-28-89, PN 111)

(i) The borrower does not respond to RD Guide Letter 1951-C-4 within 30 days. (Revised 6-28-89, PN 111)

(ii) The borrower responds to RD Guide Letter 1951-C-4 within 30 days and (Revised 6-28-89, PN 111)

(A) has had an opportunity to review the file, if requested,

(B) has received a hearing, if requested, and

(C) a decision has been made by the hearing officer to uphold the offset.

(2) A copy of Form AD-343 and RD Form Letter 1951-6 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit.

(3) If the debtor is an USDA Agency employee, Form Ad-343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official. (Revised 6-28-89, PN 111)

(4) If the debtor has agreed to have more or less than 15 percent of the disposable pay sent to USDA Agency, a copy of the debtor's letter (RD Form Letter 1951-8) authorizing this must be attached to Form AD-343.

(5) Field offices will be notified of payments received from salary offset by receipt of a transaction record from the Finance Office.

(i) Deduction percentage.

(1) Generally, installment deductions will be made over a period not greater than the anticipated period of employment. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. Certifying Officials are responsible for determining the size and frequency of the deductions. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(2) Deductions will be made only from basic pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount. (Revised 11-2-88, PN 97)

(j) Agency/NFC responsibility for other debts.

(1) USDA Agency will inform NFC about other indebtedness by transmitting to NFC an AD-343. NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the USDA Agency's records. USDA Agency is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). NFC will send the salary offset notice to the employing office.

(k) Establishing employees-or former employees defalcation accounts and non-cash credits to borrower accounts. In cases where a borrower made a payment on an USDA Agency account(s) and, due to theft, embezzlement, fraud, negligence, or some other action on the part of an USDA Agency employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

- (i) Employee's name (or former),
- (ii) Social Security Number,
- (iii) Present or last known address,
- (iv) Date of Payment, and
- (v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

- (i) Borrower's name and case number,
- (ii) Fund Code and Loan Code,
- (iii) Date and amount of missing payment,
- (iv) Copy of receipt issued for the missing payment, and
- (v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k)(1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial and Management Analysis Staff and Employee Relations Branch, Personnel Division. (Revised 11-2-88, PN 97)

(1) Application of payments, refunds and overpayments.

(1) If a debtor is delinquent or indebted on more than one USDA Agency loan or debt, amounts collected by offset will be applied as specified on Form AD-343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts. (Revised 11-2-88, PN 97)

(2) If a court or agency orders USDA Agency to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending RD Form Letter 1951-5 to the Finance Office. Processing RD Form Letter 1951-5 in the Finance Office will cause a refund to be sent to the debtor through the county office or other appropriate USDA Agency office. The debtor is not entitled to any payment of interest on the refunded amount.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraph (1)(2) above. (Revised 11-2-88, PN 97)

(4) If USDA Agency receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (1) and (2) above.

(m) Cancellation of offset. If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD-343 and send it to the National Office, FMAS. FMAS will notify the paying

agency with Form AD-343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit. (Revised 6-28-89, PN 111)

(n) Intra-departmental transfer. When an USDA Agency employee who is indebted to one agency in USDA transfers to another agency within USDA, a copy of the repayment schedule should be forwarded by the agency personnel office to the new employing agency. The NFC will continue to make deductions until full recovery is effected.

(o) Liquidation from final checks. Upon the determination that an employee owing a debt to USDA Agency is to retire, resign, or employment otherwise ends, the Certifying Official should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD-343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR, Part 3, Subpart B, Section 3.32). (Revised 11-2-88, PN 97)

(p) Coordination with other agencies.

(1) If USDA Agency is the creditor agency but not the paying agency, the Certifying Official will submit Form AD-343 to the National Office, FMAS, to begin salary offset against an indebted employee. The request will include a certification as to the determination of indebtedness, and that USDA Agency has complied with applicable regulations and instructions for submitting the funds to the Finance Office. (See RD Form Letter 1951-6.) (Revised 6-28-89, PN 111)

(2) When an employee of USDA Agency owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the employee has been given the due process entitlements guaranteed by the Debt Collection Act of 1982. When a request for offset is received, USDA Agency will notify the employee and NFC and arrange for offset. (See RD Form Letter 1951-7).

## § 1951.111 (Con.)

(q) Deductions by the National Finance Center (NFC). The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FSA/RD issues the notice. If FSA/RD issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD-343.

(r) Interest, penalties and administrative costs. Interest and administrative costs will normally be assessed on outstanding claims being collected by salary offset. However, penalties should not be charged routinely on debts being collected in installments by salary offset, since it is not to be construed as a failure to pay within a given time period. Additional interest, penalties, and administrative costs will not be assessed on delinquent loans until FSA/RD publishes regulations permitting such charges.

(s) Adjustment in rate of repayment.

(1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, FSA/RD must take action to reduce the amount of the deductions to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, FSA/RD may increase the amount of the deductions accordingly. In either case, when a change is made the employee will be notified in writing.

(2) When an employee has an existing reduced repayment schedule because of financial hardship, the creditor agency may arrange for a new repayment schedule.

§ 1951.112 - 1951.120 [Reserved]

§ 1951.121 Treasury Offset Program (TOP).

Treasury can offset an entities and individuals' Federal payments to apply to legally enforceable delinquent debts owed to the Federal government as authorized by the Debt Collection Act. Internal Revenue Service tax refunds are included in TOP. Borrowers referred to TOP for offset will be notified as required by § 1951.124 of this subpart. (Revised 10-20-00, SPECIAL PN.)

RD Instruction 1951-C

§ 1951.122 Kansas City Finance Office/Saint Louis (KCFO/STL) screening.  
(Revised 10-20-00, SPECIAL PN.)

KCFO/STL will programmatically screen all borrower loans for potential TOP eligibility, based on DCIA and USDA regulations. Agency servicing offices will further screen these loan accounts based on criteria and dates outlined in applicable notices.

§ 1951.123 Initial servicing office screening. (Revised 10-20-00, SPECIAL PN.)

Loans determined by computer screening to be potentially eligible for referral to TOP for offset will be displayed on the TOP online screens for the appropriate FSA state and local servicing office to review or delete. If the servicing office is aware of any loan which should be removed from the screens for any of the reasons contained in § 1951.122, the servicing office will delete the loan in accordance with instructions outlined in the applicable notice. Borrowers who are deleted by the servicing office prior to the screening deadline established by the applicable notice will not receive a 60-Day Due Process (RD Form Letter 1951-C-6) Letter. No further action is necessary concerning borrowers removed in this initial phase.

§ 1951.124 Notice to borrowers. (Revised 10-20-00, SPECIAL PN.)

The RD Form Letter 1951-C-6, generated programmatically by KCFO/STL will be mailed to borrowers not deleted in the initial screening. These letters must be mailed in time to ensure that borrowers will have 60 days from the date of receipt to provide evidence in writing to the servicing official that their debt should not be offset.

§ 1951.125 Processing borrower's requests not to exercise TOP offset.  
(Revised 10-20-00, SPECIAL PN.)

If a borrower responds to the letter within 60 days from the date of receipt, the servicing official will review the borrower's reasons for believing that the debt is not eligible for offset. Once a determination on whether the borrower's loans are eligible for offset is made, the servicing official will either delete the loan on the online TOP screens, using the applicable codes outlined in the notices, or take no action. The Finance Office will refer loans which were not deleted to TOP.

§ 1951.126 Final servicing office screening. (Revised 10-20-00, SPECIAL PN.)

Servicing offices will be instructed through an administrative offset notice to monitor loans via the online TOP screens for borrowers who have received a RD Form Letter 1951-C-6 due process letter. If the servicing office becomes aware that a loan should be removed for any reason contained in the notice, the servicing office will delete the loan using the applicable code outlined in the notice.

§ 1951.127 Referral to TOP. (Revised 10-20-00, SPECIAL PN.)

All loans not deleted on the TOP online screens and through computer screening in the second screening process will be sent to TOP for administrative offset. A list of loans referred to TOP will be sent to each appropriate servicing office after referral. If any events listed in the notice occur after the referral to TOP, the servicing office should immediately fax a memo stating the borrower's name, case number, loan number, and the reason the borrower is no longer eligible for offset to: KCFO/STL at 314-539-6266 or mail the memo to the Farm Service Agency, P.O. Box 200003, St. Louis, MO 63120-0003, ATTN: Program Reporting Branch. KCFO/STL will delete the borrower on TOP offset screens and send the updated information to Treasury periodically.

§ 1951.128 Processing of offset amounts. (Revised 10-20-00, SPECIAL PN.)

KCFO/STL will receive and process Treasury offset payments. The total offset amount reported by Treasury will include fees assessed by Treasury. The Agency will receive the offset amount less the applicable fees to be applied to the borrower's account. The offset payment will be reflected on the ADPS Detail Online History Screen with an Application Code of "T". If the servicing office determines an offset has occurred in error, the servicing office must submit a letter signed by the Farm Loan Manager, or higher authority, to KCFO/STL immediately. The letter must include the borrower name, case number, loan number, and reason for refunding the offset amount. The letter may be faxed to KCFO/STL at 314-539-6266 or mailed to Farm Service Agency, P.O. Box 200003, St. Louis, MO 63120-0003, ATTN: Program Reporting Branch. Refunds will be made for the full amount offset, including any fees.

§§ 1951.129 - 1951.132 [Reserved]

§ 1951.133 Establishment of Federal Debt. (Added 01-21-04, PN 369.)

Any amounts paid by RBS on account of liabilities of a business and industry (B&I) program guaranteed loan borrower will constitute a Federal

RD Instruction 1951-C  
§ 1951.133 (Con.)

debt owing to RBS by the B&I guaranteed loan borrower. In such case, the RBS may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996 (DCIA), to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date a loss claim is paid. RBS may, at its option, refer such debt in all or part to the Department of the Treasury, before a final loss claim is determined.

§ 1951.134 Form RD 389-764, Weekly Offset Report (Cash Collections) Treasury Offset Program, Report Code 222-C. (Revised 10-20-00, SPECIAL PN.)

This report lists those borrowers whose Federal payment was offset by Treasury and the amount offset. All monies received will be applied to the borrower's delinquent loans. If an offset does not repay all of the delinquent amount, the borrower is subject to additional offsets until the entire outstanding delinquency is paid. This report will be retained by KCFO/STL/Program Reporting Branch (PRB) to be used for research if it has been determined a borrower has been erroneously offset.

§ 1951.135 Form USDA 389-763, Weekly Claims Report Treasury Offset Program, Report Code 222-D. (Revised 10-20-00, SPECIAL PN.)

This report lists those borrowers who were issued a whole or partial refund by Treasury. These borrowers may have filed a joint tax return and incurred the debt separately from their spouses who had no legal responsibility for the debt and who had income and withholding or estimated tax payments. This report also reflects offsets that were processed in error and are being reversed by Treasury. The report shows the actual amount refunded by Treasury. KCFO/STL/PRB will retain this report and ensure the claim is reversed from the borrower's loan and no refund is processed by the Agency.

§ 1951.136 Procedures for Department of Treasury Offset and Cross-Servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service. (Added 12-18-02, PN 354.)

(a) The National Offices of the Rural Housing Service (RHS), Community Facilities (CF) and the Rural Business-Cooperative Service (RBS) will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, will be excluded from TOP or Cross-Servicing.

§ 1951.136 (Con.)

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt from the Agency;

§ 1951.136(b) (Con.)

(3) An opportunity to review the matter within the Agency or the National Appeals Division if there has not been a previous opportunity to appeal the offset; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

§ 1951.137 Procedures for Treasury Offset and Cross-Servicing for the Farm Service Agency (FSA) Farm Loan Program (Added 12-18-02, PN 354.)

(a) The Farm Service Agency, Farm Loan Programs, will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, will be excluded from TOP or Cross-Servicing. Guaranteed debtors will only be referred to TOP upon confirmation of payment on a final loss claim.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing by the Director of Kansas City Finance Office. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

§ 1951.137(b) (Con.)

- (2) An opportunity to inspect and copy the records related to the debt, from the Agency;
  - (3) An opportunity to review the matter within the Agency; and
  - (4) An opportunity to enter into a written repayment agreement.
- (c) In referring debt to the Department of Treasury the Agency will certify that:
- (1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;
  - (2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;
  - (3) The Agency has made reasonable efforts to obtain payment; and
  - (4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

§§ 1951.138 - 1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0119.

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