

§ 792.8

7 CFR Ch. VII (1-1-02 Edition)

(iii) State the name, address (including county), and, where legally available, the Social Security number or employer ID number of the debtor, and a brief description of the basis of the debt, including identification of the judgment, if any;

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate FSA office.

(g)(1) After FSA has complied with the provisions of this part, FSA may request other agencies of the Government to offset amounts payable by them to persons indebted to FSA.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 792.19 shall apply.

(h)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to FSA.

(ii) Debts to other agencies of USDA as determined by FSA.

(iii) Debts to other government agencies as determined by FSA.

(2) In the case of multiple debts involving the same debtor, FSA may, at its discretion, deviate from the usual order of priority in applying recovered

amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by FSA based on the facts and circumstances of the particular case.

(i) Amounts recovered by offset for FSA and CCC debts but later found not to be owed to the Government shall be promptly refunded.

(j) The debtor shall be notified whenever any offset action has been taken.

(k) Offsets made pursuant to this section shall not deprive a debtor of any right he or she might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(1) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by FSA.

(2) When FSA determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

(m) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(n) Offset action will not be taken against payments when:

(1) A debt has been discharged as provided in § 792.16.

(2) FSA determines such action will unduly interfere with the administration of an FSA or CCC program.

(3) The debt has been delinquent for more than ten years or legal action to enforce the debt due FSA is barred by an applicable period of limitation, whichever is later.

[59 FR 15829, Apr. 5, 1994, as amended at 60 FR 43706, Aug. 23, 1995]

§ 792.8 Priorities of offsets versus assignments.

(a) No amounts payable to a debtor by FSA shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

Farm Service Agency, USDA

§ 792.10

(b) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC-36 shall be subject to offset for any debt owed to FSA or CCC or any judgment in favor of the United States without regard to the date notice of assignment was accepted by FSA or CCC.

(c) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC-252 shall be offset:

(1) Against any debt of the assignor entered on the debt record of the applicable FSA office prior to the filing of such form with FSA or CCC, or

(2) At anytime, regardless of the date of filing of such form with FSA or CCC, if the debt which is the basis for the offset arises from a judgment in favor of the United States, or under the same contract under which the payment is earned by the assignor.

(d) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which have not been reduced to judgment, and which are entered on the debt record of the appropriate FSA office prior to the date the notice of assignment was accepted by FSA or CCC.

(e) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

§ 792.9 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by FSA to ensure that the interests of FSA and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of FSA or the United States only if FSA determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of FSA;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of FSA;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of FSA;

(5) The facts available to FSA are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of FSA has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due FSA or CCC, withholding action by FSA on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 792.10 Late payment interest, penalty and administrative charges.

(a) Late payment interest provisions of this section shall not apply:

(1) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged to the extent authorized under the common law or applicable statutory authority.

(2) If an applicable statute, regulation, agreement, or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(3) If the late payment interest is waived by FSA in accordance with § 792.11.

(4) To administrative charges as set forth in paragraph (f) of this section.

(b) FSA will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued program interest, and any other charges which are otherwise due and owing to FSA on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which FSA charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value