**UNITED STATES DEPARTMENT OF AGRICULTURE**
Farm Service Agency
Washington, DC 20250

**Notice FLP-228**

**For:** State and County Offices

**Screening Process for FLP Treasury Offset (TOP) Calendar Year 2001, Phase 2**

**Approved by:** Deputy Administrator, Farm Loan Programs

Carolyn B. Cooksie

## 1 Overview

### A Background

The Debt Collection Act, as amended by the Debt Collection Improvement Act of 1996 (DCIA) requires that delinquent debtors be referred to TOP for administrative offset of Federal Government payments, including the following:

- income tax refunds
- Federal salary pay, including military pay
- Federal retirement, including military retirement pay
- contractor and vendor payments
- certain Federal benefit payments issued under the Social Security Act (other than Supplemental Security Income), part B of the Black Lung Benefits Act, and any law administered by the Railroad Retirement Board (other than tier 2 benefit payments)
- other Federal payments, including certain loans, that are not exempt from offset.

**Note:** Social Security disability payments are eligible for TOP offset.

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| Disposal Date | Distribution |
|---|---|
| September 1, 2002 | State Offices; State Offices relay to County Offices |

## 1 Overview (Continued)

**A**
**Background (Continued)**

A 2-phase process is being used to screen for TOP offset eligibility. Notice FLP-219 provided phase 1 screening of delinquent debtors 90 calendar days or more past due for eligibility to receive the 60-day due process notice. In phase 2, implemented by this notice, Field Offices will delete debtors before certification if the borrower resolves the delinquency.

**B**
**Purpose**

This notice provides:

- guidance on determining eligibility for TOP offset certification
- instructions for deleting debtors on the TOP offset update screens.

**C**
**Contacts**

Address questions about this notice as follows:

- County Offices shall contact the State Office
- State Offices shall contact:
  - LSPMD at 202-720-1653 for questions about FLP procedures
  - KCFO, St. Louis, Loan Operations Division, Program Reporting Branch at 314-539-2494 for questions about the screening process.

## 2 KCFO, St. Louis Finance Office Responsibility

**A**
**Debtors Selected for TOP Offset Screen**

Beginning the week of September 10, 2001, KCFO, St. Louis made the TOP offset online screens available to State and County Offices. All borrower loans that were on the screens and not deleted in phase 1 will be reflected and must be reviewed on an ongoing basis. The delinquency amounts reflected on the due process letters were as of September 7, 2001, and will appear on the phase 2 screens. For accounts that have an acceleration (ACL), foreclosure action pending (FAP), or court action pending (CAP) flag, or are cost item loans, employee defalcations, or fully matured, the delinquent amount is the total unpaid principal and interest.

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## 2 KCFO, St. Louis Finance Office Responsibility (Continued)

### A Debtors Selected for TOP Offset Screen (Continued)

Debtors who have requested servicing under FmHA Instruction 1951-S are **eligible** for offset until a settlement or repayment plan has been approved by FSA. Debtors flagged "51-S" have been included. The servicing office must review each account with this flag. Debtors flagged "51-S" whose account appears delinquent because of Transaction Code 5S or 5T problems should be deleted. Contact your KCFO, St. Louis Finance Office loan servicing team to verify delete eligibility because of transaction processing problems.

Currently Not Collectible (CNC) borrowers submitted by the State Offices to KCFO, St. Louis for manual addition to the TOP screens are included. Exceptions to the above are:

- an amount less than $25
- BAP or SAA flag
- paid code is other than S00, S03, or S07
- class of writeoff code (CWC) is other than 5
- no Online History or AI screen is available
- non-CNC judgments that were included in error.

**Note:** The capability to add non-CNC judgments, newly delinquent loans, and delinquent leases is currently under development. When this is ready for implementation, you will be provided with appropriate guidance.

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### B Notice to Debtors

During the week of September 10, 2001, KCFO, St. Louis sent a 60-calendar-day due process notice to all debtors not deleted on the TOP offset online screens in phase 1. Debtors have 60 calendar days from the date of receipt to provide evidence in writing to the servicing official that their debt should not be offset.

**Note: The notice does not provide new appeal rights.** See Exhibit 1.

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## 3 County Office Responsibility

**A**
**Screening**

During the week of September 10, 2001, servicing officials were provided access to the TOP offset online screen. Only borrowers who received a due process notice will be reflected on the screens. Servicing officials have until 3:30 p.m. central standard time (CST) December 7, 2001, to:

- review the online screens and determine whether each loan is eligible for TOP offset certification

- verify the accuracy of any flags on the debtor's account and correct them if necessary

- review Exhibit 2 for delete codes that will be programmatically generated based on the status of the debtor's account when the certification process is run

  **Note:** No servicing office action is needed for debtors who fit the delete code criteria in Exhibit 2.

- enter a delete code for **each** loan that is ineligible, based on criteria in Exhibit 3. (Do not use codes which do not appear on Exhibit 3.)

CNC loans must be critically reviewed before determining TOP eligibility. **Do not delete any CNC loans on the screen for any reason.** CNC borrowers should be removed by FAXing FSA 1956-22 to KCFO, St. Louis at 314-539-6266. If any CNC loan is past either the 6-year statute of limitations (for cross-servicing) or the 10-year statute of limitations (for TOP referrals), notate the statute of limitations date and basis on the form. Refer to Notice FLP-213 for further information on determining whether the statute of limitations has expired.

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## 3 County Office Responsibility (Continued)

**A Screening (Continued)**

CAP and FAP flagged loans are included on the screens. Review the borrower file to determine eligibility, as follows.

- CAP flagged accounts should be deleted with code 03 **only** if legal action other than bankruptcy or foreclosure prohibits offset. (Loans involved in a discrimination lawsuit remain eligible for offset pending the outcome of the lawsuit.)

- FAP flagged accounts should be deleted with code 01 **only** if administrative offset would jeopardize litigation under the applicable State law.

For debtors whose files are being handled in another office, contact that office for a determination of eligibility.

If the servicing official is not able to access that office's debtors, and the servicing official is aware that there should be debtors on the screens, contact the State Office.

**Note:** Each loan must be reviewed because the 10-year statute of limitations for collection by offset may have expired. Questions concerning statute of limitations determinations should be directed to the Regional OGC office. Use delete code 09 for **open** (non-CNC) loans only.

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## 3 County Office Responsibility (Continued)

**B**
**How to Access Screens**

County Offices can view and delete debtor loans from the TOP offset online screens as follows.

On the Online Subsystem Selection Menu, select "TOPOFFST". The Borrower Selection Menu will be displayed.

On the Borrowers Selection Menu, enter 1 of the following to view all borrowers by servicing office or to view an individual borrower by case number.

ENTER "2" in the "Enter Option" field to view borrowers by State and county. Enter the 2-digit non-FIPS State code (former FmHA code) in the "Enter State" field. Enter all 5 digits of the FSA servicing office mail code, which is the 2-digit non-FIPS State code and the 3-digit servicing office code, and PRESS "Enter".

ENTER "3" in the "Enter Option" field to view borrowers by case number. Enter all 5 digits of the FSA servicing office mail code, which is the 2-digit non-FIPS State code (former FmHA code) and the 3-digit servicing office code, in the "Enter State and County" field. Enter the entire 15-digit borrower case number in the "Enter Case Number" field, and PRESS "Enter". The loans for the borrower requested will be displayed if the borrower is within the requestor's servicing jurisdiction.

ENTER "4" in the "Enter Option" field to return to the Online Subsystem Selection Menu, and PRESS "Enter".

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## 3 County Office Responsibility (Continued)

### C
### Deleting Debtors

After accessing debtors through option 2 or 3 on the Borrowers Selection Menu, follow these steps to delete a loan (**and any cost item related to the loan**) if ineligible for offset.

| Step | Action |
|---|---|
| 1 | Enter the applicable delete code from Exhibit 3 in the "DLT CDE" field on the line for the loan number to be deleted. If all of a debtor's loans are to be deleted, a delete code **must** be entered for each loan. |
| 2 | Enter any delete codes needed for all borrowers and their loans displayed on the page of the screen. |
| 3 | PRESS "Enter".<br><br>**Note:** "Enter" must be pressed for each page if a delete code has been entered. If "PF8" or "PF7" is pressed without pressing "Enter" first, the delete code will not be processed. |
| 4 | Once "Enter" has been pressed, "Borrower(s) Processed" will be displayed on the bottom left of the screen. The delete codes will be displayed in the loan line under the "Delete Code" column, which is left of the center of the screen. The current date will be displayed in the "Delete Date" column in the center of the screen. |
| 5 | Continue this process for all pages displayed for the requested servicing office or borrower. |

Debtors remaining undeleted after screening should be in 1 of the following categories and not in bankruptcy:

loans at least 90 calendar days past due, with no approved repayment or settlement agreement

- CNC loans
- employee defalcation.

**Note:** Before 3:30 p.m. CST on December 7, 2001, the delete code previously entered may be changed by inputting "00" if the debtor becomes eligible for offset, or by entering a new delete code. Any debtor loans that have no delete code input by 3:30 p.m. CST on December 7, 2001, or generated in the update process immediately following, will be certified.

## 4 State Office Responsibility

### A Accessing the Screens

State Offices will be able to delete problem accounts serviced by their office online, if necessary. See subparagraph 3 A for screening loans.

State Offices can access the TOP offset screens as follows:

- select "TOPOFFST" from the Online Subsystem Selection Menu
- ENTER "1" in the "Enter Option" field to view all borrowers in the State selected
- enter the 2-digit non-FIPS State code in the "Enter State" field and PRESS "Enter". All debtors within the State will be displayed. Follow the steps in subparagraph 3 C to delete any applicable loans.

To delete a loan for a specific borrower, follow the steps in subparagraphs 3 B and C using option 3.

### B Verifying Screens Process

State Offices must follow up with County Offices to ensure that the screening process has been completed by 3:30 p.m. CST on the December 7, 2001, deadline.

To verify that the screening process has been completed, view each servicing office screen for delete codes other than "00". If this field is "00" for all borrowers in the servicing office, there may be no debtors who are ineligible or the delete codes have not been processed. Contact servicing offices that have no delete codes on the debtor loans to verify that the screening has been completed, and that no access problems exist.

## 60-Day Due Process Notification

### 60-Day Due Process Notification

September 10, 2001

Dear Debtor:

Our records indicate that you are more than 90 days past due on debt owed to the U.S. Department of Agriculture, Farm Service Agency (FSA). On September 7, 2001, the debt included the delinquent loans listed on the enclosure. You have 60 days to resolve this delinquent debt.

The following options are available to you for resolving this delinquent debt:

- Pay the delinquent debt outstanding on your loans at your local servicing office not later than November 30, 2001.

- Make settlement arrangements with your local servicing office. If immediate payment would create a serious financial hardship, you may request consideration of a written repayment agreement with FSA. This request must be submitted in writing before October 30, 2001, and must state the specific repayment terms desired.

  **Note:** To verify that immediate repayment of the delinquency would cause serious financial hardship, signed financial statements must be provided with any settlement or installment request. The financial statements must list all income and expenses and also include a balance sheet listing all assets and liabilities.

  Inform your servicing office of any bankruptcy proceedings. Debtors who have filed for bankruptcy, and for whom an automatic stay is in effect, may not be subject to collection actions. If this provision applies, please submit a copy of the bankruptcy petition to your local servicing office by November 30, 2001.

If the delinquent debt is not involved in a bankruptcy proceeding and is not paid in full or settled by November 30, 2001, the United States Treasury Department will be notified to collect the delinquent amount by offset from the following Federal Government payments due you if applicable:

- Income tax refunds

- Federal salary pay, including military pay

- Federal retirement, including military retirement pay

- Contract or vendor payments

- Certain Federal benefit payments, such as Social Security, Railroad Retirement (other than tier 2), and Black Lung (part B) benefits.

- other Federal payments, including certain loans to you, that are not exempt from offset.

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**60-Day Due Process Notification (Continued)**

All debt is referred to commercial credit bureaus quarterly.

After all security has been liquidated and if debt remains which has not been settled with FSA, the debt may also be referred to Treasury or a Treasury-designated collection agency for potential referral to private collection agencies, and possible administrative wage garnishment.

The amount referred for collection will include the delinquent principal, any accrued interest, as well as collection costs. The debt may also be referred to the U.S. Department of Justice for litigation.

You have the right to obtain a copy of the records for the listed delinquent debt. To obtain a copy of the records, send a written request to your local servicing office. Please provide your social security number or employer identification number and your complete mailing address with the request.

You have the right to a review of the validity of the delinquent debt amount. Any request for review must be made in writing to your local servicing office by October 5, 2001. Please explain the reason for any challenge. Include any written evidence available to support your position. The information provided will be reviewed. You will be notified in writing of a determination.

Additional interest is accruing daily on this delinquent debt. The total due will continue to increase until the delinquency is paid or settled. Any discharged debt will be reported to the Internal Revenue Service (IRS) on Form 1099-C, Cancellation of Debt. If a recent payment has been made on the delinquency, the payment may not be reflected in the total shown due.

If a joint Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

For further information, please call your local servicing office or our toll-free number at 1-800-428-9643.

Sincerely,

LESTER R. FLANDERMEYER
Director, Kansas City Finance Office

**IRS Offset Programmatic Delete Codes**

| Code | Description |
|---|---|
| 02 | Account has a “BAP” flag. |
| 08 | Account has an “SAA” flag. |
| 13 | A cost item reversal put a Z99 paid code on the account. Transaction code 4A or 4D put a Z97 paid code on the account. |
| 17 | Loan is current or paid in full by cash payment. |
| 19 | Loan is satisfied by other than those reasons in codes 13, 17, and 38. |
| 38 | Account has been written off with a class of writeoff code other than “5”. |

**TOP Offset Online Screen Delete Codes for Non-CNC Loans**

| Code | Description |
|---|---|
| 01 | Account has been referred to OGC or Department of Justice for foreclosure, and collection by offset would jeopardize the litigation under State law.<br><br>**Note:** Existence of a foreclosure action pending flag is not a determining factor. Remove any erroneous flag. |
| 02 | Loan has been discharged in bankruptcy, and debtor is no longer liable or is under the jurisdiction of a bankruptcy court, and the debt has not been reaffirmed.<br><br>**Note:** Existence of a bankruptcy action pending flag or a Collection Only code of 8 is used as a determining factor in the programmatic screening. Remove any erroneous flag or erroneous Collection Only code of 8. |
| 03 | Legal action, other than bankruptcy or foreclosure, prohibits offset.<br><br>**Note:** Loans involved in a discrimination lawsuit remain eligible for offset pending the outcome of the lawsuit. |
| 07 | Borrower was indebted to FSA before entering full-time active duty military service and is serviced according to RD Instruction 1950-C. |
| 08 | Loan is current under a Subject to Approved Adjustment (SAA).<br><br>**Note:** SAA is a bankruptcy reorganization plan or debt settlement adjustment. Borrowers who are delinquent in a reorganization plan will be ineligible for offset if still under court jurisdiction. |
| 09 | Loan is past the 10-year statute of limitations to collect by offset.<br><br>**Note:** Use this code only for non-CNC accounts. See subparagraph 3 A for instructions on how to handle CNC accounts. |
| 16 | Repayment plan has been approved by FSA. |

**Note:** It is critical that no CNC accounts are deleted on the TOP offset screens. See subparagraph 3 A.