# FSA
## HANDBOOK

# Direct Loan Servicing – Debt Collection and Resolution

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

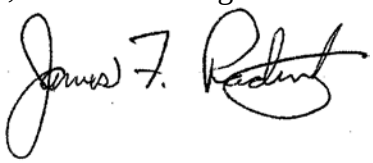
7-FLP

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

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

| Direct Loan Servicing – Debt Collection and Resolution 7-FLP | Amendment 3 |
|---|---|

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



## Amendment Transmittal

### A Reasons for Amendment

Paragraph 1 has been amended to clarify the handbook purpose and sources of authority.

Paragraph 3 has been amended to remove information provided in 1-FLP.

Subparagraphs 61 D and 81 A have been amended to correct handbook references.

Subparagraph 62 B has been amended to change “running record” to “FBP”.

Exhibit 17 has been amended to update the quarterly review timeframes.

Exhibit 29, subparagraphs 2 B and 7 A have been amended to correct handbook references.

| Page Control Chart | | |
|---|---|---|
| **TC** | **Text** | **Exhibit** |
| | 1-1 through 1-4<br>1-5 (remove)<br>3-1 through 3-4<br>3-31, 3-32 | 17, page 1<br>29, pages 1, 2<br>pages 5, 6 |

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# Part 1 Introduction and Purpose

## 1 Purpose and Sources of Authority

### A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing:

  - ***--**internal administrative offset
  - TOP
  - federal salary offset--*****
  - CNC classification and servicing
  - cross-servicing
  - AWG
  - debt settlement

- roles and responsibilities in implementing regulations and other responsibilities in offset, cross-servicing, and debt settlement.

### B Sources of Authority

***--**The sources of authority for this handbook include the following for internal administrative offset, Federal salary offset, debt settlement, cross-servicing (including AWG), TOP, and FCCS:--*****

- 7 CFR Part 3
- 7 CFR Part 1951, Subpart C
- 7 CFR Part 1956, Subpart B
- 31 CFR Part 285
- 31 CFR Parts 901 through 904 *** * ***
- various laws and statutes passed by Congress, including CONACT and DCIA.

## 1 Purpose and Sources of Authority (Continued)

### C Regulation References

Text in this handbook that is published in the CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement in the CFR
- may be used to support adverse FSA decisions.

**Note:** Cross-references printed in bold cite a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in nonbold text in parenthesis (within the bold text).

**Example:** Subparagraph 243 A provides **"[7 CFR 3.53(c)] Upon expiration of the 60-day period for review, or upon completion of a review under subpart F that upholds the agency's determination of the debt** [Parts 2 and 3]**, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset."**

**Note:** The text **"review under subpart F"** refers to 7 CFR 3.53(c). The nonbold reference indicates that 7 CFR 3.53(c) is included in Parts 2 and 3.

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

| IF the area of concern is about… | THEN see… |
|---|---|
| appeals and mediation | 1-APP. |
| civil rights compliance and administration for FSA programs | 18-AO. |
| common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX | 1-CM. |
| direct loanmaking | 3-FLP. |
| direct loan regular or routine servicing | 4-FLP. |
| direct loan servicing – special and inventory property management | 5-FLP. |
| disaster designations | 1-DIS. |
| Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, Land Contract Guarantee Program, and servicing of minor loan programs | 6-FLP. |
| employee development and training | 6-PM. |
| environmental requirements | 1-EQ. |
| general and administrative regulations governing FLP, and implementing NAD final determinations | 1-FLP. |
| guaranteed loan making and servicing | 2-FLP. |
| personnel management, such as employee conflict of interest | 3-PM. |
| policies and procedures for the acquisition of supplies, equipment, and services | 42-AS. |
| procedures for collecting, maintaining, or disclosing data or information about an individual | 3-INFO. |
| procedures for making records available to the public, other Federal Agencies, and Congress | 2-INFO. |
| processing collections and canceling loan checks and payments | 3-FI. |
| State and county organization and administration policies, procedures, principles, and standards, such as work organization | 16-AO. |
| State and county records management | 25-AS. |

**Note:** RD Instruction 1940-G must be used along with 1-EQ.

### B Helpful Links

The Helpful Links web site at
**https://amistad.sc.egov.usda.gov/flp/InformationalLinks?Action=Links&caller=index**
provides links to useful web sites.

## 2 Related References (Continued)

### C State Supplements

See Exhibit 4 for State supplements required by this handbook. SED's are authorized to issue State supplements to this handbook in addition to State supplements listed in Exhibit 4, according to 1-FLP, subparagraph 2 C.

## 3 FLP Forms

### A Form References

Except as provided in this paragraph, this handbook references forms according to the forms numbering system that became effective December 31, 2007. Forms executed before December 31, 2007, may have a number different from that referenced. See 1-FLP, Exhibit 5 for a comparison of form numbers before and after December 31, 2007.

**Note:** See Exhibit 1 for titles of forms referenced in this handbook.

### B Notary Acknowledgement

***--**See 1-FLP, subparagraph 3 C for guidance on notary acknowledgement for forms.

### C Applicant and Borrower Signatures

See 1-FLP, subparagraph 3 D for guidance on applicant and borrower signatures.

### D State-Modified National Forms

See 1-FLP, subparagraphs 3 E and H for guidance on State-modified national forms.

### E State-Created Forms

See 1-FLP, subparagraphs 3 F and H for guidance on State-created forms.

### F Other Sources of Forms

See 1-FLP, subparagraph 3 G for guidance on other sources of forms.**--***

## 4-20 (Reserved)

## Part 2 Overview of DCIA and FCCS Delinquent Debt Requirements

### 21 Overview

#### A Requirements

DCIA and FCCS require Agencies to use various collection tools, such as TOP and cross-servicing. These requirements are found in:

- 7 CFR Part 3 for DCIA and FCCS for all USDA Agencies
- 31 CFR Part 285 for DCIA for all Government Agencies
- 31 CFR Parts 900 through 904 for FCCS for all Government Agencies.

**[7 CFR 3.1(a)] (3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally shall take precedence over this part.**

**[7 CFR 3.1(b)] (2) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.**

FSA must also coordinate DCIA and FCCS requirements with CONACT requirements when servicing delinquent FLP debt. CONACT requirements are in 5-FLP and will be referenced where applicable.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) revised the offset requirement for FLP borrowers who have program discrimination complaints accepted by the Office of Adjudication. Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, subparagraph 41 I.

Borrowers entering the Armed Forces are impacted by the Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for FY 2005. In addition, both Acts affect FSA loan servicing; therefore, when applicable, accounts will be serviced according to 4-FLP, Part 11.

**21 Overview (Continued)**

**B Timing of Collection Actions**

**[7 CFR 3.30(a)] Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset. Additionally, USDA has chosen to transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart sets forth rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are set forth in subpart D** (Part 4)**, and for administrative wage garnishment in subpart E** (Part 9)**.**

Section 331 D of CONACT requires that borrowers receive loan servicing notification before FSA can take various collection actions.

FLP debt is generally eligible for internal administrative offset and referral to TOP before it is eligible for referral to cross-servicing.

For FLP debt, FSA:

- collects through internal administrative offset as soon as the borrower has received the loan servicing notification package and offset notification

  **Note:** Internal offset includes FSA program payments and other payments within USDA, such as NRCS payments.

- refers debt to TOP for centralized administrative offset after debts are certified as eligible according to Part 4

  **Note:** This is generally after internal offset is already in place, mainly because of the longer TOP due process timeframe (60 calendar days versus 30 calendar days) and automation requirements involved with referring delinquent debt to Treasury. TOP includes Federal payments, such as Social Security benefits, vender payments, etc. Some State payments are also included because of reciprocal agreements with Treasury. In addition, Federal salary offset is currently administered through TOP.

**21 Overview (Continued)**

**B Timing of Collection Actions (Continued)**

- refers debt to cross-servicing after all security is liquidated.

  **Note:** AWG is currently administered through the cross-servicing program.

| IF for… | THEN see… |
|---|---|
| administrative offset | Part 3. |
| TOP | Part 4. |
| Federal salary offset | Part 5. |
| cross-servicing | Part 8. |
| AWG | Part 9. |

**C Notification**

The agency official will inform the debtor as required under 7 CFR 3.11(b). These notifications are included, as applicable, in the following:

- loan servicing notification packages (5-FLP, paragraphs 67 and 68)
- FSA-2701, FSA-2702, FSA-2703, and FSA-2704
- 60-day due process letter (Exhibit 7) to refer delinquent debt to Treasury
- FSA-2710
- FSA-2716 and FSA-2717.

**Notes:** Excusing or waiving interest and administrative costs does not apply to FLP loans according to 7 CFR 3.17(g). Interest and penalties on FLP debt are determined by the promissory notes.

FLP debt is not referred to cross-servicing based on the "over 180 calendar days delinquent" requirement. 7 CFR 3.31 states that referral is not required if the debt is in litigation or foreclosure. FLP debt is generally referred after all loan servicing has been completed and all security has been liquidated according to 5-FLP.

**D ARA's**

Debtors may submit a written ARA as an alternative to FSA collecting delinquent debt through administrative offset (Part 3), TOP (Part 4), salary offset (Part 5), cross-servicing (Part 8), and AWG (Part 9) according to 7 CFR 3.11(b)(4) and 7 CFR 3.16. See Exhibit 8 for additional information about ARA's.

**22-60 (Reserved)**

# Part 3 Administrative Offset

## 61 Overview and Authority

### A General

**[7 CFR 3.43(a)] … a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt… Also, non-centralized administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (FSA) delinquent debts.**

**[7 CFR 3.43(d)] Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.**

Any FSA payments or commodity loans due to a borrower will be offset for the collection of a delinquent debt owed to FSA, with some exceptions.

The following are not subject to administrative offset:

- the initial payment for planting expenses under CRP
- loan funds from FLP loans or other Federal loan programs
- CAT indemnity payments.

### B Authority

**[7 CFR 1951.102(a)] Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and §1951.106.**

## 61 Overview and Authority (Continued)

### C State Office Responsibility

SED's will ensure that:

- no FSA payments including CRP (except for the initial payment for planting expenses), PFC, LDP, market loan payments, EQIP, LIP, SIP, ECP payments, any other disbursements, and commodity loans are made to a producer who is also delinquent on an FLP debt

- authorized FSA employees are correctly updating, maintaining, and monitoring delinquent debt and eligibility information:

  - in the web-based subsidiary system according to 64-FI and 3-PL
  - in FSAFS according to 58-FI, paragraphs 160, 161, 404, and 405 and 63-FI, Part 5.

### D DD's Responsibility

DD's will ensure that:

- offset notification lists in paragraph 81 are updated monthly

- the lists are provided to all County Offices where the borrower farms

- delinquent FLP debt has been recorded in the web-based subsidiary files, using "FSA Debt" as the "Source of Delinquent Debt Determination", according to 64-FI, *****--paragraph 81 and 3-PL (Rev. 2), paragraph 33--*****

- the "Other Agency Claim" flag is set in Financial Services, Customer Profile and NPS, according to 64-FI, paragraph 81

- information on FLP delinquent debt is updated timely and accurately in FSAFS according to 63-FI, Part 5

- applicable program payments are offset, and the offset monies are properly credited to delinquent FSA debts.

## 62 Offset Notification

### A When 90 Calendar Days Delinquent

**[7 CFR 3.41(c)] The Notice of Intent to Collect by Administrative Offset shall be included as part of a demand letter issued under §3.11** (paragraph 21) **to advise the debtor of all debt collection possibilities that the agency will seek to employ.**

The authorized agency official will send the following by certified mail:

- FSA-2701 to each borrower who is 90 calendar days past due

  **Notes:** The offset notice will be sent in the same envelope with the loan servicing notification package. The notices will be placed back to back with a blank sheet of bold colored paper in between.

  If the borrower was previously sent PLS notices for nonmonetary default, or is actively being serviced as 90 calendar days past due, a new PLS notice will not be reissued.

- FSA-2702 to each nonborrower entity as required.

If the certified mail is not accepted by the borrower or borrower entity, the authorized agency official will ensure that the:

- envelope is placed in the borrower's case file

- documents from the certified mail package are sent to the last known address by first-class mail.

### B Notice Requirements for Offset of Payments to Entities Related to Debtors

If the debtor will receive all, or part, of a payment because of participation in an entity, the authorized agency official will consult the Regional OGC, as needed, to determine whether FSA has a legally enforceable right under State or Federal law, including common law, to pursue payment from the entity.

See Exhibit 12 for additional information about the following:

- offsetting entity payments
- definition of an entity for this paragraph and Exhibit 12 only
- determining debtor's participation in an entity
- guidance on explaining the situation to the Regional OGC.

**62 Offset Notification (Continued)**

**B Notice Requirements for Offset of Payments to Entities Related to Debtors (Continued)**

***--**The FBP will document the basis of FSA's right to pursue the entity payment.**--***

Collection of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the borrower participates.

Notice will be given to nonborrower entities subject to pro rata offset where practicable to do so. Written concurrence from the State Office must be obtained if it is not practicable to notify nonborrowers. The borrower's file must be documented accordingly.

Notices to nonborrower entities should be sent at the same time as notices to borrowers. The entity 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.

Appeal rights to NAD will be provided so the entity has an opportunity to challenge the extent of the debtor's interest in the nondebtor entity.

**Note:** Notice shall be mailed to any person who is authorized by State law to receive service on behalf of the entity. For example, in most States notice provided to the registered agent is sufficient notice for a corporation. Each State should consult their respective Regional OGC to determine what notice is sufficient for the entity involved.

**C When Insufficient Time for Prior Notice and Opportunity to Review**

**[7 CFR 3.41(b)(3)] …when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. …the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the government.**

In cases where the notice in subparagraph A was sent, and a farm program payment is scheduled to be paid before the time periods for review and appeal in connection with the notice has expired, the authorized agency official will determine whether failure to offset the payment 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.

## 62 Offset Notification (Continued)

### C When Insufficient Time for Prior Notice and Opportunity to Review (Continued)

If the payment should be offset, the authorized agency official will:

- request concurrence from SED to send FSA-2703 (borrower) and/or FSA-2704 (nonborrower entity)
- insert the reasons for taking immediate offset on FSA-2703 and FSA-2704

  **Note:** Examples might include:

  - loans are seriously undersecured
  - loans are seriously delinquent with little attempt to make payments
  - the borrower has a history of unauthorized disposition of security
  - the borrower has a history of paying unsecured accounts or junior lienholders first and failure to collect the payments would result in additional financial losses to the Government.
- attach FSA-2701 when mailing FSA-2703
- attach FSA-2702 when mailing FSA-2704
- send the forms by certified mail.

**Note:** Offset is prohibited until an FLP loan is 90 calendar days past due.

### D Timeframes

Timeframes will commence from the date certified mail is accepted by the borrower, or 3 calendar days following the date of first-class mailing.

Offset will begin for:

- FSA-2701 and FSA-2703 on the 31st calendar day, or when a stay of offset expires according to paragraph 63
- FSA-2702 and FSA-2704 immediately

## 63 General Requirements and Due Process

### A Feasibility

SED, working with OGC, will determine whether offset is not feasible. Determinations will consider legal impediments to administrative offset, such as the 1-action rule in a State where pursuing offset could jeopardize FSA's ability to foreclose on the security, contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

Determinations concerning legal impediments, and relevant communications with the Regional OGC and/or DOJ, should be documented in the borrower's case file.

### B Resolving the Delinquency

To prevent administrative offset, the borrower must:

- pay the account current or in full
- submit a proposed ARA that is acceptable to FSA
- submit a debt settlement offer on RD 1956-1 that is acceptable to FSA.

### C Stays

While offset can be stayed when a debtor requests FSA review according to Exhibit 13 or FSA accepts ARA, stay will not be granted when:

- PLS has begun and is not concluded
- FSA determines that a situation exists that requires proceeding with offset
- a debtor appeals to NAD.

If offset collections are later determined not to be subject to offset, they will be promptly paid to the debtor.

**63 General Requirements and Due Process (Continued)**

**D Inspect and Copy Records**

**[7 CFR 3.42(a)] A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.**

See 2-INFO if a debtor requests a copy of their file or records. FSA will pay copying costs for 1 copy. If a debtor requests to inspect or copy FSA records after the 30-calendar-day timeframe, access will be provided; however, no stay of administrative offset will occur. See 3-INFO:

- paragraph 17 for information about records holding office responsibility
- paragraph 20 for information about legal basis for withholding information.

**E ARA**

ARA's will be considered according to Exhibit 8, but cannot prevent, suspend, or delay the statutory PLS requirements in 5-FLP.

FSA's decision to not accept an ARA request is not appealable. However, the borrower may still appeal FSA's decision to use offset.

**F FSA Documentary Review or Hearing**

**[7 CFR 3.42(c)] A debtor must request an administrative review of the debt under subpart F** (this paragraph) **within 30 days of the date of the Notice of Intent to Collect by Administrative Offset.**

See Exhibit 13 for additional information about FSA documentary review or hearing.

**64-80 (Reserved)**

## 81 Internal Administrative Offset to Collect Delinquent FLP Debt

### A Reports

For relevant reports, refer to the following:

- 63-FI, paragraph 178 for FWADM Active Other Agency Offset Profiles Report
- 64-FI, paragraph 72 for a list of FWADM reports in NRRS
- 1-FLP, Part 3 for DLS, GLS, FOCUS, and Data Mart
- ***--**3-PL (Rev. 2), Part 8 for delinquent debt determinations in web subsidiary.**--***

### B FSAFS System

See 63-FI, Part 5 for guidance on establishing, modifying, and canceling "Other Agency Debt" indicators for FLP debt.

### C Requesting and Canceling Offset

**[7 CFR 3.43(c)] A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:**

**(1) The debtor has been provided notice and opportunity for review as set forth in §3.41;** (paragraph 62) **and**
**(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.**

After the expiration of any stays or the conclusion of any applicable reviews, the authorized agency official will notify the State Office of those borrowers in their area who are subject to offset for delinquent FLP debts, including individually liable members of entities and nonborrower entities.

As long as the borrower's account remains in default, a subsequent notice is not required to be made to the State Office to continue offsetting payments or disbursements.

When a delinquent debt has been resolved through payment in full, or is no longer eligible for offset for other reasons, such as bankruptcy, the authorized agency official will notify the State Office to remove the borrower from internal administrative offset, TOP (Part 4), and cross-servicing (Part 8), as needed.

## 81 Internal Administrative Offset to Collect Delinquent FLP Debt (Continued)

### D Timing of Offset

**[7 CFR 3.43 (b)] A non-centralized administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under §3.42(c)** (subparagraph 63 F) **is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under §3.41(b)(3)** (subparagraph 62 C) **that immediate action to effectuate the offset is necessary.**

### E Offset Collections

Collections received through offset will be processed as regular payments and credited to the delinquent debts. Payments will have an application code "A".

If the debtor owes more than 1 type of FSA debt, the priority of the delinquent FSA debts to be paid from offset collections will be according to 58-FI and 4-FLP.

### F Continuation of Offset

**[7 CFR 3.41(b)(4)] … With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. … Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.**

Once offset collection is in place for a delinquent FLP loan account, offset will continue until the account is brought current, paid in full, not eligible for offset (such as during certain bankruptcy proceedings, etc.), or otherwise resolved.

If the account is brought current, any subsequent delinquency would require new notification of FSA's intent to collect the delinquency through offset.

### G Refunds

Refunds of amounts offset, plus interest, will be made within 45 calendar days if FSA determines an amount should not have been offset or that the debtor has prevailed in an administrative appeal.

The 90-calendar-day Treasury bill rate will be used to calculate interest payable to the debtor.

**Note:** See 64-FI, Part 4 for processing FLP refunds through NRRS.

**82-100 (Reserved)**

# Part 4 TOP

## 101 Quarterly Screening Process for TOP

### A Background

The Debt Collection Act, as amended by DCIA, requires that delinquent debtors be referred to TOP for administrative offset of Federal and some State Government payments. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) revised the offset requirement for FLP borrowers who have program discrimination complaints accepted by the Office of Adjudication.

### B Purpose

This part provides guidance on:

- the 2-step process required to certify FSA direct FLP delinquent borrower/co-borrower debts to Treasury for offset on an ongoing, quarterly basis
- determining eligibility for referring borrower/co-borrower debts to Treasury for TOP offset
- refunding co-borrower TOP offsets
- instructions for updating co-borrowers/related entities in the DLS Customer Profile
- instructions for deleting:
  - borrowers/co-borrowers on TOP offset update screens
  - bankruptcy cases.

## 102 Discrimination Complaints and TOP

### A Accepted Complaints

Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, subparagraph 41 I.

Accounts that have no security remaining, which have been accelerated or where all loans are mature, such as those classified CNC, will continue to accrue interest and be subject to administrative offset.

In cases where loans are not eligible for TOP, according to 1-FLP, subparagraph 41 I, use delete code “11” to remove them from the TOP Offset Screens.

## 103 SOL for TOP

### A Nonjudgment Debt

There is no SOL for offset of nontax nonjudgment debt.

### B Judgment Debt

There is a 20-year SOL for offset of judgment debt.

## 104 TOP Screens and Process

### A Co-Borrower Selection and Changes

Co-borrower information for TOP is selected from the DLS Customer Profile. In DLS, co-borrowers are considered related entities. To link, view, update, and unlink related entities through the loan making process, follow the procedure in the DLS Loan Making User's Guide, Part 3, Sections I through L. To view, create, and update related entity information through the loan servicing process, follow the procedure in the DLS Loan Servicing User's Guide, Section 4.2.5.

Both guides may be found on the FLP Systems web page located at **https://amistad.sc.egov.usda.gov/flp/InformationalLinks?Action=Manuals&caller=index**.

### B TOP Weekly Update

All loans on the Borrowers Eligible for TOP Offset Certified Screen will be available for review and manual deletion on an ongoing weekly basis. PRD DCIB and State Offices have delete capability; County Offices and DLD FaSB have view capability. State Offices are responsible for processing all deletes. The monthly RC 540 and its parts will be used to programmatically update or delete certified borrower/co-borrower loan information at TOP each weekend. The screens will be taken down by 2:30 p.m. c.t. on Fridays and made available on Tuesdays.

### C Debtors Displayed on Borrowers Eligible for TOP Offset Screens

The monthly RC 540 and its parts will be used on an ongoing basis to select and update delinquent loans eligible for offset. The TOP Selection process is usually run the last 2 weeks of the quarter. The screens will be made available to State and County Offices according to the timeframe in Exhibit 17.

## 104 TOP Screens and Process (Continued)

### C Debtors Displayed on Borrowers Eligible for TOP Offset Screens (Continued)

The screens will be displayed with all delinquent loans for:

- borrowers/co-borrowers who are not at TOP and fall into 1 or more of the following categories:

  - 90 calendar days past due
  - at least $25 delinquent
  - **not** flagged "BAP"
  - **not** a boll weevil loan
  - **not** flagged "SAA"

  **Notes:** Loans listed will include Apple loans, Bureau of Reclamation loans, and debts classified CNC.

  Borrowers on full-time active duty in the Armed Forces are not eligible for TOP. See 4-FLP, Part 11 for guidance on servicing borrowers on full-time active duty.

- debtors/co-debtors who have:

  - employee defalcations
  - judgments **not** currently certified
  - delinquent equity receivables or loan suspensions
  - delinquent leases
  - TPJ's, both borrower and third parties, if they are in SCIMS and linked as related entities in the DLS Customer Profile
  - filed bankruptcy, but have not been flagged "BAP".

To prevent selection for TOP when a borrower/co-borrower is no longer eligible for TOP, such as individual bankruptcy, release from liability, deceased, etc., users must:

- delete the loan on TOP screens with the appropriate code
- unlink the co-borrower as a related entity in the DLS Customer Profile.

## 104 TOP Screens and Process (Continued)

### C Debtors Displayed on Borrowers Eligible for TOP Offset Screens (Continued)

If a co-borrower later becomes eligible for TOP, such as when a bankruptcy is dismissed, remove or change the "BAP" flag, and/or link the co-borrower as a related entity, as appropriate.

Loans will be selected each quarter, even if manually deleted in a prior quarter, if the loan continues to appear delinquent on ADPS and no circumstance would generate a programmatic delete. Specific examples are ineligible judgment loans, SAA loans, loans involved in bankruptcy with no "BAP" or "SAA" flag on the account, and loans related to a settlement agreement or a problem case being worked by NFAOC where ADPS transactions have not been processed. See Exhibits 18 and 19 for descriptions of programmatic delete codes and the manual delete codes available for State Office use.

To accommodate TOP selection for TPJ loans, the third party's name, address, and TIN must be entered in SCIMS. Ensure that the third party is not already in SCIMS before attempting to add them. The third party must also be linked as a related entity in the DLS Customer Profile. Select "co-borrower" as the type of related entity. The TOP selection process will bring in all loans. The loans for the primary borrower and any original co-borrowers should be deleted, if appropriate. This will leave only the third party's debt in TOP.

Borrowers who have requested loan servicing or debt settlement are eligible for offset until the loans have been brought current through payment or restructure, or a settlement or repayment plan has been approved by FSA.

Salary offset collections for delinquent debtors are being handled by Treasury through the TOP offset process. These payments will be biweekly and have a "T" application code.

### D State Tax Refunds and State Vendor Payments Included in TOP Centralized Offset

DCIA contains a provision that allows the State to enter into reciprocal agreements with Treasury to collect unpaid State debt by offset of Federal nontax payments and the Federal Government to collect delinquent nontax debt by offset of State payments.

The 60-day TOP Due Process Notification Letter (Exhibit 7) was modified to include State payments.

## 104 TOP Screens and Process (Continued)

### E TOP Refunds

FAX FSA-2722 to PRD DCIB at 314-457-4478 only if a refund is needed, or the loan needs to be recalled from cross-servicing.

**Note:** FSA-2722 is only to be used for TOP and cross-servicing refunds and cross-servicing recalls. If FSA-2722 is used for an internal administrative offset or regular payment refund request, processing of the refund may be delayed.

Refunds must be made to the specific person who was offset. PRD DCIB will determine whether the refund will be manual or programmatic. The refund will be programmatic if the person receiving the refund is in ADPS and no other name will be on the check. Full refunds will include the TOP fee amount. Partial refunds will not include the TOP fee amount.

The following information must be provided on FSA-2722, item 16B, if a check must be sent to other than the County Offices:

- name of the person or persons to whom the check should be made payable
- address where the check should be mailed

  **Note:** Manual refunds may be sent directly to the borrower's/co-borrower's address; however, this is discouraged because the County Office then has no confirmation the refund was received. It is critical to specify where the check must be sent.

- effective date the borrower/co-borrower was no longer eligible for offset (the date of bankruptcy filing, date paid current, repayment agreement date, etc.) and which person was involved.

**Note:** To ensure timely and accurate processing of refund requests, all FSA-2722 refund requests must be FAXed to PRD DCIB only at 314-457-4478, not to DLD FaSB. PRD DCIB monitors and tracks all refunds.

## 104 TOP Screens and Process (Continued)

### E TOP Refunds (Continued)

When completing FSA-2722 for a borrower/co-borrower who has a monthly offset occurring or the amount of the offset is unknown and the offset needs to be refunded, enter the following:

- in item 13, the amount of the offset in ADPS Online History, which is the amount of the offset taken by Treasury minus any TOP and/or salary offset fees

- in item 16B, the date specified should be the date the loan was no longer eligible for offset, such as the bankruptcy filing date, date SED signed the settlement agreement, etc.

**Note:** It is not necessary to wait to FAX FSA-2722 until the offset appears on ADPS. However, FSA-2722's will be held by PRD DCIB until the payment arrives and is applied to the loan. This usually takes 2 to 3 weeks from the date of offset.

## 105 County Office Responsibilities

### A Screening

On an ongoing basis, County Offices will be provided view-only access to the TOP Offset Online Screens. Since County Offices do not have the authority to delete loans on the TOP Offset Online Screens, County Offices must:

- review the Borrowers Eligible for TOP Offset Screens and determine whether each debtor shown is eligible to receive a 60-day TOP Due Process Notification Letter, or is being referred to TOP for offset

  **Note:** It is critical that borrowers/co-borrowers on this screen are reviewed for TOP due process notification eligibility.

- review the Borrowers Eligible for TOP Offset Certified Screens on an ongoing basis to determine whether any loans need to be removed from TOP

## 105 County Office Responsibilities (Continued)

### A Screening (Continued)

- review Exhibit 18 for delete codes that will be programmatically generated based on the ADPS status of the debtor's account

  **Note:** No County Office action is needed for debtors who meet the delete code criteria in Exhibit 18.

- FAX all FSA-2722 and supporting documentation to the State Office, if a loan needs to be deleted, recalled from cross-servicing, or an offset payment needs to be refunded based on criteria in Exhibit 18 or 19

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

- remove ineligible co-borrowers from TOP eligibility by updating/unlinking them in the DLS Customer Profile.

  **Note:** This action will keep borrowers from being selected in subsequent quarters, but will not programmatically delete the loan from TOP Offset Online Screens. They must still be deleted by the State Office in the current quarter, using the applicable codes.

### B Accessing Borrower/Co-Borrower Accounts

County Offices can view borrower/co-borrower loans in ADPS, on the TOP Offset Online Screens according to Exhibit 20.

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

If the County Office is unable to access any borrowers/co-borrowers and the authorized agency servicing official is aware that there should be debtors on the screens, contact the State Office.

On an ongoing basis, State Offices will be provided access to both of the TOP Offset Online Screens. The responsibility for deleting loans now rests with the State Office; however, the screening process is the responsibility of both the State and County Offices.

## 106 State Office Responsibilities

### A TOP Certification

At the end of each quarter, the TOP Offset Online Screens will be taken out-of-service and all debts not deleted on the Borrowers Eligible for TOP Offset Screen will be certified to Treasury for offset. The Borrowers Certified for Treasury Offset Report will be mailed to State and County Offices within 2 weeks after certification. Borrowers/co-borrowers displayed on this report will be moved to the Borrowers Eligible for TOP Offset/Certification Screen for weekly update capability.

See Exhibit 17 for a tentative timeframe for the quarterly referral process. If changes to the timeframe are needed, a message will be:

- displayed on the ADPS Message Screen
- e-mailed to TOP Coordinators in each State Office.

### B Screening

Delete codes cannot be changed or removed at any time. Loans deleted in error will be picked up for screening in the next selection process. See Exhibit 17 for deadlines for entering delete codes.

**Note:** Delete codes should be entered during the pre-certification screening process.

State Offices will enter a delete code for each loan that is ineligible, based on criteria in Exhibit 19. **Do not use codes that are not included in Exhibit 18 or 19.** Delete code information is tracked and used for quarterly Congressional reporting.

**Note:** No State Office action is needed for debtors who meet the delete code criteria in Exhibit 18, unless there is a suspend code on an account ("ZSPC" on the ADPS AI Screen). A suspend code will prevent a TOP borrower/co-borrower from being deleted programmatically, even if there is a fully paid code on the loan.

State Offices that transfer loans to a spouse must correct the borrower/co-borrower related entity information in DLS Customer Profile.

## 106 State Office Responsibilities (Continued)

### B Screening (Continued)

Judgment loans must be carefully reviewed before determining TOP eligibility. DOJ is responsible for referring debts to TOP when DOJ has jurisdiction. In some cases, DOJ may request that FSA refer debts on DOJ's behalf. Do **not** refer a judgment under DOJ jurisdiction **without** contacting LSPMD at 202-720-1658. If the loan needs to be deleted, use delete code "05".

"CAP" and "FAP" flagged loans are included on the TOP Offset Online Screens. The presence of 1 of these flags on the account is not a determining factor for whether a debtor should be deleted. Review the debtor file to determine eligibility as follows:

- "CAP" flagged accounts should be deleted with code "03" only if the debt is being handled by OGC

- "FAP" flagged accounts should be deleted with code "01" only if offset could jeopardize litigation under State law.

CNC loans must be carefully reviewed before determining TOP eligibility.

If any nonjudgment loan becomes ineligible, input the proper delete code and notify PRD DCIB immediately by FAXing FSA-2722 to 314-457-4478.

### C Accessing Debtor/Co-Debtor Accounts

State Offices:

- will have online capability to delete loans serviced by their County Offices
- may access the TOP Offset Online Screens as described in Exhibit 20.

## 106 State Office Responsibilities (Continued)

### D Deleting Debtors/Co-Debtors

After accessing debtors through the Borrowers Selection Menu, options "1", "2", "3", or "4", delete a loan and any cost item related to the loan according to the following table, if ineligible for offset.

| Step | Action |
|---|---|
| 1 | On the Borrowers Selection Menu, for options:<br><br>• "1" and "2", input all delete codes needed for all borrower/co-borrower loans displayed on the page before pressing "Enter"<br><br>**Note:** Borrowers and co-borrowers are not necessarily eligible for deletion for the same reason or at the same time.<br><br>• "3" and "4", input the applicable delete code from Exhibit 19 in the "DLT CDE" field on the line for the loan number to be deleted.<br><br>**Note:** If all of a borrower's/co-borrower's loans are to be deleted, input a delete code for each loan. |
| 2 | PRESS "Enter".<br><br>**Note:** Users must PRESS "Enter" for each page, if a delete code has been entered. If users PRESS "PF8" or "PF7" without pressing "Enter" first, the delete code will not be processed.<br><br>Once users PRESS "Enter", "Borrower(s) Processed" will be displayed on the bottom-left of the screen. The current date will be displayed in the "Delete Date" column in the center of the screen. To verify the delete codes have processed, ENTER "5" to return to the Subsystem Selection Menu, and PRESS "Enter" again. The delete codes will be displayed in the loan line under the "Delete Code" column, on the left. |
| 3 | Continue this process for all pages displayed for the requested State or County Office or for the requested debtor. |

**107-130 (Reserved)**

# Part 5 Salary Offset

## 131 Introduction

### A Authority

Federal salary offset for delinquent FLP debt is processed according to statutory requirements in 37 U.S.C. 3716, OPM regulations at 5 CFR Part 550 subpart K, USDA regulations at 7 CFR Part 3 subpart G, and FSA regulations at 7 CFR 1951.111 (RD Instruction 1951-C, Section 1951.111).

**Note:** FSA is in the process of:

- adopting 7 CFR Part 3
- updating and moving salary offset from RD Instruction 1951-C.

### B USDA Federal Salary Determination

**[7 CFR 3.70(c)] These regulations do not apply to debts owed by FSA county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.**

County employee salaries are:

- **not** considered Federal salaries for the purpose of offset collection
- subject to administrative offset through Treasury's TOP (Part 4).

Federal employee salary offset collections are also received through Treasury's TOP, after additional due process has been provided.

## 132 Debt Referral and Matching Process

### A Debts in TOP

**[7 CFR 3.72(c)] Mandatory centralized administrative offset. Debts may be referred to Treasury under §3.44 for collection through salary offset in accordance with 31 CFR 285.7.**

**[5 CFR 550.1108] Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS.**

Delinquent debt must be in TOP (Part 4) before FSA can receive Federal salary offset collections.

### B Notification From Treasury

When Treasury matches a Federal salary to a delinquent FLP debt that is at TOP:

- Treasury notifies NFAOC
- NFAOC notifies the applicable State Office
- State Office determines whether Federal salary offset is feasible (paragraph 133) and ensures that Federal salary offset due process is given to the debtor (paragraph 134), within 15 calendar days of receiving notification from NFAOC.

## 133 Feasibility and Certifying Official

### A Feasibility

**[7 CFR 1951.111(c)] 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.**

If there are legal restrictions to collecting the debt, such as bankruptcy or a civil rights complaint, the debt is also not eligible for TOP and should be recalled (Part 4).

**Note:** COC member salaries referenced in this subparagraph are also exempted by 7 CFR 3.70 (paragraph 131).

### B Certifying Official

**[7 CFR 1951.111(b)(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.**

SED is the certifying official for Federal salary offset feasibility determinations and due process notifications.

## 134 Due Process Notification and Hearings

### A Due Process

The State Office ensures that FSA-2710 and FSA-2711 are sent to all liable debtors.

If debtors do not request a hearing within 30 calendar days of receiving FSA-2710:

- State Office notifies NFAOC and provides the following:
  - a memorandum or cover letter
  - copies of due process letters
  - copies of any mail receipts
  - other documentation as needed
- NFAOC notifies Treasury that due process has been provided and salary offset can begin.

### B Hearings

Hearing officers for Federal salary offset are being provided by Treasury.

If debtors request a hearing:

- State Office notifies NFAOC and provides the following:
  - a memorandum or cover letter
  - copies of due process letters
  - copies of any mail receipts
  - other documentation as needed
- NFAOC notifies Treasury of the request
- Treasury provides for a hearing
- State Office ensures that an FSA representative is available to participate in a telephone hearing
- Treasury issues a hearing decision.

**134 Due Process Notification and Hearings (Continued)**

**C ARA**

ARA's will be considered according to Exhibit 8, but cannot prevent, suspend, or delay the statutory PLS requirements in 5-FLP.

FSA's decision to not accept an ARA request is **not** appealable. However, the borrower may still appeal FSA's decision to use offset.

**D Other Collection Actions**

**[7 CFR 3.78(e)] The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt by other means authorized by this part.**

If the hearing officer determines FSA cannot collect through salary offset, FSA can keep the debt in TOP to receive other offset collections, such as from IRS tax refunds, Federal travel reimbursement payments, etc. (Part 4). If eligible, the debt may also be collected through cross-servicing (Part 8) or AWG (Part 9).

**135-160 (Reserved)**

## Part 6 (Reserved)

**161-200 (Reserved)**

## Part 7 Servicing Unsecured Account Balances and CNC Classification

### 201 Servicing Requirements for Unsecured Account Balances

#### A Issuing FSA-2716 and FSA-2717

After all security for the account has been liquidated, and all proceeds have been applied to the loans, the authorized agency official will send FSA-2716 and RD 1956-1 to all borrowers liable for the debt.

In cases of voluntary liquidation and/or third party foreclosures, FSA loans might not have been delinquent at the time of sale. As appropriate, the authorized agency official will ensure that all applicable loan servicing and offset notices are sent according to Parts 2 and 4.

In instances of a conveyance and according to 5-FLP, subparagraphs 497 A and 517 A, the authorized agency official can accept a borrower's conveyance offer and deny a borrower's debt settlement request that was submitted with the conveyance offer. In these cases, after all appeal rights have been concluded and the conveyance has been processed, the authorized agency official will send FSA-2717 to all liable borrowers for any remaining account balance.

If FSA loans were not delinquent at the time of conveyance, the authorized agency official will ensure that all applicable offset notices are sent according to Parts 2 and 4.

**Note:** FSA-2716 or FSA-2717 will be sent as an attachment to 5-FLP, Exhibit 48 for unsecured accounts that have not been previously accelerated.

#### B Continued Servicing

The authorized agency official will determine whether the debt can be classified as CNC if borrowers do **not**:

- pay the debt in full or submit a completed RD 1956-1 within 30 calendar days of the date on FSA-2716
- pay the debt in full within 30 calendar days of the date on FSA-2717.

Internal administrative offset, TOP, and Federal salary offset will continue until the delinquency is cured.

#### C No Remaining Liable Borrowers

If there is a remaining account balance and there are no liable borrowers for the debt because of bankruptcy discharge, death, etc., the authorized agency official will prepare FSA-2731 recommending cancellation according to Part 12.

## 202 CNC Classification

### A Required Notification Before CNC

Before classifying debt as CNC, borrowers must have received the following:

- all applicable loan servicing notices
- FSA-2701, FSA-2702, FSA-2703, FSA-2704, or previous authorized form, as applicable
- 60-day due process letter (Exhibit 7) sent as part of the TOP screening procedure in Part 4
- FSA-2716 or FSA-2717 or previous authorized form, as applicable.

**Note:** Any applicable timeframes about the information in this part must have expired and all security liquidated, conveyed, released, or otherwise resolved.

### B Determining CNC Eligibility and Classification Processing

The authorized agency official will:

- use FSA-2720 to determine CNC eligibility
- submit CNC eligible debt on FSA-2720 to the State Office through DD
- obtain civil rights clearance as set forth in 1-FLP, subparagraph 41 H
- ensure that eligible debts are classified CNC using transaction code 3K, class of write off code 5
- ensure that CNC debt is referred to cross-servicing for collection according to Part 8.

### C Servicing Debts Not Eligible for CNC

The authorized agency official will:

- determine whether the debt can be debt settled according to Part 12
- monitor debt that is **not** eligible for CNC or debt settlement until it:
  - becomes eligible for CNC
  - is paid in full
  - is debt settled, or otherwise resolved.

## 203-220 (Reserved)

# Part 8 Cross-Servicing

## 221 Overview

### A Overview

Referral to Treasury for TOP, cross-servicing, and AWG must be considered before processing debt settlement offers under Part 12. If a greater recovery of taxpayer dollars is possible through referral to Treasury for cross-servicing and/or AWG, then the debt must be referred to Treasury.

As part of cross-servicing, Treasury, or its contracted PCA's, perform various collection actions, such as calling debtors, sending letters to debtors, skip tracing, and negotiating debt settlement offers. FLP debts must be referred to TOP before they are referred for cross-servicing and they must remain at TOP for cross-servicing actions to be taken. Therefore, while debts are at cross-servicing, they are also at TOP and subject to offsets. In addition, Treasury administers AWG through the cross-servicing program; therefore, separate referral to AWG is not required. See Part 9 for AWG information.

**Note:** Borrowers on full-time active duty in the Armed Forces will not be referred for cross-servicing. See 4-FLP, Part 11 for guidance in servicing borrowers on active duty.

## 222 Discrimination Complaints at Cross-Servicing

### A Accepted Complaints

CNC accounts involved in an accepted discrimination complaint according to 1-FLP, subparagraph 41 I, are **not** eligible for cross-servicing. If a CNC debtor files a program discrimination complaint and the Office of Adjudication accepts the complaint as valid, immediately FAX FSA-2722 and supporting documentation to PRD DCIB at 314-457-4478 to recall the debt from cross-servicing. However, CNC debts are still eligible for administrative offset. For:

- servicing accounts with an accepted discrimination complaint, see 1-FLP, subparagraph 41 I
- administrative offset information, see Parts 2 and 3.

## 223 Cross-Servicing Process

### A TOP Screen Certification

The referrals of debt to cross-servicing and TOP are separate processes. However, a debt must have been certified to TOP to be referred for cross-servicing. The information on the TOP screens is used to validate eligibility for both processes.

### B Referring Debt to Cross-Servicing

If the debt is determined to be eligible for CNC according to Part 7, the State Office shall:

- process transaction code "3K" in ADPS with a class of write off code "5" for all debt types except leases, TPJ's, and equity receivables

- refer debts to cross-servicing by completing and submitting FSA-2721 to PRD DCIB by FAX at 314-457-4478

- submit FSA-2721 to PRD DCIB by the 15th of each month to ensure that debts are included in the end of the month referral

  **Note:** Borrowers and co-borrowers (including liable spouses) shall be listed on FSA-2721 with their TIN's and must be referred at the same time. The debtor's last known address will be provided on FSA-2721 if TIN cannot be identified. This debt will be referred to cross-servicing manually. Debts without TIN cannot be referred to TOP.

- respond to each dispute on the debt.

  **Note:** Multiple disputes on the same debt may be received because Treasury and 2 different PCA's to collect the debt. If Treasury does not receive FSA's dispute response within 60 calendar days, the debt will be returned as uncollectible.

The State Office will also receive notification from PRD DCIB when the following occur:

- compromises are offered
- initial cross-servicing payments are received
- debts are returned from cross-servicing
- debt has been resubmitted per State Office request.

## 223 Cross-Servicing Process (Continued)

### C Recalling Debts From Cross-Servicing

When, because of such things as bankruptcy protection, debts no longer meet CNC requirements, the State Office will recall debts from cross-servicing by completing and FAXing FSA-2722, with supporting documentation, to PRD DCIB at 314-457-4478.

**Note:** These debts should also be deleted immediately on the TOP screens, if applicable.

### D FSA Collection Activity

Treasury regulations require that FSA stop all collection activity on debts referred for cross-servicing, including AWG, except TOP offsets, Federal salary offsets, and internal administrative offsets.

Debtors referred to cross-servicing are provided with payment instructions from Treasury and/or PCA's. Debtors must make their payments to Treasury or PCA because there is a significant Treasury/PCA fee debtors must pay.

When a voluntary payment is received from CNC borrowers, the:

- County Office shall call the State Office
- State Office shall check the borrower's current cross-servicing status on FedDebt.

**Note:** If needed, call PRD DCIB at 314-679-6870 for assistance.

If the account has been referred to cross-servicing, the State Office shall notify the County Office to:

- prepare a memorandum to PRD DCIB stating the following:
  - that the payment should have been sent to cross-servicing
  - amount of the check
  - debtor's name
  - TIN
  - relationship to the borrower's or co-borrower's loan
  - case number and loan number
- mail the check and memorandum to the following address:

  USDA, Rural Development
  DLD, Farm Service Branch, FC-1311
  NFAOC, Building 104
  4300 Goodfellow Blvd.
  St. Louis, MO 63120.

## 223 Cross-Servicing Process (Continued)

### D FSA Collection Activity (Continued)

Borrowers referred for cross-servicing will continue to have FSA-2065 and, if applicable, IRS Form 1098 generated at calendar year-end if the account had activity. County Offices shall forward FSA-2065 to the borrower and a copy to the State Office.

### E Debt Settlement Offers

CNC debt may be settled by FSA upon application by the borrower, **if the debt has not been referred to Treasury for cross-servicing, or if all of the borrower's loans have been returned from cross-servicing**. If a CNC borrower submits or inquires about a debt settlement application, the State Office shall access the FedDebt system to determine whether the account has been referred for cross-servicing.

| IF the account has… | THEN inform the borrower that… |
|---|---|
| been referred for cross-servicing and at least 1 loan is still at cross-servicing | the debt is now at Treasury and negotiations need to be with Treasury. Borrowers:<br>• may contact Treasury at 1-888-826-3127<br>• have no appeal rights for settlements rejected by Treasury and returned to FSA. |
| either of the following:<br>• not been referred for cross-servicing (and this referral is not required)<br>• all of the borrower's/co-borrower's loans have been returned from cross-servicing | a debt settlement offer may be considered. See Part 12 for processing debt settlements. |

**Note:** If a debt settlement offer is received after the State Office has submitted the debt for cross-servicing referral on FSA-2721, but the debt has not yet been referred, the State Office should notify PRD DCIB immediately by FAX at 314-457-4478. Include the terms of the debt settlement offer and request a delay in referring the debt for cross-servicing until a decision is made. Notify PRD DCIB immediately when a decision is made. If the offer is rejected, and all appeal rights exhausted, the debt will be sent to Treasury for cross-servicing in the next referral.

## 223 Cross-Servicing Process (Continued)

### E Debt Settlement Offers (Continued)

Treasury will notify FSA and request concurrence for some repayment agreements and compromises. This notification is done on a loan-by-loan basis, not by account. In cases where a debtor has more than one FSA loan referred to cross-servicing and FSA is advised of an agreement to compromise or adjust 1 loan or several loans, but not all of the debt, SED's may approve the settlement agreements on a loan-by-loan basis.

Cancellation of any loan balances remaining on the compromised or adjusted loans will **not** be processed until all:

- payments have been received as agreed
- loans eligible for referral to the cross-servicing program for that debtor have been returned, with or without payment agreements, to FSA
- co-borrower issues are resolved, including recall and returns.

### F Debt Recalled From Cross-Servicing

When a debt has been recalled from cross-servicing because it currently does **not** meet the CNC certification requirements on FSA-2720, such as when the borrower files for bankruptcy protection, the authorized agency official will:

- ensure that transaction code 3K, class of write off code 5, is reversed
- review the debt for possible debt cancellation, if appropriate

  **Example:** After consultation with the Regional OGC, the determination may be made that the debt is not eligible for CNC in a community property State where 1 obligor received a Chapter 7 bankruptcy discharge and another co-obligor did not. However, the still liable co-obligor would like to debt settle the loans.

- complete FSA-2731 or continue monitoring the debt, as applicable.

## 223 Cross-Servicing Process (Continued)

### F Debt Recalled From Cross-Servicing (Continued)

If the debt was recalled from cross-servicing because the borrower filed bankruptcy, which has now been dismissed, it is possible that the debt did not complete the 2-year cross-servicing process.

- If the authorized agency official determines that the account should be canceled, the cancellation will be completed according to Part 12.

- If the authorized agency official determines the account should be resubmitted, and the State Office concurs, the State Office will complete and submit FSA-2721 to PRD DCIB by FAX at 314-457-4478 and note that the case was previously recalled because of the borrower filing bankruptcy; however, the bankruptcy has been dismissed.

  **Note:** For Treasury to accept the account, PRD DCIB will place an "X" at the end of the case number. This only applies to cases under this scenario. Because of the limited character space available, only the primary borrower and case number can be resubmitted.

If additional assistance is needed in resubmitting the account to Treasury, the State Office will contact PRD. The contact information for PRD is as follows.

Karen D. Campbell, Chief
Program Reporting Division
Debt Collection Improvement Branch
National Financial and Accounting Operations Center
Branch Telephone – 314-679-6870
ECM FAX – 314-457-4478
E-Mail – **karen.d.campbell@stl.usda.gov**

## 223 Cross-Servicing Process (Continued)

### G Repayment Agreement, Adjustment Offer, or Compromise Offer

If a repayment agreement, adjustment offer, or compromise offer has been negotiated by Treasury, State Offices shall:

- receive Treasury's DMS action form or concurrence request from PRD DCIB about a repayment agreement/adjustment offer or compromise offer
- receive a list of all debts Treasury has returned from cross-servicing for the month from PRD
- based upon the information in the case file, determine whether the debt is eligible for settlement through the proposed repayment/adjustment offer, compromise offer, or if the debt may be canceled.

SED shall:

- obtain concurrence from the U.S. Attorney or FSA FLP National Office, if necessary
- sign the DMS action form
- ENTER "Y" or "N" in the "Approved" column, as applicable
- FAX to PRD DCIB at 314-457-4478.

**Note:** If an offer is not approved, include supporting documentation to substantiate why greater repayment is warranted. Approved agreements must not exceed 5 years according to Part 12.

### H Debt Returned From Cross-Servicing

Debts returned from cross-servicing shall be resolved according to Part 12.

## 224-240 (Reserved)

# Part 9 AWG

## 241 Overview

### A AWG

AWG allows a Federal Agency to require a non-Federal employer to withhold up to 15 percent of an employee's disposable income to pay nontax delinquent debt. Treasury, on behalf of the Federal Agency, is authorized to issue a wage garnishment order to collect the debt. The employer will be required to send the amounts deducted to Treasury for payment to the Federal Agency. AWG is governed by Federal law.

Debts referred to Treasury for cross-servicing are generally eligible for AWG.

The AWG Reference Guide for LSPMD (Exhibit 29) is for National Office use in the AWG process.

FLP is implementing AWG through the authority provided in:

- USDA-wide regulations at 7 CFR Part 3
- Government-wide regulations published by Treasury at 31 CFR Part 285.

### B Process

AWG is administered through Treasury's cross-servicing program. If an FLP debt is classified CNC and referred to cross-servicing according to Part 8, Treasury will:

- determine whether it will use AWG to collect the FLP debt
- perform all necessary due process notifications.

The only times FLP will need to become involved in the AWG process are when:

- borrowers request to inspect and/or copy their FLP records

  **Note:** See subparagraph 244 A for guidance.

- Treasury requests FLP's assistance in evaluating a debt settlement offer or ARA

  **Note:** See subparagraph 244 B for guidance.

- borrowers request a hearing.

  **Note:** See subparagraph 245 A for guidance.

## 241 Overview (Continued)

### B Process (Continued)

The overall process when a borrower requests an AWG hearing is as follows:

- Treasury will notify OCFO that a hearing was requested
- OCFO will notify LSPMD that a hearing was requested
- Treasury will notify LSPMD and the borrower of the hearing date, etc.
- LSPMD will:
    - notify the applicable State Office servicing the account that a hearing was requested
    - request any documentation or information needed for the hearing
- the State Office will provide the documentation or information to LSPMD
- LSPMD will be the FLP representative at the hearing
- Treasury's hearing official will make a decision and notify all parties.

### C Debt Settlement Offers

While FLP debt is referred to Treasury for AWG and/or cross-servicing, borrowers must submit any debt settlement offer to Treasury and/or Treasury's PCA servicing the debt. If needed, Treasury and/or PCA will forward the debt settlement request to FSA for review through NFAOC or OCFO.

Accounts eligible for AWG and/or cross-servicing are classified CNC (3K class of write off code 5). If a CNC borrower submits or inquires about a debt settlement application, see Part 8.

### D Other Collection Actions Authorized

DAFLP will continue to use all applicable collection tools, including centralized administrative offset through TOP (Part 4) and noncentralized administrative offset of FSA Farm Program payments (7 CFR 3.43 and Parts 2 and 3).

## 242 Required Agency Notification

### A Initial Notifications

DAFLP satisfies these requirements, including FSA's intent to collect through AWG, in the 60-day due process letter that is sent by NFAOC before referring FLP debt to Treasury for TOP. See Exhibit 7 for an example of this due process letter.

A paragraph in the 60-day due process letter advises FLP borrowers that after liquidation of loan security, any remaining loan balance may be referred to Treasury for collection through PCA's (generally referred to as "cross-servicing") and AWG.

### B Subsequent Notification

In some cases, there can be a time delay of several years between receiving the notice in subparagraph A for TOP when the account is initially delinquent and referral of debt to cross-servicing after liquidation or conveyance of all security.

Therefore, after liquidation or conveyance of all security, FSA-2716 or FSA-2717 is sent to borrowers to remind them that the unsecured balance owed on their loans will be sent to Treasury for collection through cross-servicing and AWG. FSA-2716 and FSA-2717 also give borrowers an additional opportunity to resolve the debt before it is actually referred for cross-servicing and AWG.

**Note:** FSA-2716 or FSA-2717 will be sent as an attachment to 5-FLP, Exhibit 48 for unsecured accounts that have not been previously accelerated.

## 243 Referral to Treasury

### A Referral Required

**[7 CFR 3.53(c)] Upon expiration of the 60-day period for review, or upon completion of a review under subpart F that upholds the agency's determination of the debt** [Parts 2 and 3]**, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.**

Borrowers are provided an additional opportunity to review the debt when they receive the 60-day due process letter (Exhibit 7), which is sent before referring the debt to Treasury. See Parts 2 and 3.

## 243 Referral to Treasury (Continued)

### B Collection Through AWG

FLP debt will be collected through AWG by Treasury and/or Treasury's PCA's after FSA:

- classifies the account CNC
- refers the debt to cross-servicing according to Part 8.

**Note:** CNC accounts involved in an accepted discrimination complaint according to 1-FLP, subparagraph 41 I, are **not** eligible for AWG or cross-servicing. See paragraph 222 and 1-FLP, subparagraph 41 I for servicing CNC accounts with an accepted discrimination complaint.

## 244 Borrower Requests

### A Request to Inspect and/or Copy Records

Borrowers may make a request to inspect and/or copy records. FLP State and local offices may receive the request directly from the borrower, or it may be forwarded on the borrower's behalf from Treasury, OCFO, or LSPMD. All FLP offices must respond in a timely manner to these requests. See 3-INFO, paragraphs 17 and 20 for information about records holding office responsibility and legal basis required for withholding information.

### B Request for ARA

Treasury may request assistance from DAFLP, through OCFO, in determining the acceptability of ARA, or debt settlement offers. State Offices must respond in a timely manner.

The authorized agency official may recommend acceptance of ARA if the amount offered:

- before an AWG hearing is reasonable based on the debtor's ability to repay the debt, **or** is at least equal to the estimated amount that would be collected through enforced AWG

- is at least equal to the amount established in the hearing decision and/or garnishment order.

ARA's do **not** replace any signed promissory notes, security agreements, judgments, or other debt instruments.

**Note:** ARA's will be considered according to Exhibit 8, but cannot prevent, suspend, or delay the statutory PLS requirements in 5-FLP. FSA's decision to not accept an ARA request is not appealable. However, the borrower may still appeal FSA's decision to use offset.

## 245 AWG Hearing According to 31 CFR 285.11(f)

### A Hearing Request

The debtor has a statutory right to a hearing with respect to the existence and amount of the debt claimed or the terms of the proposed repayment schedule under the garnishment order (hardship).

The hearings are generally conducted by teleconference, and the hearing official establishes the date and time.

### B Timely Requests

Treasury will:

- make the decisions for FLP because borrowers submit the requests directly to Treasury
- determine whether AWG will begin before a hearing in cases where hearing requests are **not** timely.

### C Hearing Official

Treasury, Bureau of the Fiscal Service will provide hearing official services for AWG hearing requests.

### D Hearing Procedure

Treasury's hearing official will send the hearing information to the borrower, OCFO, and LSPMD.

The pre-hearing Order sent to LSPMD establishes the hearing date and the date that the following must be submitted to the hearing official and borrower:

- narrative about the existence, computation of amount, and documentation of FLP debt
- any information about the borrower's ability to repay all or part of the debt through AWG
- copies of the proposed hearing exhibits
- list of the proposed hearing exhibits
- list of the proposed hearing witnesses.

## 245 AWG Hearing According to 31 CFR 285.11(f) (Continued)

### D Hearing Procedure (Continued)

LSPMD, or its designee, shall:

- request documentation from the applicable State Office, NFAOC, and OGC as needed
- review all relevant documentation about the case
- prepare the hearing exhibits, list of hearing exhibits, and list of hearing witnesses
- send copies of hearing documents to the hearing officer and borrower
- participate in the teleconference hearing
- respond to any follow-up questions from the hearing official in a timely manner.

FLC, or designee, shall prepare:

- a narrative including the following:
    - the existence, computation of amount, and documentation of FLP debt
    - any information the State or local FSA office may have about the borrower's ability to repay all or part of the debt through AWG
    - a statement confirming that all security that was pledged for the loans was liquidated and the proceeds were applied to the account
- copies of the promissory notes
- printout of each loan showing principal, interest, and daily interest accrual as of the date printed, with a notation showing which items are administrative expense/recoverable cost items
- any documentation, such as a debt settlement application, financial statements, etc., FSA may possess about the borrower's ability to repay all or part of the debt through the garnishment process
- name, address, e-mail, telephone number, and FAX number of the contact person for the case.

Ensure that documentation is assembled and e-mailed, in a manner that protects PII, to LSPMD at **RA.dcwashing7.FSA-AWG**.

**Note:** The e-mail subject should read "AWG Hearing – (Borrower's Name and State)".

In cases where LSPMD requests that an FLP employee familiar with the servicing of the case be available to participate in the AWG teleconference, FLC shall designate which FLP employee from the State shall participate.

## 245 AWG Hearing According to 31 CFR 285.11(f) (Continued)

### D Hearing Procedure (Continued)

Any requests for additional information or documentation from Treasury, OCFO, or the hearing official must be responded to immediately to ensure timely processing.

If a borrower's circumstances change so that AWG would not be appropriate at any time before the AWG hearing is held, or during the time period between hearing and receiving the hearing official's decision, the State Office must notify LSPMD, and refer to Parts 4 and 8 to determine whether the debt must also be removed from cross-servicing and/or TOP.

**Examples:** If the borrower files for bankruptcy protection, the debt is no longer eligible for cross-servicing, AWG, or TOP.

If the borrower provides a notice of employment termination that he or she received, the borrower must also submit the letter to Treasury and/or PCA servicing the account. The State Office will access FedDebt, and review any FedDebt documentation and servicing notes, to determine whether the letter was accepted by Treasury as notification that the borrower is no longer employed, and will notify LSPMD accordingly. LSPMD will notify OCFO and Treasury's hearing official, if a hearing is no longer necessary, etc. In cases of employment termination, AWG would not be appropriate. However, continued referral to cross-servicing and TOP may be appropriate based on the criteria in Parts 4 and 8.

If AWG hearings are canceled, LSPMD will notify the State Office accordingly.

### E Burden of Proof and Hearing Record

**[31 CFR 285.11(f)(8)] (i) The agency will have the burden of going forward to prove the existence or amount of the debt.**
**(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.**

### F AWG Decision

The hearing official sends the AWG decision to the borrower, OCFO, and LSPMD. LSPMD will notify the applicable State Office.

The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to NAD under 7 CFR Part 11. Hearings will be conducted according to 31 CFR 285.11(f).

## 246 Garnishment

### A Withholding Order

Treasury sends the withholding order to the employer on behalf of DAFLP.

### B Employer Certification

Treasury sends the certification to the employer on DAFLP's behalf. The employer returns the completed form to Treasury.

## 247 Processing Garnishment Amounts and Collections

### A Employer Processing

The employer submits withheld amounts to Treasury. Treasury sends the funds to FSA in automated reports.

### B FLP Processing

AWG collections will be included with all other collections received from Treasury through cross-servicing and/or TOP. Monies collected are applied to borrowers' loans according to 3-FI and 4-FLP, Part 5.

When Treasury reviews an account, they are reviewed by individual loans, not by the total debt owed by the borrower. As such, once an individual loan is paid in full, Treasury ceases AWG collections and returns the account to FSA. Even in instances where the borrower has more than 1 loan covered by AWG, the subsequent loans will be returned because Treasury has ceased collections. Therefore, when a borrower has more than 1 loan that should be paid from AWG, the State Office will contact PRD for assistance in resubmitting any additional loans to Treasury to resume collection through AWG. The contact information for PRD is as follows.

Karen D. Campbell, Chief
Program Reporting Division
Debt Collection Improvement Branch
National Financial and Accounting Operations Center
Branch Telephone – 314-679-6870
ECM FAX – 314-457-4478
E-Mail – **karen.d.campbell@stl.usda.gov**

PRD DCIB must notify DLD FaSB to reverse the CNC classification code (3K class of write-off code 5) to apply AWG or cross-servicing collections. After applying collections, DLD FaSB must re-establish the CNC classification code, as appropriate.

## 248 Changes to Garnishment Amount

### A Following Involuntary Separation

In many cases, FSA will **not** know when borrowers are working or unemployed. AWG is processed through Treasury's cross-servicing program. While accounts are referred to AWG and/or cross-servicing, FLP borrowers must communicate directly with Treasury and/or PCA's about their financial circumstances.

When contacted by borrowers after a garnishment order is established, State and local FSA offices shall advise borrowers that they must contact Treasury and/or PCA directly. The contact information is in the letters that borrowers receive from PCA and/or Treasury. The status of the debt at Treasury and/or PCA is available in FedDebt.

**Do not** recall debts from AWG or cross-servicing, or edit any information in FedDebt based on a borrower's claim that he or she is no longer working. The borrower must contact Treasury and/or PCA to report this information, and it will be verified by PCA and/or Treasury.

### B Financial Hardship

At this time, hardship requests for FLP debt are reviewed by Treasury. Treasury will make any hardship determination on DAFLP's behalf and notify the borrower's employer of any needed adjustments to the garnishment amount.

In cases where the garnishment amount has been adjusted because of hardship, Treasury will periodically request updated financial information from the FLP borrower to determine whether the hardship still exists and/or if the garnishment amount must be adjusted again.

Treasury uses a cost-of-living calculator to determine an appropriate garnishment amount. The calculator considers the debtor's individual financial circumstances and the cost-of-living where the debtor lives. The regional cost-of-living amounts are adjusted each year based on information compiled by IRS.

### C Debt Paid in Full

In cases where the debt is paid in full, Treasury will notify the employer to discontinue garnishment for FLP.

**249-280 (Reserved)**

## Part 10 (Reserved)

**281-350 (Reserved)**

# Part 11 Monitoring, Servicing, and Settling Judgment Debts

## 351 Monitoring Judgment Debts

### A Monitoring Status

State Offices shall monitor the status of all judgments with DOJ, except pending foreclosure judgments, to determine whether:

- any collections have been made on the judgment in the last 12 months
- the account has been referred to Department of Treasury for TOP and/or cross-servicing.

### B Request Return

State Offices shall request that DOJ return judgments if no collections have been made by DOJ in the last 12 months.

**Note:** Consult with the Regional Attorney to determine whether State law prevents FSA from pursuing offset collection or referring deficiency judgments for TOP.

## 352 Servicing Judgment Debts Retained by DOJ

### A Internal Administrative Offset

Under FSA and CCC offset regulations at 7 CFR 792.7 and 1403.7, DOJ is not entitled to priority in requesting offset of FSA Farm Program payments. To achieve the greatest recovery on judgment debt, it is FLP's policy to use FLP's priority under 7 CFR 792.7 and 1403.7 regulations whenever possible and appropriate. Therefore, State and County Offices shall:

- determine whether the borrower will receive Farm Program payments and request written DOJ concurrence to pursue collection of these monies as applicable
- pursue internal administrative offset according to Part 3 after obtaining DOJ concurrence
- notify DOJ of all administrative offset collections received and applied to the judgment accounts.

### B TOP Referral

DOJ is responsible for referring judgment debts under its control to TOP and it is DOJ's policy to do so while DOJ is pursuing collection of the debt. If the debt is selected for TOP during FSA's TOP referral process, the debt must be deleted from the TOP Eligible Screens at the end of each quarter using delete code "05". When DOJ returns the case to FSA, DOJ withdraws the debt from TOP, and it is FSA's responsibility to refer the debt to TOP according to Part 4.

### C DOJ Fees

If the borrower's account is referred to DOJ for foreclosure and/or other collection action after foreclosure, such as a deficiency judgment or enforcing a judgment lien, any attorney's fees and any fees charged by DOJ will be added to the debt.

## 353 Servicing Judgment Debts Returned by DOJ

### A Servicing Accounts Returned by DOJ

Service accounts returned by DOJ according to the following table.

| IF the judgment has… | THEN… |
|---|---|
| **not** expired | • pursue internal administrative offset according to Part 3 if collection of Farm Program payments is possible<br><br>• refer the account to Treasury for TOP offset according to Part 4, cross-servicing according to Part 8, and AWG according to Part 9, as appropriate. State Offices shall:<br><br>  • complete FSA-2720 and classify the account as CNC by processing transaction code "3K" with a class of writeoff code "5", except for employee defalcations and TPJ's<br><br>  • submit FSA-2721 to PRD DCIB by FAX at 314-457-4478.<br><br>**Notes:** In cases where an acceptable debt settlement offer is received from the debtor before referral to cross-servicing, the State Office may process it according to Parts 8 and 12.<br><br>Referral of the debt to cross-servicing is required unless any of the exceptions under 31 CFR 285.12 applies or if the borrower is no longer eligible for cross-servicing. The exceptions are included in FSA-2720. |
| expired (20 years from the date of judgment, unless renewed)<br><br>**Note:** If the U.S. Attorney states the judgment expired after 10 years, then consult the Regional Attorney to determine whether the judgment can be revived. | cancel the debt according to Part 12.<br><br>**Note:** If continuing to offset after the judgment has expired, get confirmation from the Regional Attorney that continuing to offset is allowed. Also consider if partial cancellation would be appropriate in these instances. |

## 354 Debt Settlement of Judgment Debts

### A RD Instruction 1956-B

New regulations are being developed to provide guidance on debt settling judgment debts. Before publication of the regulation, judgment debts shall be canceled, compromised, or adjusted similarly to Parts 8 and 12, Exhibit 34, and RD Instruction 1956-B, Sections 1956.66, 1956.67, 1956.68, and 1956.70.

### B Documentation

Insert any of the following that apply in FSA-2731:

- U.S. Attorney's file is closed
- judgment has expired 20 years after the judgment date, and the judgment is not renewed

  **Note:** If the U.S. Attorney states that the judgment expired after 10 years, consult the regional OGC to determine whether the judgment can be revived.

- debt was returned from cross-servicing as uncollectible
- debtor is unable to pay any part of the debt and has no reasonable prospect of being able to pay any part of the debt
- debt cannot be collected through Federal salary offset and/or AWG.

### C Releasing Judgment Lien by DOJ

The State Office shall notify the U.S. Attorney's office that it has canceled debt subject to a judgment lien. The notice should request that this judgment lien be released.

## 355-400 (Reserved)

# Part 12 Debt Settlement

## 401 Introduction

### A Procedure

Debt settlements will continue to be processed according to 7 CFR Part 1956, Subpart B, RD Instruction 1956-B, and this part.

For borrowers who have received previous debt forgiveness, and for nonprogram loans, settlement will be completed under FCCS authorities as set forth in Exhibit 34.

### B Youth Loans

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this part as part of its eligibility. The criteria for determining whether the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR 766.104(a)(1). Any borrower who met those criteria before the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to present regulations and can preclude the applicant from receiving a loan from FSA.

Past debt forgiveness on a youth loan, or an existing delinquency on a youth loan, does not preclude the borrower from receiving direct or guaranteed student loans.

Any borrower who receives debt forgiveness on a youth loan, or requests information from FSA to provide any creditor, shall be provided FSA-2727 by mail or in person.

## 402 Debt Settlement

### A Determining Largest Collection Amount

In cases where a debt settlement offer is submitted before referring CNC debt to cross-servicing (Part 8) and AWG (Part 9), and/or when FSA is currently receiving regular recurring offset through TOP (Part 4), or from a Federal salary (Part 5), the authorized agency official will:

- determine whether the debt settlement amount offered is more than what would likely be collected through enforced collection, such as cross-servicing, AWG, and Federal salary offset

- make a decision or recommendation to debt settle based on whether enforced collection would result in a larger collection amount. Debt settlement standards and procedures will be followed according to subparagraph 401 A.

When making this determination, the authorized agency official will also take into consideration the following:

- if potential recovery is less than accruing interest

- if offsets are causing a hardship on a borrower with minimal income, and recovery is not significant when related to the FSA debt.

All determinations will be thoroughly documented in the borrower's case file.

In cases where a debt settlement offer is submitted after referring CNC debt to cross-servicing, see subparagraph 223 E.

## 402 Debt Settlement (Continued)

### B Cancellation of Debt Without Application

When cancellation of debt does not require a signed application by the borrower, agency officials will cancel the debt by using FSA-2731. Instances when a signed application is not required are as follows:

- all debt returned from cross-servicing as uncollectible
- all debt returned from cross-servicing after paying compromise or adjustment offer
- obligor has been discharged of the debt under Chapter 7 bankruptcy or reorganization bankruptcy (Chapter 11, 12, or 13)

  **Note:** A partial debt settlement may be appropriate in this case.
- obligor is deceased or defunct
- DOJ settlement negotiated instead of foreclosure or judgment, plea agreement, or the remaining balance of the debt is not covered by the judgment and determined by OGC to be legally without merit

  **Note:** A partial debt settlement may be appropriate in this case.
- DOJ, Civil Division settlement without application because of prior debt forgiveness with outstanding principal of $100,000 or greater
- cancellation of judgment debt
- OGC has determined that the debt is legally without merit
- partial debt settlement
- obligor signature cannot be obtained or has disappeared.

Agency officials will also use FSA-2731 to supplement the information on RD 1956-1 for any borrower who is not required to submit a signed application.

**Note:** See Exhibit 39 for completed examples of FSA-2731 and FSA-2731A.

## 402 Debt Settlement (Continued)

### C Nonjudgment Debt

Settlement of nonjudgment debt will be processed according to subparagraph 401 A.

### D Judgment Debt

Settlement of judgment debt will be processed according to Part 11.

### E Judgment and Nonjudgment Debt

If the judgment is kept by DOJ according to Part 11, coordinate debt settlement of the judgment debt and nonjudgment debt with DOJ as the approval official.

If the judgment has been returned to FSA according to Part 11, see Exhibit 34 to determine the appropriate approval official.

Settlement of accounts with judgment and nonjudgment debt will be processed with all documentation required by subparagraph 401 A and subparagraphs C and D. All documentation will be listed on and attached to FSA-2731, as applicable.

If the judgment is under the jurisdiction of DOJ as set forth in paragraph 352, coordinate debt settlement of the judgment and nonjudgment debt with DOJ as the approval official. Nonjudgment debt should be canceled under DOJ authority if only the judgment debt remains collectible.

## 402 Debt Settlement (Continued)

### F CNC Debt Returned From Cross-Servicing

Debt classified as CNC and returned from cross-servicing after Treasury has taken all appropriate collection actions shall be canceled.

| Step | Office | Action |
|---|---|---|
| 1 | State Office | **Cancellation** |
| | | The account balance shall be canceled when:<br><br>• all of the loans eligible for referral to the cross-servicing program have been referred but returned for the debtor and any co-debtors<br><br>• all payments have been received from any compromise or adjustment offers negotiated by Treasury.<br><br>There are no collections that FSA could receive through AWG or Federal salary offset.<br><br>**Note:** Accounts on AWG or Federal salary offset returned in error by Treasury will be returned by the State Office for continued collection through PRD.<br><br>Canceling a debtor's account balance will be completed under the authorities set forth in this part and RD Instruction 1956-B, section 1956.70, as appropriate. Treasury's return of an account from cross-servicing as uncollectable will serve as documentation that the requirements of section 1956.70 have been met. Neither a credit report nor further contact with the borrower is needed. If 1 or more of a debtor's loans have been canceled using the debt cancellation authority under FCCS, the remaining account balance may be canceled under this part. If a debtor has received debt forgiveness under CONACT authorities, such as a write-down through PLS, the remaining account balance may be canceled according to Exhibit 34. |

**402 Debt Settlement (Continued)**

**F CNC Debt Returned From Cross-Servicing (Continued)**

| Step | Office | Action |
|---|---|---|
| 1 (Cntd) | State Office (Cntd) | **Cancellation** |
| | | SED's shall:<br><br>• process the loan cancellation as appropriate using FSA-2731<br><br>**Note:** Documentation that all debt has been returned from cross-servicing as uncollectable will be attached to FSA-2731.<br><br>• prepare a memorandum advising PRD of the cancellation<br><br>• FAX the signed memorandum to PRD.<br><br>**Note:** The State Office shall obtain any necessary concurrence before canceling the debt.<br><br>When canceling remaining loan balances owed on debts compromised by Treasury:<br><br>• document the information about the compromise on FSA-2731<br><br>• process transaction code "3K" using class of write off code "1" for the compromised debt<br><br>• process transaction code "3K" using class of write off code "4" for the balance of the debt returned as uncollectible<br><br>• the effective date for all 3K transactions shall be the date SED or DAFLP signed FSA-2731. |

## 402 Debt Settlement (Continued)

### F CNC Debt Returned From Cross-Servicing (Continued)

| Step | Office | Action |
|---|---|---|
| 2 | State Office | **Repayment/Adjustment Offers and Compromise Offers** |
| | | Will receive notification from PRD DCIB once the full amount of the repayment/adjustment or compromise has been collected and applied to the debt. |
| | | **Approved Cancellations** |
| | | • Will provide PRD DCIB a copy of FSA-2731 authorizing the cancellation in instances where cancellations cannot be processed by the State Office. This will enable PRD DCIB to forward FSA-2731 to FaSB to process the cancellation.<br><br>• Will receive a memorandum from PRD once the cancellation has been completed. |
| 3 | State Office | Attach PRD memorandums, State Office memorandums, and any applicable forms to the State Office copy of FSA-2720 or previous form.<br><br>Forward a copy of the PRD DCIB memorandum and any applicable forms to FLM. |
| 4 | County Office | File PRD memorandums, State Office memorandums, and any applicable forms in the case file.<br><br>After all payments have been processed, stamp the promissory notes "Satisfied by Completed Adjustment Offer", "Satisfied by Approved Compromise", or "Satisfied by Approved Cancellation", as applicable, and return the satisfied notes to the borrower.<br><br>Continue monitoring the account in cases where the debt is returned as uncollectible, but is not or cannot be canceled at that time. Once a determination is made to cancel, or it becomes eligible for cancellation, proceed to process the cancellation according to this part and Exhibit 34, as applicable. |

**Note:** If the cancellation is the borrower's first instance of CONACT debt forgiveness, the approval official is SED according to RD Instruction 1956-B. For subsequent cancellations, SED should follow the procedures in Exhibit 34.

## 403 Authority and Processing

### A Approval Authority for Debt Settlement

SED may approve or reject:

- cancellations of accounts where all obligors are properly included on FSA-2731 or were previously released using FSA-2080, without regard to the size of the debt, unless there was a previous cancellation

  **Note:** For previous cancellations, see Exhibit 34.

- proposed debt settlements that require using RD 1956-1 (with or without FSA-2731) when the outstanding balance of the indebtedness involved in the settlement, less the amount of any compromise or adjustment offer, is less than $1 million, including principal, interest, and other charges.

The Administrator or designee must approve or reject debt settlements that require using RD 1956-1 (with or without FSA-2731) when the outstanding balance of the indebtedness involved in the settlement, less the amount of any compromise or adjustment offer, is $1 million or more, including principal, interest, and other charges.

When FSA-2731 is used with RD 1956-1, the settlement code for the account (3K transaction) will be for the settlement approved on RD 1956-1. Settlement of the debt will be approved on RD 1956-1.

### B Processing and Approval

The approval official will execute completed FSA-2731 or RD 1956-1, whichever is applicable, and will process the forms according to each of the form's instructions. If a "Compromise", "Adjustment", or "Bankruptcies" is involved, DLD FaSB must process FSA-2731 or RD 1956-1. The State Office will process Chapter 7 bankruptcy cases when there is no remaining security.

The approval official will notify debtors in writing of approval of the settlement of their indebtedness and the approximate amount that will be reported to IRS according to RD Instruction 1956-B, section 1956.86. However, adjustment offers will not be reported until after the final payment is applied. The following will also be done for all compromise and adjustment offers:

- the specific amount and terms of the offer will be stated
- the accounts settled will be identified by reference to the accounts shown on RD 1956-1.

When a debt is canceled using FSA-2731, the approval official will send a letter to the debtor's last known address advising of the debt cancellation.

## 403 Authority and Processing (Continued)

### B Processing and Approval (Continued)

Approval officials are not required to notify debtors of approval of the settlement of their indebtedness when debts are canceled under RD Instruction 1956-B, section 1956.70(b).

The approval official will cancel any requests for offsets against the borrower once the debt settlement is approved.

### C Requesting Additional Information

If rejection appears to be necessary because of a lack of information, or because the amount of a compromise or adjustment offer is inadequate, SED may request the employee in charge of the account to obtain additional information or make an effort to obtain an acceptable offer, as appropriate under the circumstances. Notice of rejection of an offer will be withheld in these cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

### D Rejection Processing

The servicing official will:

- insert the reasons for rejection on RD 1956-1
- execute and retain the original RD 1956-1 in the State Office
- return case files and copies of RD 1956-1 to the employee in charge of the account
- request DLD FaSB to return any adjustment or compromise payment held by NFAOC to the borrower, in care of the employee in charge of the account
- return any adjustment or compromise payment held by the State Office to the borrower, in care of the employee in charge of the account
- notify the debtor in writing of the reasons for the rejection in the following cases:
    - all compromise and adjustment offers
    - cancellations under RD Instruction 1956-B, section 1956.70(a).

### E Appeal Rights

**[7 CFR 1956.84(e)] A debtor whose debt settlement offer is rejected will be notified of appeal rights.**

**403 Authority and Processing (Continued)**

**F Unauthorized Approval**

Authority to approve debt settlements, including accounts that have received prior debt forgiveness, is established according to subparagraph A. If unauthorized approval of a debt settlement is identified, the settlement application with supporting documentation should be forwarded to the correct approval official for post approval. If the debt settlement cannot be post-approved, the correct approval official will provide additional guidance on servicing the account.

**G Requesting Exception Authority for Debt Settlement**

Administrator's exception authority is set forth under 7 CFR 1956.99 (RD Instruction 1956-B, section 1956.99).

SED must submit an exception request by e-mail to DAFLP at **RA.dcwashing2.FSA-AdmException**. The e-mail subject should read "Administrator's Exception to (cite RD Instruction 1956-B section) – (Borrower's Name and State)". An **encrypted** attachment must fully describe the status of the account, including the following:

- a brief background on the case
- total outstanding FSA indebtedness, loan types, and amounts
- current status of the account

  **Note:** If it is delinquent, where is it in PLS?

- type of security (chattel or real estate) and value
- prior liens
- proposed plan of action that warrants the exception request
- what procedure is to be waived
- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- how the action is in the best financial interest of the Government
- additional information SED thinks is needed to review the case.

  **Note:** County Offices may submit exception requests to SED by e-mail provided documents are encrypted, as appropriate.

## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

None.

### Forms

This table lists the forms referenced in this handbook.

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2037 | Farm Business Plan Worksheet Balance Sheet | | Ex. 8 |
| FSA-2038 | Farm Business Plan Worksheet Projected/ Actual Income and Expense | | Ex. 8 |
| FSA-2065 | Annual Statement of Loan Account | | 223 |
| FSA-2080 | Release From Personal Liability | | 403 |
| FSA-2701 | Notice of Intent to Collect by Administrative Offset | | 21, 62, 202, Ex. 8 |
| FSA-2702 | Notice of Intent to Collect by Administrative Offset for Non-Borrower Entity | | 21, 62, 202 |
| FSA-2703 | Notice to Debtor That Administrative Offset Has Been Exercised and Intent to Collect by Administrative Offset | | 21, 62, 202 |
| FSA-2704 | Notice to Debtor That Administrative Offset Has Been Exercised and Intent to Collect by Administrative Offset for Non-Borrower Entity | | 21, 62, 202 |
| FSA-2707 | Alternative Repayment Agreement for Administrative Offset or TOP | | Ex. 8 |
| FSA-2710 | Notification of Salary Offset | | 21, 134, Ex. 8 |
| FSA-2711 | Alternative Repayment Agreement for Federal Salary Offset | | 134, Ex. 8 |
| FSA-2716 | Notice Advising of Potential Referral to Treasury for Cross-Servicing and the Availability of Debt Settlement | | 21, 201, 202, 242 |
| FSA-2717 | Notice Advising of Potential Referral to Treasury for Cross-Servicing | | 21, 201, 202, 242 |

**Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2720 | Checklist for "Currently Not Collectible" Debt | | 202, 223, 353, 402 |
| FSA-2721 | List of Currently Not Collectible (CNC) Debts Eligible To Be Referred to Treasury for Cross-Servicing | | 223, 353 |
| FSA-2722 | Update to TOP and Cross-Servicing Information | | 104, 105, 106, 222, 223 |
| FSA-2727 | Youth Loan (YL) Debt Forgiveness | | 401 |
| FSA-2731 | Cancellation of Debt Without Application | Ex. 39 | 201, 223, 354, 402, 403, Ex. 34 |
| FSA-2731A | Cancellation of Debt Without Application (Continuation) | Ex. 39 | 402 |
| IRS Form 1098 | Mortgage Interest Statement | | 223 |
| RD 1956-1 | Application for Settlement of Indebtedness | | 63, 201, 402, 403, Ex. 34, 39 |

**Abbreviations Not Listed in 1-CM**

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|---|---|---|
| ARA | alternative repayment agreement | 21, 63, 134, 241, 244, Ex. 8, 13, 29 |
| AWG | administrative wage garnishment | Text, Ex. 2, 7, 8, 29 |
| BAP | bankruptcy action pending | 104, Ex. 18, 19 |
| CAP | court action pending | 106 |
| CNC | currently not collectible | Text |
| CONACT | Consolidated Farm and Rural Development Act | 1, 21, 402, Ex. 34 |
| DCIB | Debt Collection Improvement Branch, NFAOC | 104, 106, 222, 223, 247, 353, 402 |
| DLD | Direct Loan Division, NFAOC | 104, 223, 247, 403 |
| DMS | debt management service | 223 |

**Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**

**Abbreviations Not Listed in 1-CM (Continued)**

| Approved Abbreviation | Term | Reference |
|---|---|---|
| ECM | Enterprise Content Management | 223, 247 |
| FAP | foreclosure action pending | 106, Ex. 19, 20 |
| FaSB | Farm Service Branch, NFAOC | 104, 247, 402, 403 |
| FCCS | Federal Claims Collection Standards | 1, 21, 132, 401, 402, Ex. 8, 34 |
| FmHA | Farmer's Home Administration | Ex. 20 |
| FSAFS | FSA Financial Services software | 61, 81 |
| NFAOC | National Financial and Accounting Operations Center | 104, 132, 134, 223, 241, 242, 245, 403, Ex. 17, 20 |
| PCA | Private Collection Agency | 221, 223, 241-243, 245, 248, Ex. 2, 29 |
| PLS | primary loan servicing | 62, 63, 134, 244, 402, 403, Ex. 8 |
| PRD | Program Reporting Division, NFAOC | 104, 106, 222, 223, 247, 353, 402 |
| SAA | subject to approved adjustment<br><br>**Note:** When reference is made to the financial "flag"/designation for an account where FSA has approved a borrower's debt settlement offer as documented on RD 1956-1. | 104, Ex. 18 |
| SOL | statute of limitations | 103, Ex. 34 |
| TPJ | third party judgment | 104, 223, 353 |
| YL | youth loan | Ex. 2 |

**Redelegations of Authority**

None.

## Definitions of Terms Used in This Handbook

### Adjustment

**Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.**

### Administrative Wage Garnishment (AWG)

AWG is a garnishment program used to collect delinquent nontax Federal debt from borrowers who have private sector jobs. AWG is:

- authorized by DCIA
- administered by Treasury.

### Agency

Agency is the Farm Service Agency (FSA), including its employees, State and area committee members, and any successor Agency.

### Agency Official

Agency official is any employee within FSA. This term is used when the action does not require inherent or delegated authority.

### Approval Official

Approval official is the specific employee who has the authority to approve or deny the described action.

### Authorized Agency Official

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.

### Borrower (or Debtor)

**Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term "borrower" includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.**

**Definitions of Terms Used in This Handbook (Continued)**

**Cancellation**

**Cancellation is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.**

**Chapter 7**

A Chapter 7 bankruptcy involves liquidation of the debtor's assets. The proceeds from liquidation are applied to the court-allowed debt.

**Chapter 11**

A Chapter 11 bankruptcy is a business reorganization form of bankruptcy. The debtor has an exclusive right to file a reorganization plan within 120 calendar days after filing for bankruptcy. After the 120-calendar-day period, the debtor loses the exclusive right to file a reorganization plan, and others may file a plan. This chapter is generally discharged at closing. The plan does not have to be concluded within a specific timeframe.

**Chapter 12**

A Chapter 12 bankruptcy provides special debt repayment relief for family farmers and family fishermen. This chapter is targeted to family farmers with 50 percent of gross income from farming. The farmer's debt must not exceed $3.237 million and 80 percent of the farmer's debts must originate from farming. The debtor must file a plan within 90 calendar days after the First Meeting of Creditors. The court determines the point of discharge (usually at the end of the third or fifth year). The reorganization plans must be paid out in 5 years.

**Chapter 13**

A Chapter 13 bankruptcy involves reorganization for wage-earners. The debtor must have regular income. A portion of that income will be set aside for distribution to creditors by the trustee. The plan is generally filed at time of petition and must be paid out in 5 years. The court determines the point of discharge, which is usually at the end of the third or fifth year.

**Compromise**

**Compromise is the settlement of an Agency debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.**

**Conveyance**

Conveyance is the transfer of ownership in property to a third party.

**Definitions of Terms Used in This Handbook (Continued)**

**Cross-Servicing**

Cross-servicing is the centralized collection of nontax Federal debt by the Department of Treasury or by Treasury's PCA's according to:

- 7 CFR Part 3, Subpart C
- 31 CFR 285.12
- 31 CFR 901.1(e).

**Debt Forgiveness**

**Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency.**

**(1) Debt forgiveness may be through:**

**(i) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;**

**(ii) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or**

**(iiii) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.**

**(2) Debt forgiveness does not include:**

**(i) Debt reduction through a conservation contract;**

**(ii) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;**

**(iii) Prior debt forgiveness that has been repaid in its entirety;**

**(iv) Consolidation, rescheduling, reamortization, or deferral of a loan; or**

**(v) Forgiveness of YL debt, due to circumstances beyond the borrower's control.**

**The Agency will use the criteria in 7 CFR 766.104(a)(1) to determine if the circumstances were beyond the borrower's control.**

**Debt Settlement**

**Debt settlement is a compromise, adjustment or cancellation of an Agency debt.**

**Definitions of Terms Used in This Handbook (Continued)**

**Debtor**

Debtor is a borrower of funds under any FSA programs. This term includes a co-signor, guarantor, and person or entity who initially obtained or assumed a loan.

**Delinquent Borrower**

**Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.**

**Discharge**

A discharge is a court order, which relieves the debtor's obligation to pay the creditor any amounts unless already accounted for in a bankruptcy plan.

**Entity**

**An entity is a corporation, partnership, joint operation, cooperative, limited liability company, or trust.**

**Equity**

Equity is the money value of a property or of an interest in a property in excess of claims or liens against that property.

**Liquidated**

Liquidated is the completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed action to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

**Loan Servicing Programs**

**Loan servicing programs include primary loan servicing programs, conservation contract, current market value buyout, and homestead protection.**

**Office of the General Counsel (OGC)**

OGC is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

**Definitions of Terms Used in This Handbook (Continued)**

**Recoverable Cost**

**A recoverable cost is a loan cost expense chargeable to either a borrower or property account.**

**Reviewing Officer**

**Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.**

**Security**

**Security is property or a right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or security property" will be considered a reference to the term security.**

**Treasury Offset Program (TOP)**

TOP is the centralized offset of payments to collect delinquent, nontax debts owed to Federal Agencies and States (including past-due child support) according to:

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).

**State Supplements**

The following table lists required State supplements.

| Subparagraph | Required State Supplement |
|---|---|
| 3 B | Guidance on notary acknowledgement. |
| 3 C | Guidance on signature requirements. |
| 3 E | Using State-specific and State-created forms. |

**Note:** SED's shall:

- issue State supplements according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.

## Example of Due Process Letter to Refer Debt to Treasury for TOP, Cross-Servicing, and AWG

The following is an example of the Due Process Letter to Refer Debt to Treasury.

USDA

United States Department of Agriculture

Rural Development

Office of the National Financial and Accounting Operations Center

4300 Goodfellow Boulevard
St. Louis, MO 63120
Voice 314.457.4152
Fax 314.457.4292

JULY 14, 2015

Dear Debtor/Co-debtor:

Our records indicate that you are more than 90 days past due on a loan(s), or are subject to an outstanding judgment, have a delinquent lease or an equity receivable owed to the United States Department of Agriculture, Farm Service Agency (FSA). Under Federal law, Federal Agencies are required to offset any eligible Government payments due you to resolve the delinquent debt.

Enclosed is a list of the delinquent debt(s) and the amount(s) due as of MM/DD/YYYY. You have 60 days to resolve this delinquent debt before an offset of payments will be made.

The following options are available, if applicable, for settling this debt:

- Fully pay the delinquent debt outstanding at your local servicing office on or before MM/DD/YYYY. The amount could change because of protective advances, servicing actions, interest accrual, previous offsets, or other collections. Contact your local office for the correct amount.

- Make delinquent settlement arrangements with your local servicing office. If immediate payment is not possible or would create a serious financial hardship, you may request consideration of a written repayment/settlement agreement with FSA. Any such settlement proposal must be submitted in writing before and accepted by the Agency no later than MM/DD/YYYY. Your request must state your repayment proposal, including the specific terms. A current and signed financial statement must be provided with any settlement proposal or installment repayment request. The financial statement must list all income and expenses, and contain a balance sheet listing all assets and liabilities. An Agency approved repayment/settlement agreement must be in place to prevent offset.

- Inform your local servicing office of any bankruptcy proceedings. Debtors who have filed for bankruptcy and have an automatic stay in effect are not subject to collection through offset while the stay remains in place. If this provision applies, please submit a copy of the bankruptcy petition to your local servicing office immediately.

- Inform your local servicing office if you, as a borrower or co-borrower, are on active military duty. FSA borrowers called to active duty may be eligible for additional servicing options, including exclusion from referral to Treasury Offset Program (TOP). If this provision applies, please submit a copy of your military activation papers to your local servicing office by MM/DD/YYYY.

If your delinquent debt is a judgment debt, a delinquent lease, or the debt has been accelerated, administrative farm loan servicing authorities are no longer applicable.

If the delinquent debt is not involved in a bankruptcy proceeding, or is not paid in full or settled by MM/DD/YYYY, the United States Treasury Department will be notified to collect by offset from the following Federal/State government payments due you, if applicable:

- Income tax refunds
- State tax refunds
- Federal salary, including military pay
- Federal retirement pay, including military retirement pay
- Contract or vendor payments
- State vendor payments
- Certain Federal benefits payments, such as Social Security (other than Supplemental Security Income), Railroad Retirement (other than tier 2), and Black Lung (part B) benefits
- Other Federal/State payments, including certain loans to you, that are not exempt from offset

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

**Example of Due Process Letter to Refer Debt to Treasury for TOP, Cross-Servicing, and AWG (Continued)**

USDA

**United States Department of Agriculture**

All delinquent debt is referred to commercial credit bureaus on a quarterly basis.

Any debt remaining after all loan security has been liquidated may also be referred to Treasury 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, protective advances and collection costs. The debt may also be referred to the United States Department of Justice for collection.

You have the right to inspect and obtain a copy of the records for the listed delinquent debt. To do so, 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 request a review of the validity of the delinquent debt amount. Any request for such review must be made in writing to your local servicing office by MM/DD/YYYY. If you disagree with the delinquent debt amount and wish to dispute the record, please explain the reason for your challenge and include any written documents or evidence to support your position. You will be notified in writing of a determination.

If you are a Federal employee, you will have the opportunity for a hearing prior to FSA's submitting the debt for Federal salary offset. You will receive more information in a separate notice if this option applies to you.

Additional interest is accruing daily on this debt. The amount due will continue to increase until the delinquency is paid or the account is settled. Any debt written off by the Agency will be reported to Internal Revenue Service (IRS) on Form 1099-C, Cancellation of Debt.

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, 800-428-9643.

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

**Alternative Repayment Agreements (ARA's)**

## A General

ARA does not prevent, suspend, or delay any 5-FLP delinquent loan servicing actions or responsibilities. All servicing actions, including but not limited to PLS, debt settlement, acceleration, and foreclosure, continue to be processed while considering ARA.

Debtors may submit a written ARA as an alternative to FSA collecting delinquent debt through offset, cross-servicing, and wage garnishment, according to 7 CFR 3.11(b)(4) and 7 CFR 3.16. Additional ARA authorities and requirements that are applicable to specific collection actions are:

- administrative offset (Part 3) according to 7 CFR 3.42(b)

- TOP (Part 4) according to 7 CFR 1951.137(b)(4) and 7 CFR 3.42(b)

  **Note:** 7 CFR Part 1951 will no longer apply after the draft regulation is published in final.

- salary offset (Part 5) according to 7 CFR 1951.111(f)

  **Note:** After the draft regulation is published in final, 7 CFR Part 1951 will no longer apply. The new authority will be 7 CFR 3.80 and there will be some changes in procedure at that time, such as providing another ARA opportunity to the debtor after an appeal hearing decision has been issued.

- cross-servicing (Part 8) according to 7 CFR 1951.137(b)(4), 7 CFR 3.31(c), and 31 CFR 285.12(c)(3)

  **Note:** After the draft regulation is published in final, 7 CFR Part 1951 will no longer apply.

- AWG (Part 9) according to 7 CFR 3.53(d), 7 CFR 3.31(c), and 31 CFR 285.11(e)(2).

ARA:

- may only be used to prevent or suspend the collection actions listed in this paragraph

- must be acceptable to FSA

- does not preclude FSA from pursuing other debt collection remedies as permitted and/or required by DCIA and FCCS

- does not replace or supersede any signed promissory notes, security agreements, judgments, or other debt instruments.

**Alternative Repayment Agreements (ARA's) (Continued)**

**B Notification**

Borrowers are notified of the opportunity to submit ARA or written repayment plan when they receive:

- FSA-2701 for noncentralized administrative offset and TOP
- 60-day due process letter (Exhibit 7) sent before referral to Treasury, which includes notification concerning TOP and, if a balance remains after liquidation of security, cross-servicing and AWG
- FSA-2710 for Federal salary offset
- notification from Treasury concerning cross-servicing and AWG.

Borrowers may submit their proposed ARA or written repayment plan along with FSA-2037 and FSA-2038 or forms provided by Treasury or its collection agents while Treasury is servicing accounts for cross-servicing and AWG.

**C Reviewing and Processing ARA Requests**

The authorized agency official will:

- ***--**review ARA requests (FSA-2707 or FSA-2711) and all information/documentation**--*** necessary to make a decision concerning the borrower's proposal
- request any additional documentation needed to show that the debtor can make the proposed payments on time and that the payments will resolve the delinquency within a reasonable amount of time

  **Example:** If a debtor proposes to sell nonsecurity property and submit the proceeds to FSA to resolve the delinquent FLP debt, FSA may require a copy of the sales contract and/or loan closing documents.

- provide SED with sufficient documentation to make a decision concerning acceptance or rejection of the ARA request
- notify the debtor of FSA's decision within 45 calendar days
- ensure that a copy of ARA and any correspondence are maintained in the borrower's case file.

**Alternative Repayment Agreements (ARA's) (Continued)**

**C Reviewing and Processing ARA Requests (Continued)**

Rejection of ARA requests is not appealable. However, debtors may pursue any remaining review or appeal rights concerning FSA's decision to pursue the various collection actions and should be reminded if there is any time remaining to appeal.

ARA requests accepted by FSA will be monitored and serviced according to subparagraph D.

**D Monitoring and Servicing ARA's**

The authorized agency official will monitor ARA's accepted by FSA to ensure that all payments are received on time as agreed. ARA should be monitored until the account is no longer delinquent, or the agreement must be canceled because of noncompliance.

If the agreement must be canceled, the authorized agency official will:

- consult with the State Office before sending additional collection notices to the debtor
- provide timely notification to the debtor
- determine where in the collection or review/appeal process FSA may continue
- continue with all applicable and appropriate collection actions.

**Pro Rata Offset of Entity Payments**

**A Definition of Entity for This Exhibit Only**

**[7 CFR 1951.102(b)(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.**

**B Determining Debtor's Participation in an Entity**

**[7 CFR 1951.106(b)] 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 has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(l) 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 which 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;**
**(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, the entity as determined by FSA.**

**C Additional Guidelines**

The following guidelines will be used to explain the situation to the Regional OGC.

- When was the entity formed? If it appears that the entity was formed to avoid the collection of an FSA debt, 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 used 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.

- 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 on-going 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?

**Pro Rata Offset of Entity Payments (Continued)**

**C Additional Guidelines (Continued)**

- Does the borrower own all or a major portion of the stock of the entity?
- Is the borrower an officer, director, or general manager of the entity?
- Do the borrower and entity have the same business offices?
- Did the borrower provide for or arrange for the financing of the entity?
- Is the borrower or entity adequately capitalized to run the farming operation?
- Where does the entity's capital come from?
- 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?
- 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?
- 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?
- Does the borrower and 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?
- 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?

**FSA Documentary Review or Hearing**

## A General

Reviews will be:

- conducted by the reviewing officer designated by SED
- limited to the existence of the debt, status of the delinquency, amount of the debt or delinquency, and propriety of the offset
- based on FSA records plus other relevant documentary evidence that may be submitted by the debtor within 10 calendar days after the request for FSA review is received.

**Note:** An FSA employee will **not** be the reviewing officer for any administrative offset case where the employee was involved in making the decision to offset.

The debtor:

- must submit a written explanation of why the debtor disagrees with offset and seeks review
- may request a documentary review or hearing.

The reviewing officer must notify the debtor in writing:

- whether the review will be by documentary review or by hearing
- of the reason why a hearing will not be granted, if the debtor requested one
- of the procedures to be used in reviewing the documentary record
- of the date, location, and procedures to be used if review is by hearing.

## B Timeframe

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

**FSA Documentary Review or Hearing (Continued)**

## C Hearings

Hearings will be conducted as informally as possible and in a fair and expeditious manner.

The reviewing officer will not use the formal rules of evidence about 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 workdays before the hearing.

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

The reviewing officer must document the substance of all significant matters discussed during the hearing; however, no official record or transcript of the hearing needs to be created. If a debtor requests that a transcript be made, it will be at the debtor's expense.

## D Reviewing Officer's Decision

After the hearing or documentary review, the reviewing officer will:

- issue a written decision within 30 calendar days after the hearing or the documentary review

  **Note:** The deadline for issuing the decision may be extended by the reviewing officer for good cause, but for no more than 30 calendar days without consent of the debtor. With the consent of the debtor, the deadline may be extended an additional 30 calendar days (for a total of 60 calendar days beyond the original deadline).

- promptly distribute copies of the decision to the FSA local servicing office, the debtor, and the debtor's representative

- if the decision is not in the debtor's favor:

  - give appeal rights to NAD

  - notify the debtor that within 15 calendar days of the reviewing officer's decision, the debtor may submit ARA, according to 7 CFR 3.42 (Exhibit 8).

**FSA Documentary Review or Hearing (Continued)**

**D Reviewing Officer's Decision (Continued)**

The decision:

- will include supporting rationale for the decision
- does not need to be lengthy or formal in style
- must address the substantive issues
- should address any significant procedural matter that was in dispute before or during the hearing or documentary review.

If the debtor does not appeal to NAD, the FSA reviewing officer's decision is final. Before any appeal hearing to NAD, the reviewing officer's decision constitutes FSA's final informal Agency decision as to the following issues:

- all issues of fact relating to the basis of the debt, including the existence of the debt and the propriety of the administrative offset, in cases where the debtor previously had not been offered due process
- 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.

**E Appeals**

Appeals will be conducted by NAD according to 7 CFR Part 11 and 1-APP. When borrowers request NAD appeal, their right to request review by FSA according to this exhibit will be considered waived.

**Timeframe for Quarterly Referrals to TOP**

The following is a timeframe for quarterly referrals to TOP.
***--**

| Process | Date(s) |
|---|---|
| **FY 2016 2nd Quarter TOP Referral** | |
| New selection **1/** | December 12, 2015 |
| **Critical** pre-letter screening | **December 15, 2015, to January 8, 2016** |
| Finance Office mails 60-day due process letters | January 12, 2016 |
| Pre-certification screening | January 12, 2016, to March 18, 2016 |
| Certification **2/** | March 19, 2016 |
| **FY 2016 3rd Quarter TOP Referral** | |
| New selection **1/** | March 26, 2016 |
| **Critical** pre-letter screening | **March 29, 2016, to April 8, 2016** |
| Finance Office mails 60-day due process letters | April 12, 2016 |
| Pre-certification screening | April 12, 2016, to June 17, 2016 |
| Certification **2/** | June 18, 2016 |
| **FY 2016 4th Quarter TOP Referral** | |
| New selection **1/** | June 25, 2016 |
| **Critical** pre-letter screening | **June 28, 2016, to July 8, 2016** |
| Finance Office mails 60-day due process letters | July 12, 2016 |
| Pre-certification screening | July 12, 2016, to September 16, 2016 |
| Certification **2/** | September 17, 2016 **3/** |
| **FY 2017 1st Quarter TOP Referral** | |
| New selection **1/** | September 17, 2016 **3/** |
| **Critical** pre-letter screening | **September 20, 2016, to September 30, 2016** |
| Finance Office mails 60-day due process letters | October 4, 2016 |
| Pre-certification screening | October 4, 2016, to December 9, 2016 |
| Certification **2/** | December 10, 2016 **4/** |
| **FY 2017 2nd Quarter TOP Referral** | |
| New selection **1/** | December 10, 2016 **4/** |
| **Critical** pre-letter screening | **December 13, 2016, to January 6, 2017** |
| Finance Office mails 60-day due process letters | January 10, 2017 |
| Pre-certification screening | January 10, 2017, to March 17, 2017 |
| Certification **2/** | March 18, 2017 |

1/ This includes all debts that appear eligible on ADPS, even if deleted in prior quarterly process.

2/ Loans with no delete code are moved from the borrower eligible (N) screens to the certified (Y) screens.

3/ The FY 2016 4th quarter certification is run on the same day as the FY 2017 1st quarter selection.

4/ The FY 2017 1st quarter certification is run on the same day as the FY 2017 2nd quarter selection.

**TOP Offset Programmatic Delete Codes**

The following are delete codes that will be programmatically generated based on ADPS status of the debtor's account.

| Code | Description |
|---|---|
| 02 | Account has a "BAP" or "SAA" flag. |
| 13 | • A cost item reversal put a "Z99" paid code on the account.<br>• Transaction code "4A" or "4D" put a "Z97" paid code on the account.<br>• Equity Receivable record suspended or amortized. |
| 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".<br>• No address or invalid address.<br>• Suspension loan amortized. |
| 38 | Account has been written off with a class of writeoff code other than "5". |

**Notes:** If the account status in ADPS generates a delete code, both the borrower and co-borrower loans will be programmatically deleted using the same delete code.

**A suspend code (ZSPC on AI Status Screen) prevents a programmatic delete.**

**TOP Offset Manual Online Screen Delete Codes**

The following are descriptions of programmatic delete codes and the manual delete codes available for State Office use.

| Code | Description |
|---|---|
| 01 | Account has been referred to OGC or DOJ for foreclosure and collection by offset would jeopardize the litigation under State law.<br><br>**Note:** Existence of "FAP" flag is not a determining factor. Remove any erroneous flag. |
| 02 | Loan is either of the following:<br><br>• discharged in bankruptcy and debtor no longer liable<br>• under the jurisdiction of a Bankruptcy court and the debt has not been reaffirmed.<br><br>**Note:** Existence of "BAP" flag is used as a determining factor in the programmatic screening. Remove any erroneous flag. |
| 03 | Being handled by OGC. |
| 04 | Type of Judgment ineligible for offset. |
| 05 | Being serviced by DOJ. |
| 06 | Forbearance because of disaster designation. |
| 07 | Soldiers and Sailors exemption. |
| 09 | Past the 20-year limitations for Judgment debt. |
| 10 | Loan is being corrected. Hold for next selection. |
| **11** | **Moratorium 2008 Farm Bill.** |
| 13 and 38 | For deceased borrower, use either of the following:<br><br>• "13", if the debt will be moved to a co-borrower<br><br>• "38", if the debt will be debt settled, because there are no other liable parties to the debt, there is no security, and no collection is possible from the estate. |
| 16 | Repayment plan has been approved by FSA. |
| 17 | May be used **if** either of the following apply:<br><br>• timing of cash applications on ADPS would not generate a delete code in time and the debtor is eligible for deletion<br><br>• loan is paid in full, but there is a suspend code on the account ("ZSPC" on the ADPS AI Screen is greater than zero).<br><br>**Note:** A suspend code prevents a programmatic delete. |
| N/A | For unique circumstances. |

**TOP Offset Online Screens**

## A Online Screen Information

The Borrowers Eligible for TOP Offset Screen and Borrowers Eligible for TOP Offset Certified Screen will be displayed with borrower and co-borrower information as follows.

| Field/Line | Information |
|---|---|
| ST CTY TIN | Primary borrower's case number. |
| TIN | TIN for the primary borrower or co-borrower. |
| CO | Co-borrower's permanent alphabet letter (A-Z) or number (1-9) as a unique identifier.<br><br>**Note:** It is critical that all co-borrowers' names, addresses, and TIN's be updated in SCIMS on an ongoing basis. The co-borrower/related entity status must be updated in the DLS Customer Profile. |
| Case Number (Located under "Name" column) | The borrower's name will be displayed, if there are no co-borrowers selected or if both borrower and co-borrower are selected.<br><br>The co-borrower's name will be displayed, if only the co-borrower is selected.<br><br>**Note:** For each co-borrower loan selected, the co-borrower's name will be displayed between the TIN and loan number. |
| FLG (Located over "Delete Date" column) | "F" will be displayed if the account has a "FAP" flag. |

**TOP Offset Online Screens (Continued)**

**B Accessing Online Screens**

County Offices may view and State Offices may modify borrower/co-borrower loans by selecting "TOPOFFST" on the Online Submenu Selection Menu. A borrower/co-borrower could have loans on both the Borrowers Certified for TOP Offset (Y) Screen and Borrowers Eligible for TOP Offset (N) Screen, depending on the status of each loan on ADPS. However, an individual loan for either a borrower or co-borrower may only be on 1 of the screens.

From the Borrower Select Menu, use the following applicable option.

| Option | Authorized Users | Step | Action |
|---|---|---|---|
| 1 | State Office | 1 | In the "Enter State" field, enter the 2-digit non-FIPS State code (former FmHA State code). |
| | | 2 | In the "View Certified Borrowers" field, enter either of the following:<br>• "Y", if the Borrower Eligible for TOP Offset/Certified Screen is needed<br>• "N", if the Borrowers Eligible for TOP Offset Screen is needed. |
| | | 3 | PRESS "Enter". All borrower/co-borrower loans on that screen for the State will be displayed. |
| 2 | State and County Offices | 1 | In the "Enter State" field, enter the 2-digit non-FIPS State code (former FmHA State code). |
| | | 2 | In the "Enter State and County" field, enter all 5 digits of FSA's servicing office mail code. |
| | | 3 | In the "View Certified Borrowers" field, enter either of the following:<br>• "Y", if the Borrower Eligible for TOP Offset/Certified Screen is needed<br>• "N", if the Borrowers Eligible for TOP Offset Screen is needed. |
| | | 4 | PRESS "Enter". All borrower/co-borrower loans on that screen for the State will be displayed. |

**TOP Offset Online Screens (Continued)**

**B Accessing Online Screens (Continued)**

| Option | Authorized Users | Step | Action |
|---|---|---|---|
| 3 | State and County Offices | 1 | In the "Enter Case Number" field, enter the entire 15-digit case number. |
| | | 2 | In the "View Certified Borrowers" field, enter either of the following:<br>• "Y", if the Borrower Eligible for TOP Offset/Certified Screen is needed<br>• "N", if the Borrowers Eligible for TOP Offset Screen is needed. |
| | | 3 | PRESS "Enter". All borrower/co-borrower loans on that screen for the State will be displayed. |
| 4 | State and County Offices | 1 | In the "Enter Tax ID" field, enter the 9-digit TIN for the primary borrower. |
| | | 2 | In the "View Certified Borrowers" field, enter either of the following:<br>• "Y", if the Borrower Eligible for TOP Offset/Certified Screen is needed<br>• "N", if the Borrowers Eligible for TOP Offset Screen is needed. |
| | | 3 | PRESS "Enter". All borrower/co-borrower loans on that screen for the specified borrower TIN will be displayed.<br>**Note:** Do not enter a co-borrower TIN because this will display a "Borrower Not Found" message. Entering borrower TIN will display any eligible co-borrowers. |
| 5 | State and County Offices | | PRESS "Enter" to return to the Online Submenu Selection Menu. |
| 6-12 | NFAOC | | In the "Enter Option Code" field, enter applicable code to enable or disable the TOP screens, as needed. |

**AWG Reference Guide for LSPMD**

## 1 Treasury Actions

### A Determination to Use AWG

Once the borrower's account has been referred to Treasury for cross servicing, Treasury appoints PCA to act as an agent on behalf of Treasury to collect the debt. If an agreement cannot be reached on a payment method, AWG payments may be a tool used for collection. If Treasury elects to pursue collection through AWG, PCA will provide the borrower a notice at least 30 calendar days in advance notifying them as follows:

- that AWG may be held against their paycheck
- provide them the opportunity to inspect and copy Agency records related to the debt
- they may enter into a repayment agreement
- they may request a hearing to determine the validity of the debt, amount of the debt, or the debtor's ability to pay
- they have 15 calendar days to respond to the letter and if they do not respond within 15 calendar days, Treasury will issue the garnishment order and apply a 15 percent garnishment rate against their paychecks.

## 2 Borrower Requests

### A Request to Inspect and/or Copy Records

If the borrowers request to inspect and/or copy records, the FLP State and local offices must respond in a timely manner to these requests. See 3-INFO:

- paragraph 17 for information about records holding office responsibility
- paragraph 20 for information about legal basis for withholding information.

**AWG Reference Guide for LSPMD (Continued)**

## 2 Borrower Requests (Continued)

### B Request for ARA

Borrowers may submit a written repayment agreement as an alternative to collection of the FLP debt through AWG. These requests are processed by Treasury, or PCA assigned by Treasury, to service the debt. Treasury may request assistance from FSA in determining the acceptability of ARA or debt settlement offers. In these cases, FLP offices must respond in a timely manner.

The authorized agency official may recommend acceptance of ARA according to ***--**paragraph 244 and Exhibit 8.**--***

ARA's do **not** replace any signed promissory notes, security agreements, judgments, or other debt instruments.

### C Request for Hearing

If the borrower requests a hearing within 15 calendar days, PCA notifies Treasury to suspend AWG against the debtor until the completion of the hearing process.

If the borrower's hearing request is received after 15 calendar days, FSA will provide a hearing to the borrower. However, Treasury will issue the garnishment order to the employer without any delay.

## 3 AWG Hearings According to 31 CFR 285.11(f)

### A Hearing Process

Treasury will forward request of hearing to OCFO, and OCFO will notify LSPMD.

A docket number and hearing date is supplied by Treasury's hearing official.

The hearing official will communicate the hearing information to the debtor, OCFO, and LSPMD.

**AWG Reference Guide for LSPMD (Continued)**

## 3 AWG Hearings According to 31 CFR 285.11(f) (Continued)

### A Hearing Process (Continued)

The borrower can request to inspect their records held by FSA or delay the hearing date. Only justifiable grounds can delay the hearing.

Before the hearing, LSPMD and the debtor must provide evidence (subparagraph 245 D) to assist the hearing official in their ruling. The hearing official will notify LSPMD and the borrower of the deadlines for the submission of evidence for a written hearing.

The hearing can be held in-person, written, or by telephone. Most of Treasury's hearings are written hearings. LSPMD and the borrower will submit documents and other evidence to allow the hearing official to determine a decision.

Depending on the difficulty of the hearing, LSPMD or the borrower may seek legal representation at their own expenses.

FSA does not have to provide more than 1 hearing, based on the same grounds or objections, unless the debtor has new evidence. If a debtor has materially changed financial circumstance from the last hearing, FSA should grant the debtor another hearing to determine hardship.

### B AWG Decision

The AWG hearing should be completed within 60 calendar days. During the hearing, if the borrower fails to appear, the debtor waives their right to a hearing and a calculated amount of AWG (not more than 15 percent) will be applied to the borrower's paycheck.

No garnishment will be held or collected against the debtor until Treasury's hearing official issues an AWG hearing decision even if the decision takes more than 60 calendar days.

The decision may have either of the following outcomes:

- if the debt is valid and should be collected, Treasury's hearing official will calculate the amount of AWG to be withheld

  **Note:** The total AWG percentage of the debtor's paychecks depends on exclusions and financial hardships.

- if the debt is invalid, the debt is terminated.

**AWG Reference Guide for LSPMD (Continued)**

## 3 AWG Hearings According to 31 CFR 285.11(f) (Continued)

### B AWG Decision (Continued)

The final hearing decision and any additional information are sent to OCFO, FSA, and the borrower. LSPMD will notify the applicable State Office.

If the decision terminates AWG, Treasury notifies PCA that the garnishment process has been terminated and the garnishment order is not executed.

**[31 CFR 285.11(f)(12)] The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 et seq.).**

## 4 Garnishment

### A Withholding Order

When the hearing official decides the debt is valid, Treasury will issue a garnishment order that contains a certification of employer document and stipulates the amount of AWG to apply to the borrower's wages.

### B Employer Certification

The employer complies with the order and returns the certification of employee document to Treasury.

### C Only One Garnishment Order

DCIA authorizes Federal Agencies or collection agencies under contract with them to garnish up to 15 percent of the disposable earnings to repay defaulted debts owed the U.S. Government.

**AWG Reference Guide for LSPMD (Continued)**

## 4 Garnishment (Continued)

### D Multiple Garnishment Orders

The total of all garnishment orders shall not exceed 25 percent of the employee's disposable earnings.

Both FLP and Farm Programs can obtain garnishment orders. The garnishment order with the earliest date has priority. The priority, or first, garnishment order will most likely receive a greater portion of the garnished wages.

**Example:** Garnishment Order A has priority over Garnishment Order B. Garnishment Order A is for the full maximum of 15 percent for a single garnishment order. Garnishment Order B must **not** exceed 10 percent (25% - 15% = 10%).

### E Borrower Consent to Garnish Larger Amount

Withholding a larger amount will be negotiated and documented by the debtor's written consent, which will be provided to FLP, Treasury or PCA, and/or the debtor's employer.

## 5 Processing Garnishment Amounts and Collections

### A Employer Processing

The employer submits withheld amounts to Treasury. Treasury sends the funds to FSA in automated reports. Throughout the life of the garnishment, PCA will monitor the garnishments to ensure that the employer complies with the order.

### B Right of Action

If the employer fails to comply with the order, PCA notifies Treasury and Treasury may take legal action against the employer to collect the debt.

### C FLP Processing

AWG collections will be included with all other collections received from Treasury through cross-servicing and/or TOP.

**AWG Reference Guide for LSPMD (Continued)**

**5 Processing Garnishment Amounts and Collections (Continued)**

**D Borrowers With More Than One FSA loan**

If the debtor has more than one FSA loan, 1 loan will go through the AWG process and the others will continue through the normal referral process and be sent to PCA's for servicing. Once the loan being collected through AWG is paid in full, the other loans will be returned to FSA because there are no collections.

FedDebt System was designed to prevent duplication of a debt by blocking the use of the Agency debt ID more than once under FSA's bureau code. To resubmit the debt to Treasury for AWG collection, alter the Agency debt ID by adding an alpha character to the end of the original Agency debt ID.

**Example:** Agency debt ID is 123-45-6789. Resubmit the account as 123-45-6789A. If there are additional loans, continue adding alpha characters in order; such as A, B, C, etc.

During the AWG hearing process, the hearing official deals with the debtor's total FSA debt. There is no need to repeat the hearing process for each individual FSA loan.

**6 Changes to Garnishment Amount**

**A Following Involuntary Separation**

Borrowers must communicate directly with Treasury and/or PCA's about their financial circumstances while accounts are referred to AWG and/or cross-servicing.

**B Financial Hardship**

Treasury will make any hardship determination on DAFLP's behalf and notify the borrower's employer of any adjustments to the garnishment amount. In cases where the garnishment amount has been adjusted because of hardship, Treasury will periodically request updated financial information from the FLP borrower to determine whether the hardship still exists and/or if the garnishment amount must be adjusted again.

**7 Ending Garnishment and Refunds**

**A Ending Garnishment**

In cases where the debt is paid in full, Treasury will notify the employer to discontinue garnishment for FLP.

If the debtor has more than one FSA loan, FSA must resubmit each additional loan to ***--**Treasury according to subparagraph 247 B.**--***

## Approving Debt Settlements Under FCCS

### 1 Previous Debt Forgiveness and Nonprogram Loans

Based on the Federal Agriculture Improvement and Reform Act of 1996, borrowers are only entitled to 1 debt forgiveness under the CONACT direct loan program. There are no exceptions.

However, even though previous debt forgiveness has been received, debt settlements can be processed outside CONACT authorities. **This approval is based on FCCS at 31 CFR 902.1(b), and not CONACT.**

Nonprogram loans may only be settled under FCCS standards.

### 2 Approval Authority

SED's are authorized to approve:

- settlement of debt when the claim, exclusive of interest, penalties, and administrative costs is less than $100,000

  **Note:** Follow RD Instruction 1956-B for guidance in accepting and processing debt settlement requests. A copy of this exhibit will be attached to RD 1956-1. For debt settlements that do not require the borrowers signature, use FSA-2731.

- cancellation of debts discharged under Chapter 7, 11, 12, or 13 of the bankruptcy code, regardless of the amount of the debt

  **Notes:** The cancellation will be processed according to FSA-2731.

  All liable parties must have received a bankruptcy discharge before SED uses this authority.

- settlements **negotiated and approved** by DOJ

  **Note:** A copy of the DOJ approval will be attached to FSA-2731 or RD 1956-1, as applicable.

- settlement of debt regardless of amount, when the local OGC determines that the 6-year SOL for deficiency judgment has expired or that the debt is otherwise legally without merit.

  **Note:** A copy of the OGC opinion and this exhibit will be attached to FSA-2731 or RD 1956-1, as applicable.

**Approving Debt Settlements Under FCCS (Continued)**

**2 Approval Authority (Continued)**

If recommended by SED, settlement of accounts that do not meet the requirements in this subparagraph must be referred to DOJ, Civil Division, through the local OGC. In addition to information collected under Part 12 and RD Instruction 1956-B, a Claims Collection Litigation Report will be completed and forwarded to the Regional Attorney in OGC. To refer the account to DOJ, OGC must concur that the debt settlement should be accepted with citation to the relevant FCCS, if appropriate.

When considering the settlement, DOJ will focus on the ability and prospects of the debtor to repay the debt over a reasonable period. The continuing ability of the debtor to farm and the degree of the debtor's cooperation with FSA will be accorded little significance.

Settlements referred to DOJ that are rejected by DOJ will be denied by SED for the reasons stated by DOJ.

Borrowers will not be provided appeal rights for settlements rejected under this authority. However, rights to a NAD review of FSA's "appealability" decision will be provided.

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation)**

## A Example 1

In the following completed example of FSA-2731, the borrowers have been returned from cross-servicing and the co-borrower is liable for all debt.

This form is available electronically.

**FSA-2731**
(05-22-14)

**U.S. DEPARTMENT OF AGRICULTURE**
Farm Service Agency

Position 2

**CANCELLATION OF DEBT WITHOUT APPLICATION**

1. Account No: 00-000-0000000000

| 2. Debt Owed Agency as of *(Date)* *(MM-DD-YYYY)*: | 3. Total Principal*: | 4. Total Interest*: | 5. Total: |
|---|---|---|---|
| 02-03-2014 | $ 174,805.42 | $ 36,731.48 | $ 211,536.90 |

| 6. Primary Borrower Name or Co-Borrower Name | 7. Fund Code and Loan Number | 8. Principal * | 9. Interest * | 10. Total | 11. Settlement Code 1/ |
|---|---|---|---|---|---|
| 6A. Joe Smith | 45-01 | 6,431.05 | 1,225.63 | 7,656.68 | 01 |
| | 41-02 | 118,155.54 | 12,780.29 | 130,935.83 | 01 |
| | 44-04 | 5,394.01 | 351.46 | 5,745.47 | 01 |
| | 43-10 | 4,297.24 | 272.69 | 4,569.93 | 01 |
| | 44-17 | 40,527.58 | 22,101.41 | 62,628.99 | 01 |
| | | | | | |
| 6B. Mary Smith | | | | | |
| ☒ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 6C. | | | | | |
| ☐ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 6D. | | | | | |
| ☐ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

***1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in Item 11 and attach supporting documentation:***

"01" – All debt returned from cross-servicing as uncollectible

"02" – All debt returned from cross-servicing after paying compromise or adjustment offer

"03" – Obligor has been discharged of the debt under Chapter 7 bankruptcy

"04" – Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)*

"05" – Obligor is deceased or defunct

"06" – DOJ settlement negotiated in lieu of foreclosure or Judgment*

"07" – DOJ – Civil Division settlement without application due to prior debt forgiveness with outstanding principal of $100,000 or greater

"08" – Cancellation of Judgment debt

"09" – OGC has determined that the debt is legally without merit

"10" – Partial debt settlement*

"11" – Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing

*For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks"

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## A Example 1 (Continued)

**FSA-2731** (05-22-14) Page 2 of 2

| | YES | NO | N/A |
|---|---|---|---|
| 12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to RD-1956-1(s) and/or attach FSA-2080(s) and supporting documentation to this form.<br><br>Note: If RD-1956-1 is used, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on RD-1956-1. | X | | |
| 13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form. | X | | |
| 14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file. | X | | |
| 15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file. | | | X |

16. Remarks

17. An obligor: ☐ has ☒ has not received previous debt forgiveness.

☐ If an obligor has received prior debt forgiveness, the requirements of 1956-B, Exhibit B have been met.

**REVIEW OFFICIAL'S CERTIFICATION**

***I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.***

| 18A. Review Official's Signature | 18B. Review Official's Name | 18C. Review Official's Title | 18D. Date (MM-DD-YYYY) |
|---|---|---|---|
| ***/s/ James Doe*** | James Doe | Farm Loan Manager | 02-03-2014 |

**RECOMMENDING OFFICIAL'S CERTIFICATION**

19. I Recommend: ☒ Approval of this Debt Settlement ☐ Rejection of this Debt Settlement

| 20A. Recommending Official's Signature | 20B. Recommending Official's Name | 20C. Recommending Official's Title (FLC or Designee) | 20D. Date (MM-DD-YYYY) |
|---|---|---|---|
| ***/s/ Bill Jones*** | Bill Jones | Farm Loan Chief | 02-12-2014 |

**APPROVING OFFICIAL'S CERTIFICATION**

21. I Hereby: ☒ Approve this Debt Settlement ☐ Reject this Debt Settlement ☐ See RD-1956-1 for Decision

| 22A. State Executive Director's Signature | 22B. State Executive Director's Name | 22C. Date (MM-DD-YYYY) |
|---|---|---|
| ***/s/ Mary Brown*** | Mary Brown | 02-14-2014 |

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*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at **http://www.ascr.usda.gov/complaint_filing_cust.html**, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at **program.intake@usda.gov**. USDA is an equal opportunity provider and employer.*

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## B Example 2

In the following completed examples of FSA-2731 and FSA-2731A, the borrower is an entity. The entity and all of the members of the entity, except 2, were discharged from Chapter 7 Bankruptcy. Of the 2 not discharged from bankruptcy, 1 member is deceased and 1 member resides in a nursing home and is incapacitated. In addition, 1 member was liable for only 1 loan.

This form is available electronically.

**FSA-2731**
(05-22-14)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 2

**CANCELLATION OF DEBT WITHOUT APPLICATION**

1. Account No: 00-000-0000000000

| 2. Debt Owed Agency as of *(Date)* *(MM-DD-YYYY)*: | 3. Total Principal*: | 4. Total Interest*: | 5. Total: |
|---|---|---|---|
| 02-03-2014 | $ 282,778.66 | $ 631,013.87 | $ 313,792.53 |

| 6. Primary Borrower Name or Co-Borrower Name | 7. Fund Code and Loan Number | 8. Principal * | 9. Interest * | 10. Total | 11. Settlement Code 1/ |
|---|---|---|---|---|---|
| 6A. Doe Brother Farms | 41-01 | 154,283.60 | 14,673.85 | 168,957.45 | 03 |
| | 44-02 | 68,396.46 | 4,013.21 | 72,409.67 | 03 |
| | 43-04 | 15,947.37 | 1,051.14 | 16,998.51 | 03 |
| | 29-08 | 44,151.23 | 11,275.67 | 55,426.90 | 03 |
| 6B. John Doe ☒ Same as 6A ☐ Differences from 6A | | | | | |
| 6C. Mary Doe ☐ Same as 6A ☒ Differences from 6A | | | | | 05 |
| 6D. Bill Doe ☒ Same as 6A ☐ Differences from 6A | | | | | |

***1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in Item 11 and attach supporting documentation:***

"01" – All debt returned from cross-servicing as uncollectible

"02" – All debt returned from cross-servicing after paying compromise or adjustment offer

"03" – Obligor has been discharged of the debt under Chapter 7 bankruptcy

"04" – Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)*

"05" – Obligor is deceased or defunct

"06" – DOJ settlement negotiated in lieu of foreclosure or Judgment*

"07" – DOJ – Civil Division settlement without application due to prior debt forgiveness with outstanding principal of $100,000 or greater

"08" – Cancellation of Judgment debt

"09" – OGC has determined that the debt is legally without merit

"10" – Partial debt settlement*

"11" – Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing

*For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks"

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## B Example 2 (Continued)

**FSA-2731** (05-22-14) Page 2 of 2

| | YES | NO | N/A |
|---|---|---|---|
| 12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to RD-1956-1(s) and/or attach FSA-2080(s) and supporting documentation to this form.<br><br>Note: If RD-1956-1 is used, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on RD-1956-1. | X | | |
| 13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form. | X | | |
| 14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file. | X | | |
| 15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file. | | | X |

16. Remarks

17. An obligor: ☐ has ☒ has not received previous debt forgiveness.

☐ If an obligor has received prior debt forgiveness, the requirements of 1956-B, Exhibit B have been met.

**REVIEW OFFICIAL'S CERTIFICATION**

***I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.***

| 18A. Review Official's Signature | 18B. Review Official's Name | 18C. Review Official's Title | 18D. Date (MM-DD-YYYY) |
|---|---|---|---|
| ***/s/ Sue Jones*** | Sue Jones | Farm Loan Specialist | 02-03-2014 |

**RECOMMENDING OFFICIAL'S CERTIFICATION**

19. I Recommend: ☒ Approval of this Debt Settlement ☐ Rejection of this Debt Settlement

| 20A. Recommending Official's Signature | 20B. Recommending Official's Name | 20C. Recommending Official's Title (FLC or Designee) | 20D. Date (MM-DD-YYYY) |
|---|---|---|---|
| ***/s/ Tom Brown*** | Tom Brown | Farm Loan Chief | 02-12-2014 |

**APPROVING OFFICIAL'S CERTIFICATION**

21. I Hereby: ☒ Approve this Debt Settlement ☐ Reject this Debt Settlement ☐ See RD-1956-1 for Decision

| 22A. State Executive Director's Signature | 22B. State Executive Director's Name | 22C. Date (MM-DD-YYYY) |
|---|---|---|
| ***/s/ Fred Smith*** | Fred Smith | 02-14-2014 |

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*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at **http://www.ascr.usda.gov/complaint_filing_cust.html**, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at **program.intake@usda.gov**. USDA is an equal opportunity provider and employer.*

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## B Example 2 (Continued)

This form is available electronically.

**FSA-2731A**
(05-22-14)

**U.S. DEPARTMENT OF AGRICULTURE**
Farm Service Agency

Position 2

**CANCELLATION OF DEBT WITHOUT APPLICATION**
(Continuation)

1. Account No: 00-000-0000000000

| 2. Debt Owed Agency as of *(Date)* *(MM-DD-YYYY)*: | 3. Total Principal*: | 4. Total Interest*: | 5. Total: |
|---|---|---|---|
| 02-03-2014 | $ 282,778.66 | $ 31,013.87 | $ 313,792.53 |

| 6. Primary Borrower Name or Co-Borrower Name | 7. Fund Code and Loan Number | 8. Principal * | 9. Interest * | 10. Total | 11. Settlement Code 1/ |
|---|---|---|---|---|---|
| 6E. Jane Doe<br>☐ Same as 6A ☒ Differences from 6A | 29-08 | 44,151.23 | 11,275.67 | 55,426.90 | 03 |
| 6F. Tom Doe<br>☐ Same as 6A ☒ Differences from 6A | | | | | 11 |
| 6G. Betty Doe<br>☒ Same as 6A ☐ Differences from 6A | | | | | |
| 6H.<br>☐ Same as 6A ☐ Differences from 6A | | | | | |
| 6I.<br>☐ Same as 6A ☐ Differences from 6A | | | | | |
| 6J.<br>☐ Same as 6A ☐ Differences from 6A | | | | | |

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**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## C Example 3

In the following completed example of FSA-2731, the primary borrower was discharged from Chapter 7 Bankruptcy. The co-borrower, who did not file bankruptcy, subsequently requested debt settlement and has submitted RD 1956-1.

This form is available electronically.

**FSA-2731**
(05-22-14)

**U.S. DEPARTMENT OF AGRICULTURE**
Farm Service Agency

Position 2

**CANCELLATION OF DEBT WITHOUT APPLICATION**

1. Account No: 00-000-0000000000

| 2. Debt Owed Agency as of *(Date)* *(MM-DD-YYYY)*: | 3. Total Principal*: | 4. Total Interest*: | 5. Total: |
|---|---|---|---|
| 02-03-2014 | $ 10,958.63 | $ 1,327.04 | $ 12,285.67 |

| 6. Primary Borrower Name or Co-Borrower Name | 7. Fund Code and Loan Number | 8. Principal * | 9. Interest * | 10. Total | 11. Settlement Code 1/ |
|---|---|---|---|---|---|
| 6A. Joe Farmer | 44-01 | 431.05 | 1,225.63 | 1,656.68 | 03 |
| | 44-02 | 10,527.58 | 101.41 | 10,628.99 | 03 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 6B. | | | | | |
| | | | | | |
| ☐ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 6C. | | | | | |
| | | | | | |
| ☐ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 6D. | | | | | |
| | | | | | |
| ☐ Same as 6A ☐ Differences from 6A | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

***1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in Item 11 and attach supporting documentation:***

"01" – All debt returned from cross-servicing as uncollectible

"02" – All debt returned from cross-servicing after paying compromise or adjustment offer

"03" – Obligor has been discharged of the debt under Chapter 7 bankruptcy

"04" – Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)*

"05" – Obligor is deceased or defunct

"06" – DOJ settlement negotiated in lieu of foreclosure or Judgment*

"07" – DOJ – Civil Division settlement without application due to prior debt forgiveness with outstanding principal of $100,000 or greater

"08" – Cancellation of Judgment debt

"09" – OGC has determined that the debt is legally without merit

"10" – Partial debt settlement*

"11" – Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing

*For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks"

**Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)**

## C Example 3 (Continued)

**FSA-2731** (05-22-14) Page 2 of 2

| | YES | NO | N/A |
|---|---|---|---|
| 12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to RD-1956-1(s) and/or attach FSA-2080(s) and supporting documentation to this form.<br><br>Note: If RD-1956-1 is used, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on RD-1956-1. | | X | |
| 13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form. | X | | |
| 14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file. | | | X |
| 15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file. | | | X |

16. Remarks

17. An obligor: ☐ has ☒ has not received previous debt forgiveness.

☐ If an obligor has received prior debt forgiveness, the requirements of 1956-B, Exhibit B have been met.

**REVIEW OFFICIAL'S CERTIFICATION**

***I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.***

| 18A. Review Official's Signature | 18B. Review Official's Name | 18C. Review Official's Title | 18D. Date *(MM-DD-YYYY)* |
|---|---|---|---|
| ***/s/ Jerry Doe*** | Jerry Doe | Farm Loan Officer | 01-03-2014 |

**RECOMMENDING OFFICIAL'S CERTIFICATION**

19. I Recommend: ☒ Approval of this Debt Settlement ☐ Rejection of this Debt Settlement

| 20A. Recommending Official's Signature | 20B. Recommending Official's Name | 20C. Recommending Official's Title *(FLC or Designee)* | 20D. Date *(MM-DD-YYYY)* |
|---|---|---|---|
| ***/s/ Jane White*** | Jane White | Farm Loan Chief | 01-14-2014 |

**APPROVING OFFICIAL'S CERTIFICATION**

21. I Hereby: ☐ Approve this Debt Settlement ☐ Reject this Debt Settlement ☒ See RD-1956-1 for Decision

| 22A. State Executive Director's Signature | 22B. State Executive Director's Name | 22C. Date *(MM-DD-YYYY)* |
|---|---|---|
| | | |

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