

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Direct Loan Servicing – Debt Collection and Resolution 7-FLP	Amendment 3
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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 1-5 (remove) 3-1 through 3-4 3-31, 3-32	17, page 1 29, pages 1, 2 pages 5, 6

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 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.

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)

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 <u>1</u> /	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 <u>2</u> /	March 19, 2016
FY 2016 3rd Quarter TOP Referral	
New selection <u>1</u> /	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 <u>2</u> /	June 18, 2016
FY 2016 4th Quarter TOP Referral	
New selection <u>1</u> /	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 <u>2</u> /	September 17, 2016 <u>3</u> /
FY 2017 1st Quarter TOP Referral	
New selection <u>1</u> /	September 17, 2016 <u>3</u> /
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 <u>2</u> /	December 10, 2016 <u>4</u> /
FY 2017 2nd Quarter TOP Referral	
New selection <u>1</u> /	December 10, 2016 <u>4</u> /
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 <u>2</u> /	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.

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)

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.--*