

certain inefficiencies in its requirements for referral of debts to Treasury and reporting of delinquent debts (§§ 3.11(b)(7) and 3.31(c)) in light of the requirement for FSA issuance of a "Notice of Availability of Loan Servicing Programs" when a borrower is 90 days past due on scheduled loan payments or FSA finds the borrower in non-monetary default, to which the borrower has 60 days to respond. The commenter noted similar inefficiencies with respect to the reporting to credit reporting agencies (where applicable) (§ 3.12(a)(1)) and the charging of a 6 percent penalty on delinquent debts. Given that successful resolution of an application for loan servicing could moot these referrals, reports, and penalties, the commenter suggests that these provisions of the proposed rule be amended to state that implementation of these provisions will occur only after resolution of all pending loan servicing applications.

USDA declines to revise the rule as suggested. First, this rule is intended as a general rule for debt collection for the entire Department, not only farm loan programs. As noted in § 3.1(b)(2), USDA agencies may issue regulations to supplement these Department regulations in order to meet the specific requirements of individual programs. Second, § 3.31(b)(1) provides that referrals to Treasury for cross-servicing are not applicable to debts in litigation and foreclosure, and only legally enforceable debts may be referred to Treasury for centralized offset (*see* § 3.41(c) and 31 CFR 285.5(d)(1)). Third, FSA farm loan debt is commercial debt, not consumer debt, so the commenter's comments on § 3.12(a)(1) are inapplicable. Finally, the up to 6 percent penalty can be avoided if borrowers take action to bring their accounts current in a timely manner, or making necessary financial arrangements to avoid becoming delinquent.

Installment Loans

One commenter suggested, with particular reference to § 3.16, that the proposed rule's emphasis on collection of the entirety of a debt failed to distinguish between collecting the total amount of the debt from the collection of a missed installment payment. The comment apparently assumes that use of the word "debt" in the proposed regulation equates to an entire loan held by a borrower. As the definitions make clear, the term "debt" only refers to amounts determined to be due the United States, e.g., the amount of any given installment payment or payments due on a loan or loans at a given time,

not the entire amount of a loan or loans. Further, the proposed regulation also covers debts owed USDA other than debts arising under loans, for example, civil penalties owed for program violations, disallowed costs under grants, etc. Accordingly, USDA declines to make the commenter's suggested change to the proposed rule to specify "the debt or missed installment payment."

3.16(c)—Additional Security

One commenter noted that most farm program loan debts already are secured, and thus no extra security would be needed to assure the government of adequate protection. Accordingly, the commenter recommended that the regulation should include guidance with respect to the types of cases in which taking additional security would be appropriate.

If a debt already is secured, then additional security would not be warranted. However, USDA declines to add further guidance as to when security should be obtained for unsecured deferred payments under an installment repayment plan in order to afford agencies maximum flexibility to require, or not require, such security in appropriate cases.

Review of Rejection of Repayment Plan

One commenter stated that the rejection by the agency of a repayment plan offered under § 3.42(b) seems to be a "denial" constituting an adverse agency decision appealable to the National Appeals Division (NAD), and that this should be stated in the final rule.

USDA disagrees with this comment. An offer of a repayment plan is an offer to the agency which the agency is not required to accept; it is not a request for a decision of the agency under agency program statutes and regulations that the agency has denied. Further, § 3.42(a) requires that agency decisions with respect to inspection or copying of records be consistent with 7 CFR part 1, subpart A, decisions under which expressly are not appealable to NAD. *See* 7 CFR 11.1 (definition of "participant").

Exempt Farm Program Payments

One commenter requested that the Secretary of Agriculture exempt all farm disaster payments from both referral to Treasury for cross-servicing and administrative offset, and that the final rule include a provision recognizing the authority of the Secretary of Agriculture to exempt other payments from administrative offset.

The commenter misinterprets the DCIA and fails to understand that offset and cross-servicing are two distinct processes. The Secretary of Agriculture has no authority to exempt debts from the statutory requirements for referral for cross-servicing or administrative offset or to exempt certain payments from offset. Only the Secretary of the Treasury has the authority to exempt certain payments from offset if offset would "tend to interfere substantially with or defeat the purposes of the payment certifying agency's program." 7 U.S.C. 3716(c)(3). The Secretary of the Treasury exempts classes of payments for programs upon request by a payment agency only if the standards set by Treasury for such exemptions are met. *See* 31 CFR 285.5(e)(7). This trumps the current USDA debt collection regulations that allow USDA to make that determination. *See* 7 CFR 3.23(b)(3) (2005). Similarly, the Secretary of the Treasury may exempt any class of debt from referral for cross-servicing upon request of an executive agency (31 U.S.C. 3711(g)(2)(B)) in accordance with the criteria specified in 31 CFR 285.12(d)(5).

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Agriculture, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay Administration, Salaries, Wages.

■ For the reasons stated in the preamble, USDA amends 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

■ 1. The authority citation for 7 CFR part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904.

■ 2. Subpart E is redesignated as subpart I.

■ 3. Subparts A through D are revised, and subparts E through H are added, to read as follows:

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.

- 3.1 Purpose and scope.
- 3.2 Authority.
- 3.3 Definitions.
- 3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

- 3.10 Aggressive agency collection activity.
- 3.11 Demand for payment.
- 3.12 Reporting of consumer debts.