

§ 792.9

7 CFR Ch. VII (1-1-05 Edition)

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

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

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

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

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

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

§ 792.9 Withholding.

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

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

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

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

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

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

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

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

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

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

§ 792.10 Late payment interest, penalty and administrative charges.

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

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

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

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

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

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

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

of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section. The rate of interest assessed under the Prompt Payment Act was chosen as an alternative rate to ensure that the Government would recoup interest at a rate which was at least as high as that which it pays for late payments.

(d)(1) When a debt results from a statute, regulation, contract, or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract, or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt, including notice of late payment interest, is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. FSA may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, a penalty charge of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to FSA has been agreed upon. Such penalty charge will be assessed retroactively from the date late payment interest began to accrue and applied on a daily basis. Such

rate shall continue to accrue until the delinquent debt has been paid.

(f) FSA shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to the penalty charge assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

§ 792.11 Waiver of late payment interest, penalty charge and administrative charges.

(a) FSA shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) FSA may waive the assessment and collection of all or a portion of the penalty charge on debts which are appealed in accordance with 7 CFR part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, the penalty charge and administrative charges under this part may be waived by FSA in full, or in part, if it is determined by the Controller, FSA, or his or her designee,