

PROCEDURE REFERENCE:

RD Instruction 1951-C

PURPOSE: This letter will be sent to notify all delinquent borrowers and entities in which the borrower participates that the Agency has exercised and will continue to collect by administrative offset. Do not send this letter if a borrower has filed for protection under the Bankruptcy Code.

Notice of Debtor That Administrative Offset Has Been Exercised and Intent to Collect by Administrative Offset

(Use Agency Letterhead)

Sent by Certified Mail

*Dear _____:

*The United States Department of Agriculture (USDA), (Insert Agency name) (Insert agency abbreviation) will use administrative offset to collect a debt owed by you to (Insert Agency name). This notice advises you of your rights concerning administrative offset as given by the Debt Collection Act, 31 USC 3716; the Federal Claims Collection Standards, 4 CFR 101-105; and the USDA administrative offset regulations at 7 CFR part 3, subpart B. Your delinquent debt has been referred to the United States Department of Treasury, Treasury Offset Program, as well as to your local consumer credit reporting bureau, in accordance with the requirements of the Debt Collection Improvement Act of 1996.

*We have determined that offset will begin immediately against any amounts payable to you. This is because an agency is preparing to make a payment or disbursement to you and failure to offset this payment or disbursement would substantially prejudice our ability to collect. (**Insert a narrative justification outlining why the failure to effect an emergency offset would be financially detrimental to the government.) The payment to be collected is \$ _____ that you are to receive from (Insert payment or disbursement source). (Insert Agency abbreviation) also intends to take any future payment or disbursement that you are to receive from your participation in any Federal program or contract until you pay your account current. The amount due will increase as interest accrues at the below annual rate. Also, the debt and the amount required to bring the account current may increase as penalties or fees are charged to your account and subsequent installments become due.

** See examples in RD Instruction 1951-C, §1951.103(b)(3).

* The amount to be offset will also include any payments to other entities equal to your pro rata share in the entities if FSA has a legally enforceable right under the law or otherwise.

*The loans for which payment is past due are as follows:

<u>*Loan No.</u>	<u>Note Date</u>	<u>Note Amount</u>	<u>Interest Rate</u>	<u>Amount Due</u>
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(COMPLETE AS NECESSARY FROM BORROWER LOAN RECORDS)

[NOTE: Substitute all of the following optional five paragraphs for the above * paragraphs when notifying non-debtor entities that an entity member will be offset.] [Beginning of Letter to non-debtor entities.]

Dear (Insert name of Nonborrower Entity):

A member of your entity is delinquent in the amount of \$_____ to the Farm Service Agency (FSA). Pursuant to regulations published on August 21, 2000 (65 FR 50598), 7 CFR 1951.106, FSA will offset your entity member's percentage share of any payments that member is to receive from participation in any Federal program or contract. We have determined that offset will begin immediately against any amounts payable to you. This is because an agency is preparing to make a payment or disbursement to you and failure to offset this payment or disbursement would substantially prejudice our ability to collect. (**Insert a narrative justification outlining why the failure to effect an emergency offset would be financially detrimental to the government.) The payment to be collected is \$_____ that the entity member is to receive from (Insert payment or disbursement source). (Insert Agency abbreviation) also intends to take the entity member's percentage share of any future entity payment or disbursement that you are to receive from your participation in any Federal program or contract until the entity member pays the account current. The amount due will increase as interest accrues at the below annual rate. Also, the debt and the amount required to bring the account current may increase as penalties or fees are charged to the account and subsequent installments become due.

You have the right to appeal this notice of intent to the National Appeals Division (NAD) in accordance with regulations published at 7 CFR part 11. If you appeal this decision, your written request for appeal must be postmarked no later than 30 calendar days from the date you receive this letter. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, (Insert NAD address).

The request for appeal must contain a copy of this letter and a statement explaining why you think the notice is incorrect. A copy of your appeal and attachments should be sent to this office. The request should include your name, address, and phone number, and the name and address of the decision-maker. NAD will advise you of the time and place of any hearing and of any procedural requirements.

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, disability, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

If you believe you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410.

Sincerely,

(Insert Name of Agency)
United States Department of Agriculture

[End of Letter to non-debtor entities]

You have the right to review Agency records, to make other arrangements for repaying your debt, and to obtain an Agency review of the basis for the Agency's decision to immediately take administrative offset, and to request an appeal of this notice to the National Appeals Division:

Access to Agency Records of the Debt: You may inspect and copy your Agency file regarding this debt. If you wish to review your Agency file regarding this debt, you must notify this office in writing within 20 days from the date of delivery of this notice. In response, we will notify you regarding a time and place for your review. If you desire copies of any documents, one copy will be provided at our expense.

Opportunity to Propose a Repayment Agreement: At any time within 20 days of the date of delivery of this notice, you may present a written agreement to repay the debt as an alternative to administrative offset. Your proposed repayment agreement must document your ability to pay your account current within a short period of time. In the case of a debt to the Farm Service Agency, Forms FSA 2037 and 2038 are attached for your convenience. A written repayment plan for bringing the account current may be accepted by the Agency in lieu of collection of the debt through administrative offset of payments you are to receive.

Opportunity for a Review with an Agency Reviewing Officer: You have the right to submit a written request to the Agency for an Agency review of the existence of the debt and propriety of administrative offset by an Agency reviewing officer. An Agency reviewing officer will be an Agency employee designated to conduct a review who has not been involved in the decision to collect your debt through administrative offsets. You may request a meeting in writing for such a review or you may request a documentary review of your records, in lieu of a meeting. In response to your request, the Agency may determine that no meeting is required and proceed to conduct a documentary review.

An Agency review will be limited to: 1) the existence of the debt, 2) the status of the delinquency, 3) the amount of the debt or delinquency, and 4) the propriety of administrative offset. Any review will be based on agency records plus other documentary evidence which you may submit within 10 calendar days after your request for an Agency review is received. Unless otherwise arranged, and evidenced in writing, any meeting or documentary review will be conducted not less than 10 calendar days and not more than 45 calendar days after the Agency's receipt of your written request for a review.

Upon completion of the Agency review, the Agency will give you rights to appeal the offset to the National Appeals Division under the regulations published at 7 CFR part 11. However, NAD will not reconsider the Agency's review decision; and there will be no further stay of administrative offsets to collect this debt. If NAD upholds your appeal and decides offset was incorrect, the amount offset will be refunded to you.

Your written request for an Agency review must be postmarked no later than 20 calendar days from the date of delivery of this letter. Send the request for review to the State Executive Director or State Director (Insert State Executive Director or State Director address). The request must contain a copy of this letter, must state the type of review you are requesting by an Agency reviewing officer, and must contain a statement explaining why you think the notice is improper.

The request should include your name, address, and phone number, and the name and address of the decision-maker. The State Executive Director will advise you of the time, place, agency review official and procedural requirements, if you request a face to face review. You should send a copy of your request for review and attachments to this office.

All Requests to the Agency must be in Writing: All requests to the Agency in response to this notice must be in writing and must be delivered or postmarked within 20 calendar days after the date you receive this notice. In response to any written request, you will be advised in writing of the time, place and date for any review of Agency files and any meeting that you request.

Immediate Right to Appeal to NAD You have the right to appeal this notice of intent to the National Appeals Division in accordance with regulations published at 7 CFR part 11. If you wish to appeal this decision, your written request for appeal must be postmarked no later than 30 calendar days from the date you received this letter. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, (Insert NAD address). The appeal will be limited to: 1) the existence of the debt, 2) the status of the delinquency, 3) the amount of the debt or delinquency, and 4) the propriety of immediately taking an administrative offset.

The request for appeal must contain a copy of this letter and a statement explaining why you think the notice is incorrect. A copy of your appeal and attachments should be sent to this office. The request should include your name, address, and phone number, and the name and address of the decision-maker. NAD will advise you of the time and place of any hearing and of any procedural requirements. If you appeal the Agency's transmittal of this notice to NAD your right to request a review by the Agency of the existence of the debt and the propriety of administrative offsets will be deemed waived.

Please do not delay action to correct your delinquency or schedule the meeting offered in this letter. This action may have a negative impact on your ability to obtain additional credit. No additional notice will be forthcoming. If you have any questions, please call me at (Insert phone number) or write to me at the above address.

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, disability, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

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Sincerely,

(Insert name of Agency)
United States Department of Agriculture