

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

FSA Docket No. 05-0001

In re:

CARLA BUTLER,

Petitioner

**DECISION**

This matter is before the Administrative Law Judge upon the Petition of Carla Butler who seeks review of a proposed offset of her federal salary. A telephonic hearing was held on June 14, 2005. The Petitioner, Carla Butler, who is not represented by counsel, participated *pro se*. Farm Services Agency, (hereafter "FSA") the Department of Agriculture agency that initiated the offset was represented by Danny L. Woodyard, Esquire, Office of General Counsel, United States Department of Agriculture, Little Rock, Arkansas. Following the telephonic hearing, FSA submitted additional documentation addressing the matters raised during the hearing. The additional documentation was provided to Ms. Butler for comment and she has responded and included additional documentation.

The issues before me are whether the Petitioner, a federal employee, owes a debt to the Respondent, whether the debt is eligible to be the subject of an offset, and if so, the

amount of the debt. Once the amount of the debt is determined, the Administrative Law Judge is also required to determine the percentage of disposable pay to be deducted in satisfaction of the debt.

The obligation in this case was created when the Petitioner Carla Butler and her husband Danny Butler applied for and received a loan in the amount of \$67,500.00 from which \$50,331.00 was used to purchase cattle and the remaining \$17,169.00 was used to purchase farm equipment. The Butlers both executed and delivered to FSA a promissory note dated March 24, 2000 which was to be repaid over a seven year term. The note was secured by the cattle and equipment purchased with the loan proceeds and by a second lien on a 110 acre farm. Attachment A to FSA Answer to Petition.

During the years 2000, 2001 and 2002, Danny Butler sold the cattle that were security for the FSA loan and failed to account for the proceeds. He was charged with criminal conversion, a violation of 18 U.S.C. § 658 in Case No. 2:02CR43PG in the United States District Court for the Southern District of Mississippi. Pursuant to his plea of guilty, on October 9, 2003, he was sentenced to three years probation and to pay restitution of \$47,543.38. Paragraph 2 and Attachment B, Answer of FSA; Attachments A, B and D1 to FSA Report and Memorandum.

As previously noted in my Order entered on June 15, 2005, Carla Butler has advanced five arguments in opposition to the proposed offset of her federal salary. Initially, she asserts that collection of the restitution imposed against her husband in a related criminal proceeding is sufficient, as the amount of restitution represented the net value owed after deducting the value of the farm equipment at the time of the criminal proceedings.

Secondly, she alleges that she and her husband were told that if her husband entered into a plea agreement, recourse on the amount owed would be sought only against her husband.

Third, she questions whether FSA can “legally” offset her salary.

Her fourth contention is that if FSA can in fact “legally” offset her salary, she feels a lesser amount would be appropriate.

Lastly, she questions the amount of the debt.

Ms. Butler’s third argument will be addressed first. Her argument that FSA cannot “legally” offset her salary is without merit. The statutory basis for offsetting the salary of a federal employee is found in 5 U.S.C. § 5514:

(a)(1) When the head of an agency or his designee determines that an employee.... is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination....the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals from the current pay account of the individual....The amount deducted for any period may not exceed 15 percent of disposable pay....

Before an offset can be effectuated, the statute requires notice to the employee and an explanation of the employee’s rights which include the right to inspect and copy Government records relating to the debt, the opportunity to enter into a written agreement to repay the debt according to a mutually agreed upon schedule and an opportunity for a hearing on the determination of the agency concerning the existence or amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement, upon the terms of the repayment schedule. 5 U.S.C. § 5514 (a)(2).

The implementing regulations are found in 7 C.F.R. Subpart C §§ 3.51 *et seq.* and contain specific requirements for the petition for a hearing, direct that the hearings be

conducted by an appropriately designated hearing official upon all relevant evidence and place the burden of proof upon the agency to prove the existence of the debt and upon the employee for the ultimate burden of proof once the debt is established.

During the telephonic hearing, Ms. Butler acknowledged signing the loan and related security documents, thereby obviating the necessity of further proof as to the existence of the original debt. Notice of the intended offset of her federal salary was given to Carla Butler in a letter dated March 16, 2005 which was sent by certified mail. No postal receipt appears in the file; however, a handwritten entry indicates that her "petition" for a hearing dated April 15, 2005 was received by facsimile transmission on April 19, 2005 and the original which appears in the file was hand delivered on April 29, 2005 according to the date stamp. As there is no evidence of the date of the employee's receipt of the letter of March 16, 2005, her petition will be considered timely filed.

Although Ms. Butler has admitted executing the documents giving rise to the debt, she has asserted affirmative defenses in her first two arguments against collection from her, namely that the restitution judgment against her husband in the criminal conversion case acted to bar collection action against her and secondly that she (and her husband) were told that if he entered into a plea agreement, recourse would be sought only against him.

The evidence before me does in fact show that only Danny Butler was charged with a criminal offense and the restitution judgment was entered only as to him. Carla Butler was released from the indictment and was neither charged with any criminal offense nor is she responsible for the restitution which was ordered paid by her husband. Consistent with the restitution judgment, FSA did create a judgment account in the

amount of \$47,443.38, representing the unpaid balance of the loan of \$62,444.38 as of October 9, 2003 less the estimated \$15,000.00 value of the then unliquidated collateral. This accounting entry does not operate to extinguish the liability owed by the Butlers, but rather merely identifies the amounts being paid as restitution.

While Ms. Butler may have wishfully assumed that the discussions releasing her from further liability encompassed both the criminal liability (which was borne only by her husband) as well as the remaining civil liability, the evidence in the file more strongly supports FSA's position that release of only the criminal liability was contemplated. No written agreement affecting the civil liability has been produced and the position of the United States Attorney's Office is clearly set forth in a Memorandum dated December 20, 2004 addressed to John S. Porter, Farm Loan Chief, Mississippi State FSA Office. It notes that "Mrs. Butler was released from the indictment and was not included as a defendant in the criminal restitution judgment. If she is still a debtor on a note held by the agency, you are certainly free to offset her salary." Attachment E to FSA Answer to the Petition for Review. The Memorandum goes on to request reporting of any amounts received by reason of the offset so that the restitution balance could be adjusted to reflect the payments. Accordingly, Ms. Butler's first two arguments cannot be accepted and will not shield her from civil liability on the unpaid balance owed to FSA.

The amount of the debt still must be determined. Ms. Butler indicated that as part of the criminal proceedings, a representative from FSA valued the equipment in the possession of the Petitioner and her husband as being \$15,000.00, leaving \$47,443.38 as the amount of the criminal conversion. By her account, that the equipment was valued in August of 2003, but was not sold until March of 2005 and during the period of delay, she

had received favorable offers to purchase certain of the equipment, but was not allowed to liquidate the equipment even with the understanding that the proceeds would go directly to FSA. Her position is that the ensuing delay in liquidation caused depreciation in the value of the equipment which resulted in diminished proceeds when the property was ultimately sold. Although the affidavit of Randy M. Saxon (Exhibit 1 to Agency's Report and Memorandum) indicates that he does not remember making a valuation of the chattel property, the Presentence Investigation Report<sup>1</sup> prepared by the United States Probation Office contains information (credited to FSA Loan Officer Rand Saxon) that the fair market value of the equipment as of February 2002 was "about \$15,000.00."<sup>2</sup> Attachment to Petitioner's Response to Agency's Report and Memorandum. As I find any valuation made by FSA was used only to establish the dollar amount of the criminal conversion as required by the Sentencing Guidelines in the sentencing process and in determining the appropriate amount of restitution, it will not preclude collection of the civil liability from the actual loss suffered by FSA.

Ms. Butler's position that FSA was responsible for the delay in liquidating the equipment is disputed. The affidavit of Randy Saxon, the e-mail from Joe Williams and the affidavits of Steven L. Wade and Leonard A. Beatty are consistent in presenting a picture of less than full cooperation from the Butlers.<sup>3</sup> Accordingly, FSA's actual loss will be used in computing the outstanding debt.

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<sup>1</sup> Paragraph 28 of the Presentence Investigation Report

<sup>2</sup> The sale of the equipment brought \$8,525.00. From the gross proceeds, commission of \$689.00 and hauling charges of \$200.00 were deducted by the auction company. Administrative charges of \$240.77 were also deducted, leaving \$7,395.23 applied to the outstanding loan balance.

<sup>3</sup> While doubt may be cast upon the affidavit of Randy Saxon by the Presentence Investigation Report as to whether he "valued" the equipment, the other portions of his affidavit are corroborated by Joe Williams, Steven L. Wade and Leonard A. Beatty as well as the case note entries attached as part of the FSA Report and Memorandum.

The evidence in the file reflects that the original debt of \$67,500.00 was reduced by a single payment by the Butlers made on October 22, 2001 in the amount of \$12,526.00. Other than that payment and the net proceeds of \$7,395.23 from the sale of the equipment, there is no evidence of further payments being made. As of March 16, 2005, the outstanding balance was \$61,794.46, together with interest accruing from and after that date.<sup>4</sup>

Although the Petitioner has asked that FSA consider a lesser percentage than the 15% proposed both in her Petition and during the telephone conference, she has introduced no evidence which upon which a lesser percentage would be warranted.

Accordingly, the following Findings of Fact and Conclusions of Law will be entered.

#### **FINDINGS OF FACT**

1. The Petitioner, Carla Butler and her husband, Danny Butler, applied for and received a loan from FSA in the amount of \$67,500.00 and on March 24, 2000, in consideration of the loan executed and delivered to FSA a promissory note and security agreement.

2. The Petitioner is an employee of the United States Postal Service and as such is an individual whose salary is subject to federal offset.

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<sup>4</sup> For accounting purposes, FSA created a judgment account (Loan 44-02) for the restitution payments and administratively reduced the original loan (Loan 44-01) by the amount of the restitution ordered to be paid. The resulting balance on Loan 44-01 was then calculated to be \$19,751.79 with a daily accrual rate of \$3.7880. Although it appeared that FSA contemplated collecting only Loan 44-01 as recomputed from Carla Butler, FSA is not precluded from collecting the entire outstanding deficiency from either or both of the borrowers.

3. The Petitioner was given notice of the proposed offset of her federal salary and the notice dated March 16, 2005 is in full compliance with the statutory requirements of 5 U.S.C. § 5514 and the implementing regulations.

4. Actions by the Butlers in failing to voluntarily liquidate the equipment collateral and having all of the equipment readily available contributed to any delay in liquidation of the farm equipment.

5. The Petitioner is currently indebted to FSA in the amount of \$61,794.46 together with accrued interest from and after March 16, 2005.

### **CONCLUSIONS OF LAW**

1. By executing the promissory note in the amount of \$67,500.00 dated March 24, 2000 to FSA, Carla Butler is a joint obligor for any outstanding balance owed to FSA.

2. Carla Butler, as an employee of the United States Postal Service, is an employee against whom an offset of her federal salary may be effected.

3. The notice of proposed offset dated March 16, 2005 complied with all statutory and regulatory requirements for offsetting her salary.

4. Neither the discussions prior to the entry of a guilty plea by Danny Butler nor the restitution judgment act to preclude imposition of civil liability on Carla Butler as a joint obligor of the debt owed to FSA.

5. The amount owed to FSA as of March 16, 2005 is \$61,794.46 together with interest accruing from and after that date.

6. FSA is entitled to offset 15% of the Petitioner's disposable federal salary until the same shall be paid in full.



Copies of this Decision shall be served on the parties by the Hearing Clerk's Office.

August 9, 2005

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**PETER M. DAVENPORT**  
Administrative Law Judge

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