

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR PART 285**

RIN 1510-AA68

Transfer of Debts to Treasury for Collection

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) requires Federal agencies to transfer any nontax debt which is over 180 days delinquent to the Department of the Treasury for debt collection action; this is known as "cross-servicing." This rule establishes the procedures and criteria for transferring delinquent debt to the Department of the Treasury, explains the statutory exceptions to this requirement, and establishes standards under which the Secretary of the Treasury will make a determination whether or not to grant exemptions. This rule also mandates that agencies refer debts to private collection contractors and to debt collection centers in accordance with procedures established by the Financial Management Service.

DATES: *Effective:* April 2, 1998. Comments must be received on or before May 4, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6859; or Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background**

Section 31001(m)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (1996), codified at 31 U.S.C. 3711(g), requires Federal agencies to transfer to the Secretary of the Treasury any nontax debt that has been delinquent for a period of 180 days. Upon such transfer the Secretary of the Treasury will take appropriate action to

collect or terminate collection action on the debt. The DCIA lists several exemptions to this requirement. In addition, the Secretary of the Treasury may exempt any class of debts from this requirement.

Under the DCIA, the Secretary of the Treasury is authorized to prescribe regulations as the Secretary considers necessary to carry out this requirement. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations governing this and other provisions of the DCIA. This rule describes when a debt must be transferred to the Department of the Treasury for debt collection action and when a debt will be considered in an exempt category. This rule explains the relationship between the requirement to transfer debt to Treasury for debt collection action (i.e., cross-servicing) and the DCIA requirement, codified at 31 U.S.C. 3716(c), that agencies notify the Secretary of the Treasury of all debt over 180 days delinquent for purposes of administrative offset. This rule also describes the factors that the Secretary of the Treasury will consider in determining whether to exempt a class of debts from the mandatory provisions of 31 U.S.C. 3711(g).

The DCIA also authorizes the Secretary of the Treasury to designate other Federal agencies as debt collection centers and to maintain a schedule of private collection contractors eligible for referral of debts owed to the United States. This rule mandates that agencies refer debts to debt collection centers and to private collection contractors in accordance with procedures established by the FMS.

Readers are reminded that most of the provisions of the DCIA became effective upon enactment on April 26, 1996. FMS is publishing this rule to clarify and interpret the DCIA provisions pertaining to the referral of debts to the Department of the Treasury and Treasury-designated debt collection centers for collection action. However, publication of this rule does not delay the effective date of the DCIA, nor does it postpone the duty of Federal agencies to comply with the provisions of the DCIA.

Section Analysis*(a) Definitions*

The intent of 31 U.S.C. 3711(g) is to centralize the collection of delinquent debt owed to the Government within Treasury, which has the authority to designate debt collection centers to administer centralized collection. Therefore, the definitions in paragraph (a) of this rule are intended to apply to

every Federal agency in the Government and every entity who owes delinquent nontax debt to the Federal Government.

(b) General Rule

Paragraph (b) of this section explains that "cross-servicing" is the term used to refer to the function performed by a Federal agency that is providing debt collection services for another Federal agency. Debt collection services may include, but are not limited to, sending demand letters, telephoning the debtor, and referring the debt for collection by offset or by a private collection contractor. The Department of the Treasury and debt collection centers, more fully described in paragraph (f) of this section, are authorized to perform cross-servicing.

(c) Mandatory Transfer to FMS

Paragraph (c)(1) of this section states the general rule that unless a nontax debt which is over 180 days delinquent falls within one of the exempt categories listed under paragraph (d) of this section, it must be transferred to the Financial Management Service (FMS) of the Department of the Treasury for collection action. For accounting and reporting purposes, however, the debt remains on the books and records of the agency which transferred the debt, i.e., the creditor agency. The terms "transfer" and "refer" (see paragraph (h), below) as used in this rule have the same meaning.

Paragraph (c)(2) of this section describes the actions which FMS may take relative to a debt which is transferred to FMS under this paragraph. Paragraph (c)(2) clarifies that FMS will take action upon a debt in accordance with the statutory and regulatory requirements and other authorities that apply to that debt or to the particular action being taken subject to terms and conditions agreed upon, in writing, between FMS and the creditor agency. Transfer of a debt to FMS does not change the rights and/or obligations of the debtor. Thus, for example, if an agency's authority to compromise a certain type of debt is set forth in a statute or regulation, that statute or regulation would continue to govern.

Paragraph (c)(3) of this section describes when a debt will be considered 180 days delinquent for purposes of mandatory transfer to FMS. Paragraph (c)(3) recognizes that there are circumstances where 180 days or more has passed from the time a debt is first established as delinquent on an agency's books and records, but collection action on that debt may not be appropriate either because there has not been a final agency determination

regarding the debt, or there is a legal bar to further collection action. The 180 day period begins when the creditor agency first establishes the debt as delinquent and continues to run even though collection action may be barred. Nevertheless, agencies are not required to transfer to FMS debts which are over 180 days delinquent until such time as a final agency determination regarding the debt is made or the legal bar to further collection action is removed. For example, agencies are not required to transfer debt where the amount due is in dispute and the agency has not yet made a final determination regarding the amount due; where an administrative appeals process is pending and continued collection action during the appeals process is prohibited; or where the automatic stay in a bankruptcy proceeding applies. Once a final agency determination regarding the debt is made or the legal bar to further collection action is removed, however, the debt must be immediately transferred to FMS. Agencies are cautioned that circumstances where an agency's determination regarding a debt is still pending at the time the debt is 180 days delinquent should generally exist only where an applicable statute or regulation requires it. In all other circumstances, agency determinations regarding debts must be made within reasonable time frames which, absent compelling circumstances, should not exceed 180 days from the time the debt is first established.

(d) Exceptions to Mandatory Transfer

Paragraph (d) of this section describes more fully the exceptions to mandatory transfer listed in the DCIA. Paragraph (d)(1) lists the statutory exceptions. Paragraph (d)(2) more fully describes each exception.

Under paragraph (d)(2)(i) of this section, a debt is in litigation only if it has been referred to the Attorney General for litigation or if proceedings before a court of competent jurisdiction are actually pending. For debts which have been referred to the Attorney General for litigation, it is not necessary that court proceedings actually be pending. For other debts, however, such as debts owed to agencies with independent litigating authority or those debts which are the subject of defensive litigation, proceedings before a court must actually be pending. A debt which has only been referred to agency counsel for legal review is not considered to be in litigation. Nothing in the DCIA or in this rule is intended to affect an agency's authority to refer debts, which are not subject to mandatory transfer to

FMS, to the Attorney General where appropriate.

Under paragraph (d)(2)(ii) of this section, a debt is in foreclosure if judicial foreclosure proceedings before a court of competent jurisdiction are actually pending or a Notice of Default or comparable action required under applicable law to initiate a nonjudicial foreclosure proceeding against real or personal property has been issued. Additionally, for a debt to be considered in foreclosure it is also necessary that the agency expects to receive proceeds from the foreclosure which may be applied to the debt.

Under paragraph (d)(3) of this section, a debt is scheduled for sale only if it is scheduled to be sold under an established asset sales program within one year (or longer if approved by the Office of Management and Budget) from the time it is eligible for sale, that is, from the time the debt has been approved to be included in an asset sales program.

Under paragraph (d)(4) of this section, a debt is at a private collection contractor only if it has been referred to a private collection contractor in accordance with paragraph (e) of this section.

Under paragraph (d)(5) of this section, a debt is at a debt collection center only if it has been referred to a debt collection center in accordance with paragraph (f) of this section.

Under paragraph (d)(6) of this section, a debt is being collected by internal offset only if an internal offset has been initiated and the agency expects that the debt will be collected in full within three years from the date of delinquency. An internal offset will be considered to have been initiated if funds payable to the debtor by the creditor agency have been withheld or, in cases where prior notice to the debtor is required, if such notice has been issued.

Paragraph (d)(7) of this section sets forth the factors the Secretary of the Treasury will consider in granting exemptions for other classes of debts. Generally, the presumption is that an exemption will not be granted absent compelling circumstances.

(e) Schedule of Private Collection Contractors

The DCIA requires the Secretary of the Treasury to maintain a schedule of private collection contractors eligible to receive debts owed to Federal agencies. FMS and other debt collection centers must utilize this schedule of contractors when referring debts to a private collection contractor. Agencies which refer debts which are less than 180 days

delinquent to private collection contractors may utilize this schedule of contractors provided they do so in accordance with procedures established by FMS. Agencies are not required to use this schedule of contractors for debts which are less than 180 days delinquent or for debts which are otherwise exempt from the mandatory transfer requirement described in paragraph (c) of this section.

(f) Debt Collection Centers

Paragraph (f) of this section explains that a debt collection center is a Federal agency designated by the Secretary of the Treasury, under standards and terms established by the Secretary, to collect debts owed to the United States. A debt collection center may be an agency, or a unit or subagency within a Federal agency. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers are authorized, subject to the terms under which the debt collection center has been designated as such by the Secretary of the Treasury, to take any action on behalf of the creditor agency to collect, compromise, suspend or terminate collection action on debts, in accordance with the terms and conditions set forth, in writing, by the creditor agency. The action a debt collection center may take is intended to be interpreted broadly to include actions, such as reporting debts to credit bureaus and obtaining credit reports, which facilitate collection.

(g) Administrative Offset

This section explains the relationship between (1) the DCIA requirement that debts over 180 days delinquent be transferred to Treasury for collection action (i.e., cross-servicing) and (2) the DCIA requirement that agencies notify the Secretary of the Treasury of debts over 180 days delinquent for purposes of administrative offset. Debts which are transferred to FMS or a Treasury-designated debt collection center under this rule will, where appropriate, be referred for collection by administrative offset and agencies are not required to take any further action to comply with the DCIA requirement regarding administrative offset. Debts not transferred under this rule, for example, debts which fall within one of the exempt categories, may nevertheless be subject to the mandatory offset requirement.

(h) Voluntary Referral of Debts Less Than 180 Days Delinquent.

Although agencies are required to transfer debt to FMS which is more than 180 days delinquent, paragraph (h) of this section is intended to clarify that agencies may voluntarily refer debt less than 180 days delinquent to FMS, to a private collection contractor in accordance with paragraph (e) of this section and procedures established by FMS, or to a debt collection center in accordance with paragraph (f) of this section and procedures established by FMS. As noted above, the terms "transfer" and "refer" as used in this rule have the same meaning.

(i) Certification

Paragraph (i) of this section describes the requirement that the head of an agency or someone with authority to act on behalf of the head of the agency with regard to debt collection matters, must certify to FMS or to a debt collection center that debts transferred are valid, legally enforceable, that there are no legal bars to collection, and that all due process requirements have been met. This means that the agency must certify that it has made a final determination that the debt is due in the amount transferred, that there are no legal bars to collection such as bankruptcy, and that the agency has provided (or has arranged to provide) the debtor with notice and an opportunity to be heard where required as a prerequisite to a particular collection action. In addition, paragraph (i) explains that the creditor agency is responsible for notifying FMS of any changes to the status of the legal enforceability of the debt. For example, unless the creditor agency determines that the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. Therefore, it is imperative that the creditor agency notify FMS immediately upon learning that a bankruptcy petition has been filed with respect to a debtor.

(j) Fees

Paragraph (j) of this section describes the DCIA authority for FMS and debt collection centers to charge fees, to retain fees from amounts collected, and to deposit and use fees. Paragraph (j) of this section also describes the authority for creditor agencies to add these fees to the amount of the debt.

Regulatory Analysis

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no

notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"), because FMS has determined, for the following reasons, that a comment period would be unnecessary, impracticable, and contrary to the public interest. The DCIA was effective immediately upon its enactment on April 26, 1996. In implementing the DCIA provision requiring Federal agencies to transfer debt over 180 days delinquent to Treasury for debt collection, FMS has identified the need to provide guidance to Federal agencies. To ensure that this guidance was provided in a consistent and meaningful manner, FMS has determined that a rule is desirable.

Nothing in this rule impacts the rights or obligations of debtors nor changes the authorities under which Federal agencies collect debt. This rule provides critical guidance needed to facilitate the ongoing transfer of debts to Treasury for debt collection. Thus, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, the requirement to transfer debt to Treasury for debt collection became effective on April 26, 1996. Inasmuch as this interim rule provides important guidance that is expected to facilitate full implementation of the authority contained in the law, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in Part 285

Administrative Practice and Procedure, Credit, Debt, Loan Programs
Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A; E.O. 13019, 3 CFR, 1996 Comp., p. 216.

2. Subpart B is added to Part 285 to read as follows:

Subpart B—Authorities Other Than Offset

Sec.

285.11 [Reserved]

285.12 Transfer of debts to Treasury for Debt collection

Subpart B—Authorities Other Than Offset

§ 285.11 [Reserved]

§ 285.12 Transfer of Debts to Treasury for debt collection.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person. As used in this rule, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 or the tariff laws of the United States.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Secretary means the Secretary of the Treasury.

(b) *In general.* Cross-servicing means that FMS, a Federal agency, or a unit or subdivision within a Federal agency, under a designation by the Secretary of the Treasury, is taking appropriate debt collection action on behalf of one or more Federal agencies or unit or subdivision thereof. Agencies which provide such cross-servicing are known as debt collection centers.

(c) *Mandatory transfer of debts to FMS.* (1) Except as set forth in paragraph (d) of this section, a creditor agency shall transfer any debt that is more than 180 days delinquent to FMS for debt

collection services. For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(2) On behalf of the creditor agency, FMS will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency shall advise FMS, in writing, of any specific statutory or regulatory requirements pertaining to their debt and will agree, in writing, to a collection strategy which includes parameters for entering into compromise and repayments agreements with debtors.

(3) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due. Once there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action, however, any debt over 180 days delinquent must be immediately transferred to FMS. Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(d) *Exceptions to mandatory transfer.*

(1) A creditor agency is not required to transfer a debt to FMS pursuant to paragraph (c)(1) of this section only during such period of time that the debt:

(i) Is in litigation or foreclosure as described in paragraph (d)(2) of this section;

(ii) Is scheduled for sale as described in paragraph (d)(3) of this section;

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor in accordance with paragraph (e) of this section;

(iv) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center in

accordance with paragraph (f) of this section;

(v) Is being collected by internal offset as described in paragraph (d)(4) of this section; or

(vi) Is covered by an exemption granted by the Secretary as described in paragraph (d)(5) of this section.

(2)(i) A debt is in litigation if:

(A) The debt has been referred to the Attorney General for litigation by the creditor agency; or

(B) The debt is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by the creditor agency, the debtor, or any other party.

(ii) A debt is in foreclosure if:

(A)(1) Collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction; or

(2) Notice has been issued that collateral securing the debt will be foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding; and

(B) The creditor agency anticipates that proceeds will be available from the liquidation of the collateral for application to the debt.

(3) A debt is scheduled for sale if:

(i) The debt will be disposed of under an asset sales program within one (1) year after becoming eligible for sale; or

(ii) The debt will be disposed of under an asset sales program and a schedule established by the creditor agency and approved by the Director of the Office of Management and Budget.

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. "Internal offset" means withholding of funds payable by the creditor agency to the debtor to satisfy, in whole or part, the debt owed to the creditor agency by that debtor.

(5)(i) Upon the written request of the head of an agency, or as the Secretary may determine on his/her own initiative, the Secretary may exempt any class of debts from the application of the requirement described in paragraph (c)(1) of this section. In determining whether to exempt a class of debts, the Secretary will determine whether exemption is in the best interests of the Government after considering the following factors:

(A) Whether an exemption is the best means to protect the government's financial interest, taking into consideration the number, dollar

amount, age and collection rates of the debts for which exemption is requested;

(B) Whether the nature of the program under which the delinquencies have arisen is such that the transfer of such debts would interfere with program goals; and

(C) Whether an exemption would be consistent with the purposes of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (April 26, 1996).

(ii) Requests for exemptions must clearly identify the class of debts for which an exemption is sought and must explain how application of the factors listed above to that class of debts warrants an exemption.

(e) *Schedule of private collection contractors.* FMS will maintain a schedule of private collection contractors eligible for referral of debts from FMS, other debt collection centers, and creditor agencies for collection action. An agency with debt which has not been transferred to FMS or referred to another debt collection center, for example, debt that is less than 180 days delinquent, may refer such debt to a private collection contractor listed on FMS' schedule of private collection contractors provided they do so in accordance with procedures established by FMS. Alternatively, an agency may refer debt that is less than 180 days delinquent to a private collection contractor pursuant to a contract between the creditor agency and the private collection contractor, as authorized by law.

(f) *Debt collection centers.* A debt collection center is a Federal agency or a unit or subagency within a Federal agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency, subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts in accordance with terms and conditions agreed upon in writing by the creditor agency and the debt collection center or FMS.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the

DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless, may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less

than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(j) *Fees.* FMS and other debt collection centers may charge fees for debt collection services. Fees must be based on costs, however, fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a credit agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added on to the debt as an administrative cost if authorized under 3717(e).

Dated: March 25, 1998.

Richard L. Gregg,

Commissioner.

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