

**DEPARTMENT OF THE TREASURY****DEPARTMENT OF JUSTICE****31 CFR Chapter IX and Parts 900, 901, 902, 903, and 904**

[A.G. Order No. 2135-97]

RIN 1510-AA57 and 1105-AA31

**Federal Claims Collection Standards****AGENCIES:** Department of the Treasury; Department of Justice.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to revise the Federal Claims Collection Standards issued by the Department of Justice and the General Accounting Office on March 9, 1984. The proposed revisions clarify and simplify Federal debt collection standards contained in the Federal Claims Collection Standards and reflect changes to Federal debt collection procedures under the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

**DATES:** Comments must be received on or before March 2, 1998.

**ADDRESSES:** All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227; or John W. Showalter, Assistant Director, Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044. A copy of this proposed 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, Financial Management Service, Department of the Treasury, at (202) 874-6660; Ronda L. Kent or Ellen Neubauer, Senior Attorneys, Financial Management Service, Department of the Treasury, at (202) 874-6680; or John W. Showalter, Assistant Director, Commercial Litigation Branch, Civil Division, Department of Justice, at (202) 307-0244.

**SUPPLEMENTARY INFORMATION:** The Federal Claims Collection Standards (FCCS) are being revised for two primary reasons: (1) to clarify and simplify the Federal debt collection standards contained in the FCCS; and (2) to reflect changes to Federal debt collection procedures under the Debt

Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996.

Some of the changes made to clarify and simplify the FCCS were suggested by Federal officials in numerous Government agencies in the five years prior to the enactment of the DCIA. We appreciate their substantial efforts toward this revision. The revised FCCS provide agencies with greater latitude to adopt agency specific regulations considering the legal and policy requirements applicable to the various types of Federal debt and maximize the effectiveness of Federal debt collection procedures.

The DCIA is the most significant legislation for the administrative collection of Federal debt since the Debt Collection Act of 1982, Pub. L. 97-365, 96 Stat. 1749 (Oct. 25, 1982). The revised FCCS conform with relevant statutory changes to Federal debt collection procedures under the DCIA. The DCIA authorizes the issuance of rules concerning new debt collection procedures, including centralized administrative offset, the transfer or referral of delinquent debt to Treasury or Treasury-designated debt collection centers for collection (cross-servicing), administrative wage garnishment, and publication of debtor information. Additional rules concerning these new debt collection procedures will be issued separately in accordance with the DCIA.

While this revision of the FCCS is being issued as a proposed rule, readers are reminded that most of the provisions of the DCIA became effective upon enactment on April 26, 1996. Publication of this proposed 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.

The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996 (GAO Act), Pub. L. 104-316, 110 Stat. 3826 (Oct. 19, 1996). The Department of the Treasury and the Department of Justice are establishing a new joint chapter IX in Title 31 of the Code of Federal Regulations. The Department of the Treasury and the Department of Justice will publish the revised FCCS as a joint rule in this new chapter. The current FCCS are found at 4 CFR parts 101-105.

**Discussion of Major Changes**

The revised FCCS contain numerous changes and amendments throughout the rule. Major changes contained in these revised FCCS are highlighted below. The various provisions of the FCCS that have been redrafted for clarity but that do not substantively change debt collection procedures are not discussed here. A detailed section-by-section analysis comparing the revised FCCS to the current FCCS is available at the addresses noted above. Readers are encouraged to read the revised FCCS carefully to assure knowledge and understanding of all the changes and not rely solely on the changes highlighted in this discussion.

The following major changes to the FCCS have been incorporated into these revised FCCS:

1. The Comptroller General was removed as a co-promulgator of the FCCS. The revised FCCS will be published in parts 900-904 of chapter IX of Title 31 of the Code of Federal Regulations because the Secretary of the Treasury was added as a co-promulgator of the FCCS. See 4 CFR 101.1.

2. The revised FCCS reflect the elimination of the Comptroller General's role in Federal debt collection.

3. The revised FCCS provide agencies with greater latitude to streamline and customize debt collection procedures to accommodate agency specific requirements or unique circumstances.

4. The revised FCCS reflect the requirement that agencies use government-wide debt collection contracts (with certain exceptions) for referrals to private collection contractors.

5. The revised FCCS contain a new requirement that agencies and debtors exchange mutual releases of non-tax liabilities, in all appropriate instances, when a claim is compromised.

6. The revised FCCS reflect the increase in the principal claim amount, from \$20,000 to \$100,000, that agencies are authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by the Department of Justice. In addition, the minimum amount of a claim that may be referred to the Department of Justice is increased from \$600 to \$2,500. The circumstances under which the Department of Justice will litigate when the claim amount does not meet the minimum threshold have not been changed.

7. The revised FCCS reflect several new debt collection procedures under the DCIA, including, but not limited to:

(a) transfer or referral of delinquent debt to the Department of the Treasury

or Treasury-designated debt collection centers for collection, known as "cross-servicing;"

(b) mandatory, centralized administrative offset by disbursing officials;

(c) mandatory credit bureau reporting; and

(d) mandatory prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

The Department of the Treasury and the Department of Justice have determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and accordingly this regulation has not been reviewed by the Office of Management and Budget. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for Federal agencies to streamline their own debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

## List of Subjects

### 31 CFR Part 900

Antitrust, Claims, Fraud, Taxes.

### 31 CFR Part 901

Administrative practice and procedure, Claims, Federal Employees, Penalties, Privacy.

### 31 CFR Part 902

Claims.

### 31 CFR Part 903

Claims.

### 31 CFR Part 904

Claims.

For the reasons set out in the preamble, chapter IX, consisting of parts 900 through 904, is proposed to be established in title 31 of the Code of Federal Regulations to read as follows:

## CHAPTER IX—FEDERAL CLAIMS COLLECTION STANDARDS

### (DEPARTMENT OF THE TREASURY—DEPARTMENT OF JUSTICE)

#### Part

- 900 Scope of standards
- 901 Standards for the administrative collection of claims
- 902 Standards for the compromise of claims
- 903 Standards for suspending or terminating collection activity
- 904 Referrals to the Department of Justice

### PART 900—SCOPE OF STANDARDS

#### Sec.

- 900.1 Prescription of standards.
- 900.2 Definitions and construction.
- 900.3 Antitrust, fraud, and tax and interagency claims excluded.
- 900.4 Compromise, waiver, or disposition under other statutes not precluded.
- 900.5 Form of payment.
- 900.6 Subdivision of claims not authorized.
- 900.7 Required administrative proceedings.
- 900.8 No private rights created.

**Authority:** 31 U.S.C. 3711.

#### § 900.1 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States are issuing the regulations in parts 900–904 of this chapter under 31 U.S.C. 3711(d)(2). The regulations in this chapter prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations. These regulations in this chapter also prescribe standards for referring claims to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A–129 (Revised) "Policies for Federal Credit Programs and Non-Tax Receivables," the Department of the Treasury's "Managing Federal Receivables," and other publications concerning debt collection and debt management. These publications are

available from the Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227.

(b) Additional rules governing disbursing official administrative offset and the transfer of delinquent debt to the Department of the Treasury or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), are issued in separate regulations by the Department of the Treasury. Rules governing the use of certain debt collection tools created under the Debt Collection Improvement Act of 1996, such as administrative wage garnishment and dissemination of information regarding delinquent debtors, also are issued in separate regulations by the Department of the Treasury.

(c) Agencies are not limited to the remedies contained in parts 900–904 of this chapter and are encouraged to use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Pub. L. 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749 (Oct. 25, 1982), the Debt Collection Improvement Act of 1996, or other relevant statutes. These regulations in this chapter are not intended to impair agencies' common law rights to collect claims.

#### § 900.2 Definitions and construction.

(a) For the purposes of the standards in this chapter, the terms "claim" and "debt" are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) A claim is "delinquent" if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement),

unless other satisfactory payment arrangements have been made.

(c) In parts 900–904 of this chapter, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms “includes” and “including” do not exclude matters not listed but do include matters that are in the same general class.

(d) Recoupment is a special method for adjusting claims arising under the same transaction or occurrence. For example, obligations arising under the same contract are generally subject to recoupment.

(e) For purposes of the standards in this chapter, unless otherwise stated, “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

#### **§ 900.3 Antitrust, fraud, and tax and interagency claims excluded.**

(a) The standards in parts 900–904 of this chapter relating to compromise, suspension, and termination of collection activity do not apply to any claim based in whole or in part on conduct in violation of the antitrust laws or to any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in parts 900–904 of this chapter relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, agencies shall promptly refer the case to the Department of Justice for action. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the standards in parts 900–904 of this chapter.

(b) Parts 900–904 of this chapter do not cover tax claims.

(c) Parts 900–904 of this chapter do not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

#### **§ 900.4 Compromise, waiver, or disposition under other statutes not precluded.**

Nothing in parts 900–904 of this chapter precludes agency disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and these standards. See, e.g., the Federal Medical Care Recovery Act, Pub. L. 87–693, 76 Stat. 593 (Sept. 25, 1962) (codified at 42 U.S.C. 2651 *et seq.*), and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of a particular agency generally take precedence over parts 900–904 of this chapter.

#### **§ 900.5 Form of payment.**

Claims may be paid in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

#### **§ 900.6 Subdivision of claims not authorized.**

Claims may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor’s liability arising from a particular transaction or contract shall be considered a single claim in determining whether the claim is one of less than \$100,000 (excluding interest, penalties, or administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

#### **§ 900.7 Required administrative proceedings.**

Agencies are not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

#### **§ 900.8 No private rights created.**

The standards in this chapter do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of an agency to comply with any of the provisions of parts 900–904 of this chapter be available to any debtor as a defense.

### **PART 901—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS**

Sec.

- 901.1 Aggressive agency collection activity.
- 901.2 Demand for payment.

- 901.3 Collection by administrative offset.
  - 901.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund and the Federal Employee Retirement System.
  - 901.5 Reporting claims.
  - 901.6 Contracting for debt collection agencies and to locate and recover unclaimed assets.
  - 901.7 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
  - 901.8 Liquidation of collateral.
  - 901.9 Collection in installments.
  - 901.10 Interest, penalties, and administrative costs.
  - 901.11 Analysis of costs.
  - 901.12 Use and disclosure of mailing addresses.
  - 901.13 Exemptions.
- Authority:** 31 U.S.C. 3701, 3711, 3716, 3717, 3718, and 3720B.

#### **§ 901.1 Aggressive agency collection activity.**

(a) Federal agencies shall aggressively collect all claims arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary depending upon the circumstances. Nothing contained in parts 900–904 of this chapter requires the Department of Justice, the Department of the Treasury, or other Treasury-designated debt collection center, to duplicate collection activities previously undertaken by other agencies or to perform collection activities that other agencies should have undertaken.

(b) Claims referred or transferred shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities otherwise applicable to the collection of such claims.

(c) Agencies shall cooperate with one another in their debt collection activities.

(d) Agencies should consider referring claims that are less than 180 days delinquent to “debt collection centers” of the Federal Government to accomplish efficient, cost effective debt collection. The Department of the Treasury is a debt collection center, is authorized to designate other debt collection centers within the Federal Government based on the debt collection centers’ performance in collecting delinquent claims owed to the Government, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) Agencies shall transfer to the Secretary any claim that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the claim or terminate collection action. This requirement does not apply to any claim that:

- (1) Is in litigation or foreclosure;
  - (2) Will be disposed of under an approved asset sale program;
  - (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;
  - (4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);
  - (5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or
  - (6) To other classes of claims for which the Secretary has determined that an exemption from this requirement is in the best interest of the Government. Agencies may request that the Secretary exempt specific classes of claims.
- (f) Agencies operating debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred claims. The fee may be paid out of amounts collected and may be added on the claim as an administrative cost (see § 901.10).

#### § 901.2 Demand for payment.

(a) Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the claim. The specific content, timing, and number of demand letters shall depend upon the type and amount of the claim and the debtor's response, if any, to the agency's letters or calls. Generally, one demand letter should suffice. In determining the timing of the demand letter or letters, agencies should give due regard to the need to refer claims promptly to the Department of Justice for litigation, in accordance with § 904.1 of this chapter or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under parts 900–904 of this chapter, including immediate referral for litigation.

(b) Demand letters shall inform the debtor of:

- (1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;
- (2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which payment should be made to avoid late charges and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within the agency.

(c) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the claim can be resolved administratively or must be referred for litigation.

(d) Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the claim (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute claims to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue or is required to pursue offset, the procedures applicable to offset should be followed (see § 901.3). The availability of funds or money for debt satisfaction by offset and the agency's determination to pursue collection by offset shall release the agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a claim for litigation, agencies should advise each person determined to be liable for the claim that, unless the claim can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 and may be given as part of a

demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of 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.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from their agency counsel to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from their agency counsel to determine whether recoupment is available.

#### § 901.3 Collection by administrative offset.

(a) *In general.* Two types of administrative offset exist under this section: Administrative offset by non-disbursing officials and administrative offset by disbursing officials. The standards contained in paragraph (a) apply to both types of administrative offset. The standards contained in paragraph (b) of this section apply solely to non-disbursing official offset, and the standards contained in paragraph (c) of this section apply solely to disbursing official offset. Collection by administrative offset shall be undertaken in accordance with §§ 901.3 and 901.4 and implementing regulations established by each agency on all claims where such collection is determined to be feasible and not otherwise prohibited.

(1) Agencies shall prescribe regulations for the exercise of administrative offset consistent with

this section or adopt this section without change by cross-reference.

(2) For purposes of this section, the term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(3) This section applies to administrative offsets undertaken by agencies pursuant to 31 U.S.C. 3716 against funds or money payable to, or held for, a debtor. It does not apply to:

- (i) Claims arising under the Social Security Act, except as provided in 42 U.S.C. 404;
- (ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c);
- (iii) Claims arising under or payments made under the Internal Revenue Code or the tariff laws of the United States;
- (iv) Offsets against Federal salaries, to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514;
- (v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of claims; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(4) Unless otherwise provided for by contract or law, claims or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) Agency regulations for offsets pursuant to 31 U.S.C. 3716 shall provide also that, except as is provided in paragraph (b)(2) of this section, offsets may be initiated only after the debtor has received:

- (i) Written notice of the type and amount of the claim and that the agency intends to use administrative offset to collect the claim;
- (ii) An opportunity to inspect and copy agency records related to the claim;
- (iii) An opportunity for a hearing or review within the agency of the determination of indebtedness; and
- (iv) An opportunity to make a written agreement to repay the claim.

(6) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular claim, the agency need not give notice and review opportunities duplicating those previously given before initiating administrative offset with respect to that claim.

(7) (i) For purposes of this section, whenever an agency is required to

afford a debtor a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when:

(A) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(B) The debtor requests reconsideration of the claim and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the agency should carefully document all significant matters discussed at the hearing.

(iii) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness or waiver rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(iv) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a "paper hearing," that is, a determination of the request for waiver or reconsideration based upon a review of the written record.

(8) Unless otherwise provided by law, agencies may not initiate administrative offset to collect a claim under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the claim first accrued, unless facts material to the Government's right to collect the claim were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such claims.

(b) *Administrative offset by non-disbursing officials.* Generally, administrative offsets by non-disbursing officials are offsets that an agency conducts internally or in cooperation with the agency certifying or authorizing payments to the debtor. Disbursing agencies also are authorized to conduct offsets in accordance with this paragraph on a case-by-case basis.

(1) The creditor agency is responsible for determining, in its discretion on a case-by-case basis, whether collection by administrative offset under this subsection is feasible. Creditor agencies

should consider whether administrative offset may be accomplished practically and legally and whether offset furthers and protects the Government's interests. In appropriate circumstances, such as when a debtor is unable to pay the full amount that could be collected by offset (see § 902.2(b) of this chapter), the agency may consider the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds or money. Agencies also may consider whether offset would tend to interfere substantially with, or defeat the purposes of, the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset may be inappropriate. This concept generally does not apply, however, when payment is in the form of reimbursement.

(2) Agency regulations may provide for the omission of the procedures set forth in paragraph (a)(5) of this section when:

(i) The offset is in the nature of a recoupment;

(ii) The claim arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993); or

(iii) The agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(3) Agencies shall comply with requests from other agencies to collect claims owed to the United States by administrative offset, unless the offset would not be in the best interests of the Government with respect to the program of the agency conducting the offset as determined by the head of the agency, or would be otherwise contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4) Agency regulations shall provide that the agency making a payment against which administrative offset is sought should not make the requested offset until it has been provided with a written certification by the creditor agency that the debtor owes the claim in the amount specified and that the creditor agency has fully complied with

its regulations concerning administrative offset.

(5) When collecting multiple claims by administrative offset, agencies should apply the recovered amounts to those claims in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statutes of limitation.

(c) *Administrative offset by disbursing officials.* Disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary are required to conduct administrative offset to collect claims that agencies have certified to the Secretary for collection by administrative offset. Agencies shall certify claims to the Secretary and the Secretary shall share information concerning delinquent claims with the aforesaid disbursing officials so that offsets may occur government-wide. If an agency has not certified a specific claim to the Secretary, an agency still may collect the claim by administrative offset in accordance with paragraph (b) of this section by contacting the payment certifying agency or the disbursing agency directly.

(1) Certification of claims to the Secretary shall be in a form acceptable to the Secretary and shall include, at a minimum:

(i) A statement that the claim(s) is past due and legally enforceable; and

(ii) A statement that the agency certifying the claim has complied with all the due process requirements enumerated in 31 U.S.C. 3716(a) and the agency's regulations.

(2) Federal agencies that are owed past due, legally enforceable claims over 180 days delinquent shall certify those claims to the Secretary for collection through the disbursing official offset program. In addition to claims that, by law, may not be collected by administrative offset, the Secretary may exempt any claim or class of claims from this requirement if the Secretary determines exemption is in the best interest of the United States.

(3) Payments that are prohibited by law from being offset are exempt from offset by disbursing officials. Means-tested benefit payments shall be exempted from offset by the Secretary at the request of the head of the agency administering the means-tested benefit program. For the purposes of this section, "means-tested benefit payments" are payments made to an individual under a program where

eligibility is based on a determination that the income, assets, and/or resources of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. The Secretary may exempt other classes of payments upon the written request of the head of the payment certifying or authorizing agency. Such requests may be granted if the Secretary determines that exemption is in the best interests of the Government. For example, offsets that would tend to interfere substantially with, or defeat the purposes of, the payment agency's program may qualify for an exemption.

(4) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits) may be offset only in accordance with Department of the Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget.

(5) The disbursing official shall notify the debtor/payee in writing that an offset has occurred. The notice shall include a description of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(6) If more than one claim is owed by a debtor, funds or money collected by offset shall be applied to the claims in an order that is in the best interests of the United States as determined by the Secretary.

(7) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions in the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for administrative offset under paragraph (c) of this section upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a claim in accordance with paragraph (c)(1) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g).

(8) Under 31 U.S.C. 3716(h), the Secretary may enter into reciprocal agreements with states for Federal

disbursing officials to collect state debts through offset of Federal payments and for state disbursing officials to collect Federal debts through offset of state payments. States shall have regulations or procedures concerning offsets consistent with those contained in these standards. This section shall not apply to claims or payments that are not subject to offset by Federal law. The Secretary may exempt additional claims and/or payments from these reciprocal agreements if the Secretary determines such exemptions are in the best interest of the Federal Government.

(d) In bankruptcy cases, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

#### **§ 901.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund and the Federal Employee Retirement System.**

(a) For claims that have not been certified to the Secretary for administrative offset by disbursing officials, unless otherwise prohibited by law, agencies may request that moneys that are due and payable to a debtor from the Civil Service Retirement and Disability Fund (CSRD) or the Federal Employee Retirement System (FERS) be administratively offset, in amounts authorized under 5 CFR 831.1807, to collect claims owed to the United States by the debtor. Because disbursing officials of the Department of the Treasury are authorized to offset these payments under § 901.3, requests under this section should be limited to those instances in which offset cannot be accomplished by certification to the Secretary. Requests under this section shall be made to appropriate officials of the Office of Personnel Management (OPM) in accordance with such regulations as are prescribed by the Director of that office at 5 CFR 831.1801–831.1808.

(b) Agencies that decide to request administrative offset under paragraph (a) of this section should make the request as soon as practical after completion of the applicable procedures. Unless the debtor has filed for a refund, there is no specific time period for filing an offset request (see 5 CFR 831.1805), other than the 10-year limitation period described in § 901.3(a)(6). The filing of the request for offset within the 10-year period shall satisfy any requirement that offset be initiated prior to expiration of the statute of limitations. The OPM shall retain the claim for future recovery and make the collection when the debtor

applies for a refund or benefits from the retirement fund. The OPM shall notify the agency if it does not have an application for a refund or benefits from the debtor so that the agency may continue to attempt recovery using other collection mechanisms. The agency shall notify the OPM if it collects the claim using alternative means and wishes to modify or terminate its offset request.

(c) If the offset request has been pending for a year or more when the debtor files an application for a refund or benefits, the OPM shall contact the agency to determine if the claim is still due and the current balance of the claim. If the claim is still due, the agency shall allow the debtor to offer a satisfactory repayment plan in lieu of the offset, upon establishing that changes in the debtor's financial condition would render the offset unjust (see § 901.9 and § 902.2(b) of this chapter).

(d) This section does not authorize the OPM or the Merit Systems Protection Board to review the merits of the requesting agency's determination with respect to the amount and validity of the claim, its determination as to waiver under an applicable statute, or its determination whether to provide a hearing. The Merit Systems Protection Board or any other review panel is not precluded from providing hearing officials, on a reimbursable basis, to other Federal agencies where hearing officials are required by law.

(e) In bankruptcy cases, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362 and 553, on pending or contemplated collections by offset.

#### **§ 901.5 Reporting claims.**

(a) Agencies shall develop and implement procedures for reporting delinquent claims to credit bureaus and other automated databases. Agencies also may develop procedures to report non-delinquent claims to credit bureaus.

(1) In developing procedures for reporting claims to credit bureaus, agencies shall comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. Credit bureaus are not subject to the Privacy Act.

(2) Agency procedures for reporting consumer claims to credit bureaus shall be consistent with the due process and other requirements contained in 31 U.S.C. 3711(e). When an agency has given a debtor any of the required notice and review opportunities with respect to a particular claim, the agency need not give notice and review opportunities

duplicating those previously given before reporting that consumer claim to credit bureaus.

(b) Agencies should report delinquent claims to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about participating in the CAIVRS program, agencies should contact the Director of Information Resources Management Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

#### **§ 901.6 Contracting for debt collection agencies and to locate and recover unclaimed assets.**

(a) Agencies may contract with collection agencies to recover delinquent claims provided that:

(1) Agencies retain the authority to resolve disputes, compromise claims, suspend or terminate collection activity, and refer claims for litigation;

(2) The collection agency is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the claim less the collection agency's fee unless the agency has granted such authority prior to the offer;

(3) The collection agency is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The collection agency is required to account for all amounts collected.

(b) Except for those agencies specifically exempted by procurement statutes or with collection contracts in effect prior to the award of the government-wide contracts, agencies shall use government-wide debt collection contracts to obtain debt collection services provided by collection agencies.

(c) Agencies may fund collection agency contracts on a fixed-fee basis, that is, by providing for payment of a fixed fee determined without regard to the amount actually collected under the contract, provided that the payment of the fee under this type of contract shall be charged to available agency appropriations or funds.

(d) Unless prohibited by statute, agencies may fund collection agency contracts on a contingent-fee basis, that is, by including a provision in the contract permitting the collection agency to deduct a fee, consistent with prevailing commercial practice, based

on a percentage of the amount collected under the contract.

(e) Agencies also may enter into contracts for locating and recovering unclaimed assets of the United States. Agencies must establish procedures that are acceptable to the Secretary before entering into contracts to recover assets of the United States held by a state government or a financial institution.

#### **§ 901.7 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.**

(a) Unless waived by the head of the agency, agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a non-tax claim owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of the agency. Agencies may extend credit after the delinquency has been resolved. The Secretary may exempt classes of claims from this prohibition and shall prescribe standards defining when a "delinquency" is "resolved" for purposes of this prohibition.

(b) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims should give serious consideration to the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a claim in accordance with the agency's regulations or governing procedures. The debtor should be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges. Any agency making, guaranteeing, insuring, acquiring, or participating in loans should give consideration to suspending or disqualifying any lender, contractor, or broker from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its claims to the Government within a reasonable time or if such debtor has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to the Department of the Treasury. The Department of the Treasury shall forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked or forfeited by the Department.



(c) The suspension or revocation of licenses, permits, or privileges should also extend to Federal programs or activities that are administered by the states on behalf of the Federal Government, to the extent that they affect the Government's ability to collect money or funds owed by debtors. Therefore, states that manage Federal activities, pursuant to approval from the agencies, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their claims to the Government.

(d) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action by the Government.

#### **§ 901.8 Liquidation of collateral.**

(a) Agencies should liquidate security or collateral and apply the proceeds to the applicable claim(s) due through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure if debtors fail to pay the claim(s) within a reasonable time after demand and such action is in the Government's best interest. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

#### **§ 901.9 Collection in installments.**

(a) Whenever feasible, agencies shall collect the total amount of a claim in one lump sum regardless of the collection mechanism being used. If a debtor is financially unable to pay a claim in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 902.2(g) of this chapter). Agencies that agree to accept payments in regular installments should obtain a legally

enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the claim in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the claim and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

#### **§ 901.10 Interest, penalties, and administrative costs.**

(a) Except as provided in paragraphs (g), (h), and (i) of this section, agencies shall charge interest, penalties, and administrative costs on claims owed to the United States pursuant to 31 U.S.C. 3717. An agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the claim is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies shall charge interest on claims owed the United States as follows:

(1) Interest shall accrue from the date of delinquency when all circumstances have occurred to give rise to the claim or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reasons for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the

Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under the new repayment agreement.

(c) Agencies shall assess administrative costs incurred for processing and handling delinquent claims. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a claim that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) Agencies may increase an "administrative claim" by the cost of living adjustment in lieu of charging interest and penalties under this section. Such increases shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a claim would be extremely difficult because of the age of the claim. "Administrative claim" includes, but is not limited to, a claim based on fines, penalties, and overpayments, but does not include a claim based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the claim was determined or last adjusted.

(f) When a claim is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties, second to administrative charges, third to interest, and lastly to principal.

(g) Agencies shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the claim that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in



whole or in part, without regard to the amount of the claim, either under the criteria set forth in these standards for the compromise of claims, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interests of the United States.

(h) Agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review.

(i) Agencies are authorized to impose interest and related charges on claims not subject to 31 U.S.C. 3717 in accordance with the applicable common law.

#### § 901.11 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for claims of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum claim amounts below which collection efforts need not be taken.

#### § 901.12 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a claim under parts 900–904 of this chapter or other authority, agencies may send a request to the Secretary of the Treasury (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent claim and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

#### § 901.13 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to claims arising under, or payments made under, the Internal Revenue Code of 1986 as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*),

except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to claims that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting claims owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the claim arose under those laws.

### PART 902—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

902.1—Scope and application.

902.2—Bases for compromise.

902.3—Enforcement policy.

902.4—Joint and several liability.

902.5—Further review of compromise offers.

902.6—Consideration of tax consequences to the Government.

902.7—Mutual releases of debtor and the Government.

Authority: 31 U.S.C. 3711.

#### § 902.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of claims pursuant to 31 U.S.C. 3711. An agency may exercise such compromise authority for claims arising out of activities of, or referred or transferred for collection services to, that agency when the amount of the claim then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General. Agency heads may designate officials within their respective agencies to exercise the authorities referred to in this section.

(b) Unless otherwise provided by law, when the principal balance of a claim, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The agency should evaluate the offer, using the factors set forth in this part. If the agency decides that an offer to compromise any claim in excess of \$100,000 is acceptable to the agency, it shall refer the claim to the appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR). Agencies may obtain the CCLR from the Department of Justice or local United States Attorney's

Office. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the agency decides to reject a compromise offer.

#### § 902.2 Bases for compromise.

(a) Agencies may compromise a claim if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the claim in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the claim does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, among other relevant factors, agencies should consider the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) Agencies should verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. Agencies may use their own financial information form or may request suitable forms from the Department of Justice or local United States Attorney's Office. Agencies should consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. Agencies also may consider uncertainty as to the price that collateral or other property will bring at forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the

legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, agencies should consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) Agencies may compromise a claim if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small claims. In determining whether the cost of collecting justifies enforced collection of the full amount, agencies should consider whether continued collection of the claim, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) Agencies generally should not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, agencies should obtain a legally enforceable written agreement providing that, in the event of default in payment of the compromise, the full original principal balance of the claim prior to compromise, less sums paid thereon, is reinstated. Whenever possible, agencies should also obtain security for repayment in the manner set forth in part 901 of this title.

(g) Agencies should obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses, as a basis for assessing the merits of a compromise proposal. Agencies also may obtain credit reports or other financial information to assess compromise offers. Agencies may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

### **§ 902.3 Enforcement policy.**

Agencies may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, pursuant to this part, if the agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the agency's acceptance of the sum to be agreed upon. Accidental or technical violations may be dealt with less severely than willful and substantial violations.

### **§ 902.4 Joint and several liability.**

(a) When two or more debtors are jointly and severally liable, agencies should pursue collection activity against all debtors, as appropriate. Agencies should not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) Agencies should ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

### **§ 902.5 Further review of compromise offers.**

If an agency receives a firm, written, substantive compromise offer on a claim that comes within its own delegated compromise authority, but is uncertain whether the offer should be accepted, it may refer the offer, using a CCLR accompanied by supporting data and particulars concerning the claim, to the appropriate litigating division in the Department of Justice. The Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

### **§ 902.6 Consideration of tax consequences to the Government.**

In negotiating a compromise with a business concern, agencies should consider the tax consequences to the Government. In particular, agencies should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

### **§ 902.7 Mutual releases of debtor and the Government.**

In all appropriate instances, a compromise that is accepted by an agency should be implemented by means of a mutual release, whereby the debtor is released from further non-tax liability on the compromised claim in consideration of payment in full of the compromise amount. The Government

and its officials, past and present, are released and discharged from any and all claims arising from the same transaction the debtor may have against them.

## **PART 903—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTIVITY**

Sec.

903.1 Scope and application.

903.2 Suspension of collection activity.

903.3 Termination of collection activity.

903.4 Exception to termination.

**Authority:** 31 U.S.C. 3711.

### **§ 903.1 Scope and application.**

(a) The standards set forth in this part apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on claims that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a claim to the Department of Justice for litigation, agencies may suspend or terminate collection under this part with respect to claims arising out of activities of, or referred or transferred for collection services to, that agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a claim exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency believes that suspension or termination of any claim in excess of \$100,000 may be appropriate, it shall refer the claim to the appropriate litigating division in the Department of Justice, using the Claims Collection Litigation Report. The referral should specify the reasons for the agency's recommendation. If, prior to referral to the Department of Justice, an agency determines that a claim is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining Department of Justice concurrence.

### **§ 903.2 Suspension of collection activity.**

(a) Agencies may suspend collection activity on a claim when:

(1) The agency cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the claim.

(b) Based on the current financial condition of the debtor, agencies may

suspend collection activity on a claim when the debtor's future prospects justify retention of the claim for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or  
 (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the claim on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the claim with interest at a later date.

(c) (1) Agencies shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the claim if the statute under which the request is sought prohibits the agency from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, agencies may use discretion, on a case-by-case basis, to suspend collection. Further, an agency ordinarily should suspend collection action upon a request for waiver or review if the agency is prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, an agency should not suspend collection when the agency determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a claim must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the agency can clearly establish that the automatic stay has been lifted or is no longer in effect. Agencies should seek legal advice immediately from their agency counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

#### **§ 903.3 Termination of collection activity.**

(a) Agencies may terminate collection activity when:

(1) The agency is unable to collect any substantial amount through its own

efforts or through the efforts of a debt collection center;

(2) The agency is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The claim is legally without merit or enforcement of the claim is barred by any applicable statute of limitations;

(5) The claim cannot be substantiated; or

(6) The claim against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, the agency should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the claim is uncollectible. Termination of collection activity ceases active collection of the claim. The termination of collection activity does not preclude the agency from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, agencies shall terminate collection activity on a claim that has been discharged in bankruptcy, regardless of the amount. Agencies may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of an agency that is a known creditor of a debtor may survive a discharge if the agency did not receive formal notice of the proceedings. Agencies should seek legal advice from their agency counsel if they believe they have claims or offsets that may survive the discharge of a debtor.

#### **§ 903.4 Exception to termination.**

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, agencies may refer such a claim for litigation even though termination of collection activity might otherwise be appropriate.

## **PART 904—REFERRALS TO THE DEPARTMENT OF JUSTICE**

Sec.

904.1 Prompt referral.

904.2 Claims Collection Litigation Report.

904.3 Preservation of evidence.

904.4 Minimum amount of referrals to the Department of Justice.

**Authority:** 31 U.S.C. 3711.

### **§ 904.1 Prompt referral.**

(a) Agencies promptly shall refer to the Department of Justice for litigation claims on which aggressive collection activity has been taken in accordance with part 901 of this title and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with parts 902 and 903 of this chapter. Agencies may refer those claims arising out of activities of, or referred or transferred for collection services to, that agency. Claims for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the division responsible for litigating such claims at the Department of Justice, Washington, D.C. Claims for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to the Department of Justice's Nationwide Central Intake Facility as required by the CCLR instructions. Claims should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in parts 900–904 of this chapter, and, in any event, well within the period for initiating timely lawsuits against the debtors. Agencies shall make every effort to refer delinquent claims to the Department of Justice for litigation within one year of the date such claims last became delinquent. In the case of guaranteed or insured loans, agencies should make every effort to refer these delinquent claims to the Department of Justice for litigation within one year from the date the loan was presented to the agency for payment or re-insurance.

(b) The Department of Justice has exclusive jurisdiction over the claims referred to it pursuant to this section. The referring agency shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the claim to the Department of Justice. The referring agency shall notify immediately the Department of Justice of any payments credited by the agency to the debtor's account after referral of a claim under this section.

The Department of Justice shall notify the referring agency, in a timely manner, of any payments it receives from the debtor.

**§ 904.2 Claims Collection Litigation Report.**

(a) Unless excepted by the Department of Justice, agencies shall complete the Claims Collection Litigation Report (CCLR) (See § 902.1(b) of this chapter.), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation. Referring agencies shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) Agencies shall indicate clearly on the CCLR the actions they wish the Department of Justice to take with respect to the referred claim. The CCLR permits the agency to indicate specifically any of a number of litigative activities which the Department of Justice may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) Agencies also shall use the CCLR to refer claims to the Department of Justice to obtain that Department's approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

**§ 904.3 Preservation of evidence.**

Referring agencies must take care to preserve all files and records that may be needed by the Department of Justice to prove their claims in court. Agencies ordinarily should include certified copies of the documents that form the basis for the claim in the packages referring their claims to the Department of Justice for litigation. Agencies shall provide originals of such documents immediately upon request by the Department of Justice.

**§ 904.4 Minimum amount of referrals to the Department of Justice.**

(a) Agencies shall not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice promptly shall notify referring agencies if the Attorney General changes this minimum amount.

(b) Agencies shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with the agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the referring agency for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government. Agencies should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the Department of Justice prior to referring claims valued at less than the minimum amount.

Dated: December 16, 1997.

**Robert E. Rubin,**

*Secretary of the Treasury.*

Dated: November 28, 1997.

**Janet Reno,**

*Attorney General of the United States.*

[FR Doc. 97-33338 Filed 12-30-97; 8:45 am]

BILLING CODE 4810-35-P, 4410-26-P