(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under §1261.416(c)(3).

(i) Exemptions.

(1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§1261.414 Compromise of claims.

(a) Designated NASA officials (see §§1261.402 and 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See §1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency’s recommendation. If NASA has a debtor’s firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may

§1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts 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, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish internal controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.
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act upon such an offer or return it to
the agency with instructions or advice.
If NASA wishes to reject the com-
promise, GAO or Department of Justice
approval is not required.

(c) A claim may be compromised pur-
suant to this section if NASA cannot
collect the full amount because of the
debtor’s inability to pay the full
amount within a reasonable time, or
the refusal of the debtor to pay the
claim in full and the Government’s in-
ability to enforce collection in full
within a reasonable time by enforced
collection proceedings. In determining
the debtor’s inability or refusal to pay,
the following factors, among others,
may be considered:

(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 trans-
ferred by the debtor;
(5) The availability of assets or in-
come which may be realized by en-
forced collection proceedings; and
(6) The applicable exemptions avail-
able to the debtor under State and Fed-
eral law in determining the Govern-
ment’s ability to enforce collection.
Uncertainty as to the price which col-
lateral or other property will bring at
forced sale may properly be considered
in determining the Government’s abil-
ity to enforce collection. The com-
promise should be for an amount which
bears a reasonable relation to the
amount which can be recovered by en-
forced collection procedures, having re-
gard for the exemptions available to the
debtor and the time which collection
will take.

(d) A claim may be compromised if
there is a real doubt concerning the
Government’s ability to prove its case
in court for the full amount claimed,
either because of the legal issues in-
volved or a bona fide dispute as to the
facts. The amount accepted in com-
promise in such cases should fairly re-
fect the probability of prevailing on
the legal question involved, the prob-
abilities with respect to full or partial
recovery of a judgment, paying due re-
gard to the availability of witnesses
and other evidentiary support for the
Government claim, and related prag-
matic considerations. In determining
the litigative risks involved, propor-
tionate weight should be given to the
probable amount of court costs and at-
torney fees pursuant to the Equal Ac-
cess to Justice Act which may be as-
essed against the Government if it is
unsuccessful in litigation. See 28 U.S.C.
2412.

(e) A claim may be compromised 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 re-
fect an appropriate discount for the
administrative and litigative costs of
collection, paying heed to the time
which it will take to effect collection.
Costs of collecting may be a substan-
tial factor in the settlement of small
claims, but normally will not carry
great weight in the settlement of large
claims. In determining whether the
cost of collecting justifies enforced col-
lection of the full amount, it is legiti-
mate to consider the positive effect
that enforced collection of some claims
may have on the collection of other
claims. Since debtors are more likely
to pay when first requested to do so if
an agency has a policy of vigorous col-
collection of all claims, the fact that the
cost of collection of any one claim may
exceed the amount of the claim does
not necessarily mean that the claim
should be compromised. The practical
benefits of vigorous collection of a
small claim may include a demonstra-
tion to other debtors that resistance to
payment is not likely to succeed.

(f) Enforcement policy. Statutory pen-
alties, forfeitures, or debts established
as an aid to enforcement and to compel
compliance may be compromised pur-
suant to this part if the agency’s en-
forcement policy in terms of deter-
rence and securing compliance, both
present and future, will be adequately
served by acceptance of the sum to be
agreed upon. Mere accidental or tech-
nical violations may be dealt with less
severely than willful and substantial
violations.

(g) Compromises payable in install-
ments are to be discouraged. However,
if payment of a compromise by install-
ments is necessary, a legally enforce-
able agreement for the reinstatement
of the prior indebtedness less sums paid
thereon and acceleration of the balance

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due upon default in the payment of any installment should be obtained, together with security in the manner set forth in §1261.411, in every case in which this is possible.

(h) If the agency’s files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor’s assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD-500 or OBD-500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor’s profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-back rights of the debtor.

(i) Joint and several liability. When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency’s claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to §1261.414, the official designated in §1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See §1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) Suspension of collection activity—(1) Inability to locate debtor. Collection action may be suspended temporarily on