(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.

§1261.413 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.

§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

341
act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant 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 inability 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 transferred by the debtor;
(5) The availability of assets or income which may be realized by enforced collection proceedings; and
(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government’s ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government’s ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard 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 involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed 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 reflect 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 substantial 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 collection of the full amount, it is legitimate 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 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 demonstration to other debtors that resistance to payment is not likely to succeed.

(f) Enforcement policy. Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency’s enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance.
due upon default in the payment of any installment should be obtained, to-
gether 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 con-
tain reasonably up-to-date credit infor-
mation as a basis for assessing a com-
promise proposal, such information
may be obtained from the individual
debtor by obtaining a statement exec-
uted under penalty of perjury showing
the debtor's assets and liabilities, in-
come, and expenses. Forms such as De-
partment 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 busi-
ness 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 sever-
ally liable, collection action will not be
withheld against one such debtor until
the other or others pay their propor-
tionate 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 remain-
ing debtors. The amount of a com-
promise with one such debtor shall not
be considered a precedent or as morally
binding in determining the amount
which will be required from other debt-
ors 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 appro-
priate release, which shall include the
provision that it shall be void if proc-
cured by fraud, misrepresentation, the
presentation of a false claim, or mu-
tual mistake of fact.

§ 1261.416 Suspending or terminating
collection action.

(a) The standards set forth in this
section apply to the suspension or ter-
mination of collection action pursuant
to 31 U.S.C. 3711(a)(3) on claims which
do not exceed $20,000, exclusive of in-
terest, penalties, and administrative
costs, after deducting the amount of
partial payments or collections, if any.
NASA may suspend or terminate col-
lection action under this part with re-
spect 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.

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