

decided to use the reports of the preexisting subscription services as a proxy for historical reporting, the Office should also adopt regulations "holding SoundExchange harmless from any under- or over- payments resulting from the use of such data for distribution purposes." SoundExchange comment at 20. The Copyright Office does not have the power to excuse SoundExchange, or anyone else, from liability for a breach of a legal obligation. See 67 FR 45239, 45269 (July 8, 2002). Therefore, we cannot comply with SoundExchange's request. However, we believe that regulations already exist that provide SoundExchange with the reassurance it seeks. Specifically, §§ 261.4(h) and 262.4(g) require that the designated agent distribute royalty payments on a basis that values all performances equally based upon information obtained pursuant to regulations governing records of use. Because the rules proposed today would provide that the reports of the preexisting subscription services shall constitute the records of use for the other services for the historic period, SoundExchange may-indeed, it has no choice but to-rely on those reports in making its distributions.<sup>6</sup>

#### Comments on the Proposed Regulation

Any party objecting to the proposal to use the reports of the preexisting subscription services as a proxy for reporting requirements for the historic period is requested to set forth in detail how the Office can obtain more accurate information for the historic period and respond to NAB's argument that the Copyright Office does not have the authority to promulgate retroactive recordkeeping regulations.

#### List of Subjects

Copyright, Sound recordings.

#### Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 270 of 37 CFR to read as follows:

1. The authority citation for part 270 continues to read as follows:

**Authority:** 17 U.S.C. 702.

<sup>6</sup> Because the Librarian's decision setting rates and terms for the license period from October 28, 1998 through December 31, 2002 is the subject of an appeal pending before the United States Court of Appeals for the District of Columbia Circuit, the only royalties from the historic period that can be distributed prior to the resolution of that appeal are those collected for the period from January 1, 2003 through March 31, 2004, a period for which final rates and terms have been established. See 69 FR 5693 (February 6, 2004).

#### PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSEES

2. Part 270 is proposed to be amended as follows:

- a. By redesignating § 270.4 as § 270.5; and
- b. By adding a new § 270.4 to read as follows:

##### § 270.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.

(a) General. This section prescribes the rules which govern reports of use of sound recordings by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(b) Reports of use. Reports of use filed by preexisting subscription services for transmissions made under 17 U.S.C. 114(f) pursuant to § 270.2 for use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period October 28, 1998, through March 31, 2004, shall serve as the reports of use for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services for their use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

Dated: July 8, 2004

**Marybeth Peters,**

*Register of Copyrights.*

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of the Secretary

##### 45 CFR Part 30

**RIN 0991-AB18**

##### Claims Collection

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to amend its regulations to implement the provisions of the Debt Collection

Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (Justice) and the Department of the Treasury (Treasury) as the Federal Claims Collection Standards (FCCS). The proposed rule implements the final rule promulgated by Justice and Treasury, and would amend the process by which HHS can administratively collect, offset, compromise, suspend and terminate collection activity for civil claims for money, funds, or property, and the rules and process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable.

**DATES:** Submit comments on or before September 13, 2004.

**ADDRESSES:** Comments concerning this proposed rule can be mailed to: Jeffrey Davis, Acting Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Davis, Acting Associate General Counsel; his telephone number is 202-619-0153.

##### SUPPLEMENTARY INFORMATION:

##### Background

The Debt Collection Act of 1982 (DCA), Pub. L. 97-365, was implemented on a government-wide basis by the FCCS, set forth at 4 CFR part 101 *et seq.* issued by Justice and the General Accounting Office on March 9, 1984. See 49 FR 8889 (1984). HHS implemented the FCCS at 45 CFR part 30. As mandated by the DCIA, Justice and Treasury jointly promulgated the revised FCCS at 31 CFR parts 900-904 to reflect the legislative changes to the Federal debt collection procedures enacted by the DCIA. The revised FCCS supercede the current FCCS, and removed the Comptroller General as promulgator of the FCCS. HHS is required to implement regulations, consistent with the DCIA and the regulations promulgated by Justice and Treasury. To the extent any provision of this rule is inconsistent with a more specific provision of parts 31, 32 or 33 of this Title, the more specific provision shall apply.

##### Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations promulgated by Justice and Treasury at 31 CFR parts 900-904, the proposed regulation establishes the rules and procedures for the

administrative collection, offset, compromise, suspension and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701 (b), and the process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable. The proposed regulation does not apply to claims between federal agencies. The proposed rule affects HHS' debtors.

This proposed rule would revise the current Department regulation in accordance with the substantive and procedural requirements of the DCIA and the implementing final rule. The various provisions of the Department's regulation have been redrafted for clarity but do not substantively change the debt collection regulation and are not discussed herein. The following changes to the Department's current debt collection regulation are incorporated in the proposed regulation to reflect the DCIA and the implementing final rule:

1. Demand Letter. One demand should be sufficient. It will include the applicable standards for imposing any interest, penalties, or administrative costs; use of collection agencies, federal salary offset, tax refund offset, administrative offset, and litigation; any rights the debtor may have to seek review of the Department's determination of the debt and to enter into a reasonable repayment agreement; and information regarding the Department's remedies to enforce payment of the debt.

2. Mutual Releases. HHS and debtors will exchange mutual releases of non-tax liabilities, in all appropriate instances, when a claim is compromised.

3. Increase in Amounts. The principal claim amount that HHS is authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by Justice, is increased from \$20,000 to \$100,000. In addition, the minimum amount of a claim that may be referred to the Justice for litigation is increased from \$600 to \$2,500.

4. Transferring or Referring Delinquent Debt. There are new debt collection procedures for transferring or referring delinquent debt to Treasury or a Treasury-designated debt collection center for collection.

5. Centralized Administrative Offset. There are new debt collection procedures for mandatory, centralized administrative offset by disbursing officials.

6. Mandatory Credit Bureau Reporting. There are new debt collection procedures for mandatory credit bureau reporting.

7. Prohibition Against Federal Financial Assistance. There are new debt collection procedures prohibiting federal financial assistance in the form of loans, loan guarantees, or loan insurance to debtors, unless waived by the Secretary. Disaster loans are exempt from this prohibition.

8. Army Hold-up List. The use of the Army hold-up list to report indebted contractors to the Department of the Army has been discontinued.

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

#### **Request for Comments**

Comments are requested and must be received at the above address, by the above date.

#### **Reporting and Recordkeeping Requirements**

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

#### **Economic Impact**

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review); the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96-354); the Unfunded Mandated Reform Act of 1995 (UMRA, Pub. L. 104-4); and Executive Order 13132 (August 1999, Federalism). Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in 1 year). We have determined that the proposed rule is consistent with the principals set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds \$100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the rule was

reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criteria of Executive Order 13132 and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

#### **Alternatives Considered**

The Department seeks to promulgate the proposed rule consistent with the requirements of the DCIA, as implemented at 31 CFR parts 900-904. There is little room for us to consider alternatives. Where the Department has discretion (e.g. in section 30.17, whether to require installment agreements to be in writing and in section 30.11 regarding the demand letter), we drafted the proposed rule to be as strong as possible to maximize the Department's debt collection ability and to make the demand letter to be informative as possible.

**List of Subjects in 45 CFR Part 30**

Administrative practice and procedure, Claims, Debts, Appeals, Government employees, Privacy.

For the reasons set forth in the preamble, HHS proposes to revise 45 CFR part 30 to read as follows:

**PART 30—CLAIMS COLLECTION****Subpart A—General Provisions**

Sec.

- 30.1 Purpose, authority, and scope.
- 30.2 Definitions.
- 30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.
- 30.4 Compromise, waiver, or disposition under other statutes not precluded.
- 30.5 Other administrative remedies.
- 30.6 Form of payment.
- 30.7 Subdivision of claims.
- 30.8 Required administrative proceedings.
- 30.9 No private rights created.

**Subpart B—Standards for the Administrative Collection of Debts**

- 30.10 Collection activities.
- 30.11 Demand for payment.
- 30.12 Administrative offset.
- 30.13 Debt reporting and the use of credit reporting agencies.
- 30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 30.15 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits or privileges.
- 30.16 Liquidation of collateral.
- 30.17 Collection in installments.
- 30.18 Interest, penalties, and administrative costs.
- 30.19 Review of cost effectiveness of collection.
- 30.20 Taxpayer information.

**Subpart C—Debt Compromise**

- 30.21 Scope and application.
- 30.22 Basis for compromise.
- 30.23 Enforcement policy.
- 30.24 Joint and several liability.
- 30.25 Further review of compromise offers.
- 30.26 Consideration of tax consequences to the Government.
- 30.27 Mutual release of the debtor and the Government.

**Subpart D—Suspending and Terminating Collection Activities**

- 30.28 Scope and application.
- 30.29 Suspension of collection activity.
- 30.30 Termination of collection activity.
- 30.31 Exception to termination.
- 30.32 Discharge of indebtedness; reporting requirements.

**Subpart E—Referrals to the Department of Justice**

- 30.33 Prompt referral.
- 30.34 Claims Collection Litigation Report.
- 30.35 Preservation of evidence.
- 30.36 Minimum amount of referrals.

**Authority:** 31 U.S.C. 3711(d).

**Subpart A—General Provisions****§ 30.1 Purpose, authority, and scope.**

(a) *Purpose.* This part prescribes the standards and procedures for the Department's use in the administrative collection, offset, compromise, and suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701 (b) and this part. Covered activities include the collection of debts in any amount; the compromise and suspension or termination of collection activity of debts that do not exceed \$100,000, or such higher amount as the Attorney General may prescribe, exclusive of interest, penalties, and administrative costs; and the referral of debts to the Department of the Treasury, Department of the Treasury-designated debt collection centers, or the Department of Justice for collection by further administrative action or litigation, as applicable.

(b) *Authority.* The Secretary is issuing the regulations in this part under the authority contained in 31 U.S.C. 3711(d). The standards and procedures prescribed in this part are authorized under the Federal Claims Collection Act, as amended, Public Law 89-508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97-365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321, 1358 (April 26, 1996) and the Federal Claims Collection Standards at 31 CFR parts 900 through 904.

(c) *Scope.* (1) The standards and procedures prescribed in this part apply to all officers and employees of the Department, including officers and employees of the various Operating Divisions and Regional Offices of the Department, charged with the collection and disposition of debts owed to the United States.

(2) The standards and procedures set forth in this part will be applied except where specifically excluded herein or where a statute, regulation or contract prescribes different standards or procedures.

(3) Regulations governing the use of certain debt collection procedures created under the Debt Collection Improvement Act of 1996, including tax refund offset, administrative wage garnishment, and federal salary offset, are contained in parts 31 through 33 of this chapter.

(4) Further guidance may be found in the Departmental General Administration Manual, Accounting Manual, Personnel Manual, Grants Program Directives, and any other supplemental manual issued by an

Operating Division, Office or Program within the Department. In case of conflict or inconsistencies, this regulation takes precedence except as provided by paragraph (c)(2) of this section.

**§ 30.2. Definitions.**

In this part—

*Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

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

*Appropriate official* means the Department official who, by statute or delegation of authority, determines the existence and amount of debt.

*Business day* means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

*Claim* see the definition for the term "debt." The terms claim and debt are synonymous and interchangeable.

*Creditor agency* means an agency to which a debt is owed, including a debt collection center acting on behalf of a creditor agency.

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a federal legal holiday, in which case the next business day will be considered the last day of the period.

*Debt* or *claim* means an amount of money, funds, or other property determined by an appropriate official of the federal Government to be owed to the United States from any person, organization, or entity, except another federal agency. For the purpose of administrative offset, the term includes an amount owed by an individual to 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. Debts include, but are not limited to, amounts owed pursuant to: loans insured or guaranteed by the United States; fees; leases; rents; royalties; services; sales of real or personal property; federal salary overpayments; overpayments to program beneficiaries; contractors, providers, suppliers, and grantees; audit disallowance determinations; civil penalties and

assessments; theft or loss; interest; fines and forfeitures (except those arising under the Uniform Code of Military Justice); and, all other similar sources.

*Debt collection center* means the Department of the Treasury, or other federal agency, subagency, unit, or division designated by the Secretary of the Treasury to collect debts owed to the United States.

*Debtor* means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

*Debts arising under the Social Security Act* are overpayments to, or contributions, reimbursements, penalties or assessments owed by, any entity, individual, or State under the Social Security Act. Such amounts include amounts owed to the Medicare program under section 1862(b) of the Social Security Act. Salary overpayments and other debts that result from the administration of the provisions of the Social Security Act are not deemed to "arise under" the Social Security Act for purposes of this part.

*Delinquent debt* means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

*Department* means the Department of Health and Human Services, and its Operating Divisions and Regional Offices.

*Disbursing official* means an officer or employee who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law.

*Disposable pay* means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

*Evidence of service* means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and

name of the debtor to whom it is being sent. A copy of the dated and signed written notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

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

*Hearing* means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

*IRS* means the Internal Revenue Service, a bureau of the Department of the Treasury.

*Late charges* means interest, penalties, and administrative costs required or permitted to be assessed on delinquent debts.

*Legally enforceable* means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

*Local government* means a political subdivision, instrumentality, or authority of any 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, or an Indian tribe, band or nation.

*Operating Division* means each separate component, agency, subagency, and unit within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, Substance Abuse and Mental Health Services Administration, Indian Health Service, Health Resources and Services Administration, Agency for Toxic Substances and Disease Registry, Agency for Healthcare Research and Quality, and the Office of the Secretary.

*OPM* means the Office of Personnel Management.

*Payment authorizing agency* means an agency that transmits a voucher to a disbursing official for the disbursement of public money.

*Payments made under the Social Security Act* means payments by the Department to beneficiaries, providers,

intermediaries, physicians, suppliers, carriers, States, or other contractors or grantees under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance for the Aged); Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health Services Block Grant); Title IX (Miscellaneous Provisions Relating to Employment Security); Title X (Grants to States for Aid to the Blind); Title XI, Part B (Peer Review of the Utilization and Quality of Health Care Services); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for Aid to Permanently and Totally Disabled); Title XVI (Grants to States for Aid to the Aged, Blind, and Disabled); Title XVII (Grants for Planning Comprehensive Action to Combat Mental Retardation); Title XVIII (Health Insurance for the Aged and Disabled); Title XIX (Grants to States for Medical Assistance Programs); Title XX (Block Grants to States for Social Services); and, Title XXI (State Children's Health Insurance Program). Federal employee salaries and other payments made by the Department in the course of administering the provisions of the Social Security Act are not deemed to be "payable under" the Social Security Act for purposes of this part.

*Private collection contractors* means private debt collection under contract with the Department to collect a nontax debt or claim owed to the Department. The term includes private debt collectors, collection agencies, and commercial attorneys.

*Salary offset* means an administrative offset to collect a debt owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

*Secretary* means the Secretary of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

*Taxpayer identification number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

*Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

**§ 30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.**

(a) *Claims involving antitrust violations or fraud.* (1) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of antitrust laws or to any debt involving fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Unless the Department of Justice returns a referred claim to the Department for further handling in accordance with parts 31 CFR 900 through 904 and this part, only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such claims.

(2) The standards in this part relating to the administrative collection of claims apply to the extent authorized by the Department of Justice in a particular case.

(3) Upon identification of a debt suspected of involving an antitrust violation or fraud, a false claim, misrepresentation, or other criminal activity or misconduct, the Secretary shall refer the debt to the Office of the Inspector General for review.

(4) Upon the determination of the Office of the Inspector General that a claim is based in whole or in part on conduct in violation of the antitrust laws, or involves fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Secretary shall promptly refer the case to the Department of Justice for action.

(5) At its discretion, the Department of Justice may return the claim to the Secretary for further handling in accordance with the standards in 31 CFR parts 900 through 904 and this part.

(b) *Exception in the account of an accountable official.* The standards in this part do not apply to compromise of an exception in the account of an accountable official. Only the Comptroller General may compromise such a claim.

(c) *Interagency claims.* This part does not apply to claims between federal agencies. The Department will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146.

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

Nothing in this part precludes the Department from disposing of any claim under statutes and implementing regulations other than subchapter II of

chapter 37 of Title 31 of the United States Code and the Federal Claims Collection Standards, 31 CFR parts 900 through 904. Any statute and implementing regulation specifically applicable to the claims collection activities of the Department will take precedence over this part.

**§ 30.5 Other administrative remedies.**

The remedies and sanctions available under this part for collecting debts are not intended to be exclusive. Nothing contained in this part precludes using any other administrative remedy which may be available for collecting debts owed to the Department, such as converting the method of payment under a grant from an advancement to a reimbursement method or revoking a grantee's letter-of-credit.

**§ 30.6 Form of payment.**

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

**§ 30.7 Subdivision of claims.**

Debts 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 debt in determining whether the debt, exclusive of interest, penalties and administrative costs, exceeds \$100,000, or such higher amount as prescribed by the Attorney General for purposes of compromise, or suspension or termination of collection activity.

**§ 30.8 Required administrative proceedings.**

This part does not supersede, or require omission or duplication of administrative proceedings required by contract, or other laws or regulations. *See for example*, 42 CFR part 50 (Public Health Service), 45 CFR part 16 (Departmental Grant Appeals Board), and 48 CFR part 33 (Federal Acquisition Regulation) and part 333 (Health and Human Services Acquisition Regulation).

**§ 30.9 No private rights created.**

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

**Subpart B—Standards for the Administrative Collection of Debts**

**§ 30.10 Collection activities.**

(a) *General rule.* The Secretary shall aggressively and timely collect all debts arising out of activities of, or referred or transferred for collection actions to, the Department. The collection activities provided under this part shall be undertaken promptly with follow-up action taken as necessary. Normally, the initial written demand for payment shall be made no later than 30 days after a determination by an appropriate official that a debt exists.

(b) *Cooperation with other agencies.* The Department shall cooperate with other agencies in their debt collection activities.

(c) *Transfer of delinquent debts.* (1) *Mandatory transfer.* The Secretary shall transfer debts 180 days or more delinquent to the Department of the Treasury in accordance with the requirements of 31 CFR 285.12. This requirement does not apply to any debt that:

(i) Is in litigation or foreclosure;

(ii) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;

(iii) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(iv) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury (see paragraph (c) (2) of this section);

(v) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(vi) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

(2) *Permissive transfer.* The Secretary may refer a debt less than 180 days delinquent, including debts referred to the Department by another agency, to the Department of the Treasury, or with the consent of the Department of the Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

**§ 30.11 Demand for payment.**

(a) *Written demand for payment.* (1) Written demand, as described in paragraph (b) of this section, shall be

made promptly upon a debtor in terms that inform the debtor of the consequences of failing to cooperate with the Department to resolve the debt.

(2) Normally, the demand letter will be sent no later than 30 days after the appropriate official determines that the debt exists. The demand letter shall be sent by first class mail to the debtor's last known address.

(3) When necessary to protect the Government's interest, for example to prevent the running of a statute of limitations, the written demand for payment may be preceded by other appropriate action under this part, including immediate referral to the Department of Justice for litigation.

(b) *Demand letters.* The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the Department's letters or telephone calls. Generally, one demand letter should suffice; however, more may be used.

(1) The written demand for payment shall include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which generally shall be no later than 30 days from the date the demand letter is mailed;

(iii) The applicable standards for imposing any interest, penalties, or administrative costs (*see* § 30.18);

(iv) The rights, if any, the debtor may have to:

(A) Seek review of the Department's determination of the debt, and for purposes of administrative wage garnishment or salary offset, to request a hearing (*see* 45 CFR parts 32 and 33); and

(B) Enter into a reasonable repayment agreement.

(v) An explanation of how the debtor may exercise any of the rights described in paragraph (b)(1)(iv) of this section;

(vi) The name, address, and phone number of a contact person or office within the Department to address any debt-related matters; and

(vii) The Department's remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through administrative wage garnishment;

(B) Offsetting any federal payments due the debtor, including income tax refunds, salary, certain benefit payments such as Social Security, retirement, and travel reimbursements and advances;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to the Department of Justice for litigation; and

(F) Referring the debt to the Department of the Treasury for any of the collection actions described in paragraphs (b)(1)(vii)(A) through (E) of this section, advising the debtor that such referral is mandatory if the debt is 180 days delinquent.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to inspect and copy all records of the Department pertaining to the debt, or if the debtor or the debtor's representative cannot personally inspect the records, to request and receive copies of such records;

(ii) The Department's willingness to discuss with the debtor alternative methods of payment;

(iii) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt;

(iv) When seeking to collect statutory penalties, forfeiture or other similar types of claim, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful. Such suspension or revocation shall extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors;

(v) Knowingly making false statements or bringing frivolous actions may subject the debtor to civil or criminal penalties under 31 U.S.C. 3729–3731, 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority, and, if the debtor is a federal employee, to disciplinary action under 5 CFR part 752 or other applicable authority;

(vi) Any amounts collected and ultimately found not to have been owed by the debtor will be refunded;

(vii) For salary offset, up to 15% of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(viii) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) The Secretary will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service, which may include a certificate of service, may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) Prior to, during, or after the completion of the demand process, if the Secretary determines to pursue, or is required to pursue offset, the procedures applicable to offset should be followed (*see* § 30.12). The availability of funds or money for debt satisfaction by offset and the Secretary's determination to pursue collection by offset shall release the Secretary from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(e) *Finding debtors.* The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the IRS, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located.

(f) *Exception.* This section does not require duplication of any notice already contained in a written agreement, letter or other document signed by, or provided to, the debtor.

#### § 30.12 Administrative offset.

(a) *Scope.* (1) Administrative offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(2) This section does not apply to:

(i) Debts 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), and implementing regulation at 31 CFR 285.4;

(iii) Debts 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 and 31 U.S.C. 3716 (*see* 5 CFR part 550, subpart K; 31CFR 285.7; and part 33 of this chapter);

(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 for particular types of debts; or

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

(3) Unless otherwise provided for by contract or law, debts 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.

(4) Unless otherwise provided by law, collection by administrative offset under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Department's right to collect the debt first accrued, unless facts material to the Department's right to collect the debt were not known and could not reasonably have been known by the Secretary. This limitation does not apply to debts reduced to judgment.

(5) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362 and 553, on pending or contemplated collections by offset.

(b) *Centralized administrative offset.*

(1) Except as provided in the exceptions listed in § 30.10(c)(1), legally enforceable debts which are 180 days delinquent shall be referred to the Secretary of the Treasury for collection by centralized administrative offset pursuant to and in accordance with 31 CFR 901.3(b). Debts which are less than 180 days delinquent, including debts referred to the Department by another agency, also may be referred to the Secretary of the Treasury for collection by centralized administrative offset.

(2) When referring delinquent debts to the Secretary of the Treasury for centralized administrative offset, the Department must certify, in a form acceptable to the Secretary of the Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The Department has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraph (c)(2) of this section.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary of the Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Secretary of the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(c) *Non-centralized administrative offset.* (1) Unless otherwise prohibited by law, when centralized administrative offset under paragraph (b) of this section is not available or appropriate, the Secretary may collect a delinquent debt

by conducting non-centralized administrative offset internally or in cooperation with the agency certifying or authorizing payments to the debtor.

(2) Except as provided in paragraph (c)(3) of this section, administrative offset may be initiated only after:

(i) The debtor has been sent written notice of the type and amount of the debt, the intention of the Department to initiate administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given:

(A) The opportunity to inspect and copy Department records related to the debt;

(B) The opportunity for a review within the Department of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(3) The due process requirements under paragraph (c)(2) of this section may be omitted when:

(i) Offset is in the nature of a recoupment, i.e., the debt and the payment to be offset arise out of the same transaction or occurrence;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offset conducted under paragraph (c)(1) of this section, the Department 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/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Secretary shall give the debtor such notice and an opportunity for review as soon as practical and shall promptly refund any money ultimately found not to have been owed to the Government.

(4) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under § 30.11 of this part, the Department need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before requesting that a payment authorizing agency conduct non-centralized administrative offset, the Department shall:

(i) Provide the debtor with due process as set forth in paragraph (c)(2) of this section; and

(ii) Provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the Department has fully complied with this section.

(6) When a creditor agency requests that the Department, as the payment authorizing agency, conduct non-centralized administrative offset, the Secretary shall comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the Department, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including salary offset.

(7) When collecting multiple debts by non-centralized administrative offset, the Department will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employee Retirement System.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (c)(2) of this section, the Department may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with 5 CFR part 831, subpart R, or under the Federal Employee Retirement System (FERS) in accordance with 5 CFR part 845, subpart D. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or under FERS. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in 31 CFR 901.3(b)(4).

(e) *Review requirements.* (1) For purposes of this section, whenever the Secretary is required to afford a debtor a review within the Department, the debtor shall be provided with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Secretary determines that the question of the indebtedness cannot be resolved

by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Department will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debt collection systems where determinations of indebtedness rarely involve issues of credibility or veracity, and the Secretary has determined that a review of the written record is adequate to correct prior mistakes.

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

### **§ 30.13 Debt reporting and use of credit reporting agencies.**

(a) *Reporting delinquent debts.* (1) The Secretary will report delinquent debts over \$100 to credit bureaus or other automated databases. Debts arising under the Social Security Act are excluded from this paragraph (a).

(2) Debts owed by individuals will be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

(3) Once a debt has been referred to the Department of the Treasury for collection, any subsequent reporting to or updating of a credit bureau or other automated database may be handled by the Department of the Treasury.

(4) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

(5) If the debtor has not received prior written notice under § 30.11(b), before reporting a delinquent debt under this section, the Secretary shall provide the debtor at least 60 days written notice of the amount and nature of the debt; that the debt is delinquent and the Department intends to report the debt to a credit bureau (including the specific information that will be disclosed); that the debtor has the right to dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review within the

Department of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address, and social security number and the nature, amount, status and history of the debt.

(b) *Use of credit reporting agencies.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants, potential contractors and grantees; to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, and Social Security number and the purpose for which the information will be used.

### **§ 30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.**

(a) Subject to the provisions of paragraph (b) of this section, the Secretary may contract with private collection contractors to recover delinquent debts, provided that:

(1) The Secretary retains the authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer debts to the Department of Justice for litigation;

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

(3) The contract provides that the private collection contractor 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 private collection contractor is required to account for all amounts collected.

(b) The Secretary shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, the Secretary may refer debts to private collection contractors pursuant to a contract between the Department and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Department of the Treasury for debt collection under 31 U.S.C. 3711 (g) and 31 CFR 285.12(e).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by the Department of Treasury after the

debt has been referred to that Department for collection) are excluded from this section.

(d) The Secretary may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law. A contract under paragraph (a) of this section may provide that the fee a private collection contractor charges the Department for collecting the debt is payable from the amounts collected.

(e) The Department may enter into contracts for locating and recovering assets of the United States including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a state government or financial institution, the Department must establish procedures that are acceptable to the Secretary of Treasury.

(f) The Secretary may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Department for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

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

(a)(1) Unless waived by the Secretary, financial assistance in the form of loans, loan guarantees, or loan insurance shall not be extended to any person delinquent on a debt owed to the United States. This prohibition does not apply to disaster loans. Grants, cooperative agreements, and contracts are not considered to be loans.

(2) The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer.

(3) States that manage federal activities, pursuant to approval from the Secretary, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or other privileges to debtors who fail to pay their debts to the Federal Government.

(b) The Secretary will report to the Department of the Treasury any surety that fails to honor its obligations under 31 U.S.C. 9305.

(c) In non-bankruptcy cases, when seeking to collect statutory penalties, forfeitures, or other types of claims, the Secretary may suspend or revoke licenses, permits, or other privileges of a delinquent debtor if the failure to pay the debt is found to be inexcusable or willful. Such suspension or revocation will extend to programs or activities

administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors.

(d) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, before taking any action to suspend or revoke under paragraph (c) of this section, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

#### **§ 30.16 Liquidation of collateral.**

(a)(1) The Secretary will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interests of the United States.

(2) 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.

(3) The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

#### **§ 30.17 Collection in installments.**

(a) Whenever feasible, the total amount of a debt shall be collected in one lump sum payment. If a debtor is financially unable to pay a debt in one lump sum, either by cash or administrative offset, the Secretary may accept payment in regular installments. The Secretary will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in § 30.22 (a)(1).

(b) *Installment payment agreements.* (1) When the Secretary agrees to accept payments in regular installments, a legally enforceable written agreement

should be obtained from the debtor that specifies all the terms and conditions of the agreement, and that includes a provision accelerating the debt in the event of a default.

(2) The size and frequency of the payments should reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(3) In appropriate cases, the agreement should include a provision identifying security obtained from the debtor for the deferred payments.

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

(a) Except as provided in paragraphs (g), (h) and (i) of this section, the Department shall charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) *Interest.* The Department shall charge interest on delinquent debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under § 30.11, the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury pursuant to 31 U.S.C. 3717. The Department may charge a higher rate if necessary to protect the rights of the United States but must document in writing the reasons for charging the higher rate.

(3) Unless prescribed by statute or contract, the rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Department may require payment of interest at a new rate that reflects the Department of the Treasury rate in effect 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, unless prescribed by statute or

contract. If, however, the debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) *Administrative costs.* The Department shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs shall include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor, and any costs charged by a collection agency under § 30.14. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another federal agency or unit.

(d) *Penalty.* Unless otherwise established by contract, repayment agreement, or statute, the Secretary will charge a penalty of six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, an administrative debt may be increased by the cost of living adjustment in lieu of charging interest and penalties under this section. Administrative debt includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt 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 debt was determined or last adjusted. Such increases to administrative debts shall be computed annually.

(f) *Priority.* When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) *Waiver.* (1) The Secretary shall waive the collection of interest and administrative charges imposed

pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Secretary may extend this 30-day period on a case-by-case basis if the Secretary determines that such action is in the best interest of the Government, or otherwise warranted by equity and good conscience.

(2) The Secretary also may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at § 30.22 (a)(1) through (4) for the compromise of debts; or

(ii) A determination by the Secretary that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) *Review.* (1) Except as provided in paragraph (h)(2) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor either may pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor chose to retain the amount in dispute, the Secretary shall collect from the debtor the amount determined to be due, plus interest, penalties and administrative costs on such debt amount, as calculated under this section, starting from the date the debtor was first made aware of the debt and ending when the debt is repaid. The Department may impose and waive interest and related charges on debts not subject to 31 U.S.C. 3717 in accordance with the common law or other statutory authority.

(2) *Exception.* Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under § 30.29(c)(1) pending agency review or consideration of waiver if statute prohibits collection of the debt during this period.

### § 30.19 Review of cost effectiveness of collection.

Periodically, the Secretary will compare costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will 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 debt amounts below which collection efforts need not be taken.

### § 30.20 Taxpayer information.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or any other authority, the Secretary may send a request to the Department of the Treasury in accordance with 31 CFR 901.11 to obtain a debtor's mailing address from the records of the IRS.

(b) Mailing addresses obtained under paragraph (a) of this section may be used to enforce collection of a delinquent debt and may be disclosed to other agencies and to collection agencies for collection purposes.

### Subpart C—Debt Compromise

#### § 30.21 Scope and application.

(a) *Scope.* The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. The Secretary may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Department when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000, or any higher amount authorized by the Attorney General.

(b) *Application.* Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with the Department of Justice. The Secretary shall evaluate the compromise offer, using the factors set forth in this subpart. If an offer to compromise any debt in excess of \$100,000 is acceptable to the Department, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR), which may be obtained from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Department of Justice approval is not required if the Secretary rejects a compromise offer.

#### § 30.22 Bases for compromise.

(a) The Secretary may compromise a debt if the full amount cannot be collected based upon inability to pay, inability to collect the full debt, cost of

collection, or doubt debt can be proven in court.

(1) *Inability to pay.* The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, the Secretary will obtain and verify the debtor's claim of inability to pay by using credit reports or a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. The Secretary may use a Departmental financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office. The Secretary also may consider other relevant factors such as:

- (i) Age and health of the debtor;
- (ii) Present and potential income;
- (iii) Inheritance prospects;
- (iv) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (v) The availability of assets or income that may be realized by enforced collection proceedings.

(2) *Inability to collect full debt.* The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(i) In determining the Government's ability to enforce collection, the Secretary will consider the applicable exemptions available to the debtor under state and federal law, and may also consider uncertainty as to the price the collateral or other property will bring at a forced sale.

(ii) 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.

(3) *Cost of collection.* The cost of collecting the debt does not justify the enforced collection of the full amount.

(i) The Secretary may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation 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 debts.

(ii) In determining whether the costs of collection justify enforced collection of the full amount, the Secretary will

consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) *Doubt debt can be proven in court.* There is significant doubt concerning the Government's ability to prove its case in court.

(i) 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 to the availability of witnesses and other evidentiary support for the Government's claim.

(ii) In determining the litigation risks involved, the Secretary will 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.

(b) *Installments.* The Secretary generally will 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, the Secretary shall, except in the case of compromises based on paragraph (a)(4) of this section, obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. The Office of the General Counsel should be consulted concerning the appropriateness of including such a requirement in the case of compromises based on paragraph (a)(4) of this section. Whenever possible, the Secretary will obtain security for repayment in the manner set forth in subpart B of this part.

#### **§ 30.23 Enforcement policy.**

The Secretary may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if the Department's enforcement policy, in terms of deterrence and securing compliance, present and future, will be adequately served by the Secretary's acceptance of the sum to be agreed upon.

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

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

(b) The Secretary will ensure that a compromise agreement with one debtor does not release the Department'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.

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

If the Secretary is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Secretary's delegated compromise authority, the Secretary may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. The Department of Justice may act upon such an offer or return it to the Secretary with instructions or advice.

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

In negotiating a compromise, the Secretary will consider the tax consequences to the Government. In particular, the Secretary will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 30.32.

#### **§ 30.27 Mutual release of the debtor and the Government.**

In all appropriate instances, a compromise that is accepted by the Secretary will be implemented by means of a mutual release. The terms of such mutual release shall provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the

Government and its officials related to the transaction giving rise to the compromised debt.

### **Subpart D—Suspending and Terminating Collection Activities**

#### **§ 30.28 Scope and application.**

(a) *Scope.* The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts 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 debt to the Department of Justice for litigation, the Secretary may suspend or terminate collection under this subpart with respect to debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b) *Application.* (1) If, after deducting the amount of partial payments or collections, the principal amount of the debt 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.

(2) If the Secretary believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice, using the CCLR. The referral will specify the reasons for the Secretary's recommendation. If prior to referral to the Department of Justice, the Secretary determines that a debt is plainly erroneous or clearly without merit, the Secretary may terminate collection activity regardless of the amount involved without obtaining Department of Justice concurrence.

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

(a) The Secretary may suspend collection activity on a debt when:

(1) The Department 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 debt.

(b) *Financial condition.* Based on the current financial condition of a debtor, the Secretary may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

(1) The applicable statute of limitations has not expired;

(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 debt 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 debt with interest at a later date.

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

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

(d) Upon learning that a bankruptcy petition has been filed with respect to a debtor, in most cases the Secretary must suspend collection activity on the debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Secretary can clearly establish that the automatic stay has been lifted or is no longer in effect. The Office of the General Counsel will be contacted immediately for legal advice, and the Secretary will take the necessary legal steps to ensure that no funds or money are paid by the Department to the debtor until relief from the automatic stay is obtained.

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

(a) The Secretary may terminate collection activity when:

(1) The Department is unable to collect any substantial amount through its own efforts or through the efforts of others;

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

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

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

(5) The debt cannot be substantiated; or

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

(b)(1) Collection activity will not be terminated before the Secretary has pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible.

(2) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the Secretary from retaining a record of the account for purposes of:

(i) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interest of the United States;

(ii) 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;

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

(iv) Screening future applicants for prior indebtedness.

(c) Generally, the Secretary shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. The Secretary 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, when the Department is a known creditor of a debtor the claims of the Department may survive a discharge if the Department did not receive formal notice of the bankruptcy proceedings. When the Department believes that it has claims or offsets that may have survived the discharge of the debtor, the Office of the General Counsel should be contacted for legal advice.

#### **§ 30.31 Exception to termination.**

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the Secretary may refer debts to the Department of Justice for litigation even though termination of collection activity may otherwise be appropriate.

#### **§ 30.32 Discharge of indebtedness; reporting requirements.**

(a) *Discharge.* (1) Before discharging a delinquent debt, also referred to as close out of the debt, the Secretary shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711 (g)(9), and parts 30 through 33 of this chapter, including, as applicable, administrative offset; tax refund offset; federal salary offset; credit bureau reporting; administrative wage garnishment; litigation; foreclosure; and referral to the Department of the Treasury, Department of the Treasury-designated debt collection centers, or private collection contractors.

(2) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and 31 CFR parts 900 through 904.

(3) When the Department discharges a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt the Secretary must:

(i) Make the determination that collection action is no longer warranted; and

(ii) Terminate debt collection action.

(b) In accordance with 31 U.S.C. 3711 (i), the Secretary shall use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, the Secretary may not discharge a debt until the requirements of 31 U.S.C. 3711 (i) have been met.

(c) Upon discharge of an indebtedness, the Secretary must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. The Secretary may request that the Department of the Treasury or Department of the Treasury-designated debt collection centers file such a discharge report to the IRS on the Department's behalf.

(d) When discharging a debt, the Secretary must request that litigation counsel release any liens of record securing the debt.

## Subpart E—Referrals to the Department of Justice

### § 30.33 Prompt referral.

(a)(1) The Secretary promptly shall refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with subpart B of this part, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with subpart D of this part.

(2) The Secretary may refer to the Department of Justice for litigation those debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b)(1) Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Department of Justice Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington D.C.

(2) Debts for which the principal amount is \$1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Nationwide Central Intake Facility of the Department of Justice as required by the CCLR instructions.

(c)(1) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR parts 900 through 904, debts shall be referred to the Department of Justice as early as possible, and, in any event, well within the period for initiating timely lawsuits against the debtors.

(2) The Secretary shall make every effort to refer delinquent debts to the Department of Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, the Secretary will make every effort to refer these delinquent debts to the Department of Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

(d) The Department of Justice has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to the Department of Justice, the Secretary shall:

(1) Immediately terminate the use of any administrative collection activities to collect the debt;

(2) Advise the Department of Justice of the collection activities utilized to date, and their result; and

(3) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to the Department of Justice.

(e) After referral of a debt under this subpart, the Secretary shall immediately notify the Department of Justice of any payments credited by the Department to the debtor's account. Pursuant to 31 CFR 904.1 (b), after referral of the debt under this subpart, the Department of Justice shall notify the Secretary of any payment received from the debtor.

### § 30.34 Claims Collection Litigation Report.

(a)(1) Unless excepted by the Department of Justice, the Secretary will complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation.

(2) The Secretary shall complete all of the sections of the CCLR appropriate to each debt as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) The Secretary shall indicate clearly on the CCLR the actions that the Department wishes the Department of Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which the Department of Justice may pursue, including enforced collection, judgement lien only, renew judgement lien only, renew judgement lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) The Secretary also shall use the CCLR to refer a debt to the Department of Justice for the purpose of obtaining approval of a proposal to compromise the debt, or to suspend or terminate administrative collection activity of the debt.

### § 30.35 Preservation of evidence.

The Secretary will maintain and preserve all files and records that may be needed by the Department of Justice to prove the Department's claim in court. When referring debts to the Department of Justice for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to the Department of Justice.

### § 30.36 Minimum amount of referrals.

(a) Except as in paragraph (b) of this section, claims of less than \$2,500 exclusive of interest, penalties, and administrative costs, or such other

amount as the Attorney General may prescribe, shall not be referred for litigation.

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

(1) Litigation to collect such smaller amount is important to ensure compliance with the policies and programs of the Department;

(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 Department 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.

(c) The Secretary 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: April 1, 2004.

**Tommy G. Thompson,**  
*Secretary.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 33

RIN #0991-AB19

#### Salary Offset

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to add specific rules concerning involuntary salary offset by adding a new part 33 to title 45 CFR. The proposed rule implements 5 U.S.C. 5514, as amended by the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. Involuntary salary offset was previously included in the Department's more general claims collection regulations at 45 CFR part 30.

**DATES:** Submit comments on or before September 13, 2004.

**ADDRESSES:** Comments concerning this proposed rule can be mailed to: Jeffrey