(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 28, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

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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: Final rule.

SUMMARY: This final rule amends the Department of Health and Human Services' (HHS) 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). This final rule implements the final rule promulgated by Justice and Treasury, and amends 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: *Effective Date:* March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Davis, 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.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act of 1982 (DCA), Public Law No. 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 The revised FCCS superseded the current FCCS, and removed the Comptroller General as promulgator of the FCCS.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. 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 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.

Additionally, we note that the current HHS claims collection regulations at 45 CFR 30.13(d) provided: ''[u]nless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts arising from payments to beneficiaries under Titles II, XVI, and XVIII of the Social Security Act.'' This rule will not change this Departmental practice. For debts arising from payments to beneficiaries under Titles XVI and XVIII of the Social Security Act (Title II is now administered by the Social Security Administration), the Secretary will not assess interest unless specifically required to do so by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity.

To the extent any provision of this rule is inconsistent with a more specific provision (*e.g.*, certain provisions in 45 CFR parts 31, 32, and 33 and 42 CFR parts 401 and 405), 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, this final rule establishes the 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 rule does not apply to claims between Federal agencies. The rule affects HHS's debtors. This rule revises the current Department regulation in accordance with the substantive and procedural requirements of the DCIA and the implementing final rule.

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

Public Comments

We received the following comments on the proposed rule.

Comment: One commenter asserted that the mandatory demand letter statements required by § 30.11 of the proposed rule potentially conflicted with validation disclosures of § 809 of the Fair Debt Collection Practices Act (FDCPA) that private collection contractors are required to deliver in their initial demand letters.

Response: We do not agree that the requirements of § 30.11 of the final rule conflict with the FDCPA and have made no changes to the final rule based on this comment. Section 30.11(b)(1) provides a listing of the information that must be included in a demand letter. The specific clauses that concerned the commenter are found in § 30.11(b)(2) which provides the listing of the information which should be included in a demand letter, including the statements of fact that: (1) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt; (2) when seeking to collect statutory penalties, forfeiture or other similar types of claims, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful; and (3) 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.

Comment: One commenter noted that in the Medicare Secondary Payer (MSP) context, the Centers for Medicare & Medicaid Services (CMS) currently utilizes two demand letters and requested either the section 30.11(b) statement, ''[g]enerally one demand letter should suffice * * *'' be deleted or recognize that in the MSP context two demand letters are generally appropriate.

Response: We are making no changes to the final rule based on this comment. Under the FCCS, agencies are permitted to use more than one demand letter to meet the requirements at 31 CFR 901.2. Therefore, there is no need to change the current language of § 30.11(b) to accommodate the use of more than one demand letter.

Comment: One commenter stated that in the MSP context, initial demand letters and intent to refer letters are not often directed to the appropriate, responsible party. As a result, the entity bearing responsibility for the debt may not have an opportunity to respond prior to the referral of the debt to Treasury for collection. The commenter recommended HHS:

(1) Amend proposed § 30.11(a)(2) to state that demand letters ''shall be sent by first class mail to the debtor's last known address, as confirmed through reasonable efforts'';

(2) Add a new sentence stating that if a letter is returned as undeliverable, the Secretary shall take reasonable steps to determine the appropriate address of the alleged debtor and send a second letter; and

(3) Add a new provision stating that the Secretary shall provide alleged debtors (generally employers, insurers or third party administrators) with the opportunity to designate a central agent (at a specific location) to receive MSP demand letters.

Response: We are making no changes to the final rule based on this comment. As to the first two suggestions, CMS uses the most recent address information in its system specific to a particular debt. As to the third suggestion, the final rule would not prohibit an employer, insurer, or third party administrator from reaching an agreement with CMS on a designated agent for the receipt of MSP demand letters to the extent that CMS systems can handle the request and the specific debtor information can be appropriately matched. Employers, insurers, and third party administrators should have internal procedures which ensure correct internal routing of such letters if the letter is received at any address of the entity.

Comment: In another comment relating to MSP debts, a commenter urged HHS to amend proposed § 30.11(b)(1) to state that the written demand for payment ''shall include sufficient information to allow the recipient to identify the specific debt involved.'' The commenter noted in the MSP context, sufficient information includes: beneficiary name, HIC number, basis for Medicare eligibility, policy number, services included in the claim, dates of service, provider type, amount due, and member name/company.

Response: We are making no changes to the final rule based on this comment. The current CMS process is adequate because most of the information listed is already included in the demand letter package. The demand package contains sufficient information to allow the recipient to identify the specific debt involved. The intent to refer letter package includes the initial demand letter (including attachments) when it is issued. However, the content of the initial demand letter is dependent on the debtor responding to CMS's requests, if any, for additional information. Finally, CMS has no control over what information Treasury includes in its first letter to the debtor and the information Treasury instructs the private collection agency to include in its collection letter.

Comment: One commenter requested HHS to modify proposed § 30.11 to add new text (modeled directly on the FCCS at 31 CFR 901.2(e)) that reads ''the Secretary should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.''

Response: We have made this change requested by the commenter and have added a new 30.11(f) providing: *Communications from debtors.* The Secretary should respond promptly to communications from debtor, within 30 days where feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

Comment: One commenter noted that § 30.11(b)(1)(ii) would require that demand letters state ''[t]he 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.'' The commenter sought confirmation that the proposed regulation will not (1) Require CMS to shorten the period allowed by the MSP statute for entities to respond to demands for payment before the imposition of interest or (2) prohibit the Secretary from exercising discretion to waive interest, where appropriate.

Response: We are making no changes to the final rule based on this comment. We confirm that the regulation does not require CMS to shorten the period allowed by the MSP statute for MSP debtors to respond to demands for payment before the imposition of interest, or prohibit the Secretary from exercising discretion to waive interest, where appropriate (see § 30.18(g), Waiver). Proposed § 30.11(b)(1)(ii) is not intended to alter any existing CMS policies and procedures on when entities must respond to demands for payment to avoid interest in the MSP context (currently, 60 days), nor is it intended to limit the Secretary from waiving interest where appropriate and where consistent with government-wide and agency-specific debt collection standards. The language in proposed 30.11(b)(1)(ii) states payment ''should'' be made ''generally'' no later than 30 days to avoid late charges and enforced collection. Based on this language, CMS may exercise discretion in extending the time frame for entities to respond for specific types of debt such as MSP debts.

Comment: Proposed § 30.10(c)(1) states that ''[t]he Secretary shall transfer debts 180 days or more delinquent to the Treasury in accordance with the requirements of 31 CFR 285.12.'' A commenter requested that the regulation

be amended, consistent with the Treasury regulations, to make clear that debt is not required to be transferred to Treasury unless and until a final agency determination has been made. Accordingly, the commenter requested that HHS amend section 30.10 to read: ''(c) The Secretary shall transfer debts 180 days or more delinquent to Treasury, where appropriate, in accordance with the requirements of 31 CFR 285.12 when there is a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.'' The commenter believed that premature referral of debt would not only violate the terms of the Treasury regulation, but also undermine efficient administration of debt collection since alleged MSP debtors, whom the commenter incorrectly asserted do not receive final agency determinations prior to referral, generally seek reconsideration at the Treasury level. The commenter contended that this adds an unnecessary level of complication to the debt collection process and typically results in claims being sent back to CMS for further review and verification of the validity of the debt.

Response: We are making no changes to the final rule based on this comment. It is implicit in the regulatory language that, before transfer to Treasury, there will have been a final agency determination that the debt, in the amount stated, is due.

Comment: One commenter urged HHS to modify the proposed regulation to clearly state the specific process with which CMS must comply before transferring MSP debt to Treasury for administrative offset and/or other cross-servicing. The commenter believed that the proposed regulations do not include all of the criteria set forth in the Treasury regulations as prerequisites to transfer, and recommended that HHS amend proposed § 30.12(b)(2) to state: ''When referring delinquent debt to the Secretary of the Treasury for centralized administrative offset or other debt collection activity, the appropriate agency official must certify, in written form acceptable to the Secretary of the Treasury, that (i) The debt is valid, 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 and all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency (unless the Secretary of the Treasury has agreed to comply with such requirements on the Department's behalf).''

Response: We are making three changes to the final rule based on this comment. First, we are changing the definition of ''Legally enforceable'' in § 30.2 to add on to the end ''(for example, the debt is not the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited.)'' Second, we are adding ''legally enforceable'' before the word ''debts'' in 30.10(c)(1). While we believe the requirement that the debt not be transferred, under mandatory transfer, if it is the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited was clear, as previously drafted, since this is a requirement of 31 CFR 285.12(c)(3)(i) and 30.10(c)(1) specified that transfers to Treasury would be made in accordance with the requirements of 31 CFR 285.12, the regulation is more complete with this clarification. Related to the part of the comment that 30.10(c)(2) did not include all of the criteria set forth in the Treasury regulations as prerequisites to transfer, we are also amending 30.10(c)(2) to include ''in accordance with the requirements of 31 CFR 285.12.'' Therefore, the requirements of Treasury's regulations are clearly included.

Comment: One commenter suggested that the Claims Collection regulations be amended to state that the Secretary may, where appropriate, in the MSP debt context, explore the use of alternative dispute resolution to resolve disputed debt.

Response: We are making no changes to the final rule based on this comment because we believe that CMS's current regulations and processes provide adequate opportunity for the debtor to dispute a debt.

Comment: One commenter recommended that HHS define the term ''valid debt'' under § 30.2 to mean debt where the government has a reasonable expectation of being able to prove the existence of the debt in court, based on the legal issues and the facts.

Response: We are making no changes to the Final Rule based on this comment. We do not agree that it is necessary to define ''valid debt.''

Comment: One commenter noted the proposed Claims Collection regulations state that the term ''legally enforceable'' means ''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.'' Proposed § 30.2, Definitions. The commenter requested HHS amend the proposed regulations to expressly state that, when an alleged debtor has disputed a debt, the appropriate agency official may not refer the debt to Treasury unless and until a written determination explaining the basis for the decision has been issued (and a copy provided to the alleged debtor) concerning the validity of the alleged debt.

Response: We are making no changes to the final rule based on this comment. First, in response to a previously discussed comment, we are changing the definition of ''Legally enforceable'' in § 30.2 to add on to the end ''(for example, the debt is not the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited.)'' Also, a final determination that a debt, in the amount stated, is due and there are no legal bars to collection action does not require issuing a formal written determination, separate from and in addition to the demand letter, explaining the basis for such decision. Also, the regulations provide, in the definition of a debt (§ 30.2, Definitions) that an appropriate official of the Federal Government determined an amount of funds or other property is owed to the Government. Such a determination, therefore, is needed before a demand letter would be sent and before the debt would be referred to Treasury for collection.

Comment: One commenter noted that proposed section 30.12(b) states that when referring delinquent debts to the Secretary of Treasury for centralized administrative offset, the Department must certify that the Department has complied with all due process requirements under 31 U.S.C. 3716(a) and § 30.12(c)(2) of the proposed rule. 31 U.S.C. 3716(a)(3) states that the head of an administrative agency may collect by offset only after, among other things, giving the debtor ''an opportunity for a review within the agency of the decision of the agency related to the claim.'' The commenter noted that the proposed HHS regulations state that where review is required, the Secretary must afford the alleged debtor an oral or paper hearing. *See* Proposed § 30.12(e). The commenter supported this provision of the regulation, but noted the need for clarification regarding the specific due process rights that will be afforded to employers/unions and health plans/insurers disputing alleged MSP debt. The commenter noted that CMS has published proposed Medicare claims appeal regulations which expressly allow beneficiaries and providers/suppliers to appeal Medicare contractor determinations that they owe the government monies under the MSP

statute, but has not provided any specific due process appeal rights to employers/unions or health plans/ insurers in similar circumstances. *See* 67 FR 69311, 69317–20 (Nov. 15, 2003). The commenter asserted that, as a matter of law, employers/unions and health plans/insurers are entitled to independent review of an alleged MSP debt determination by a Medicare contractor prior to referral of the debt to Treasury for offset. The commenter strongly urged HHS to identify the specific due process rights to be afforded such entities challenging the existence of MSP debt, particularly the nature of any associated appeal rights. The commenter noted that the FCCS encourages agencies to use ''all authorized remedies, including alternative dispute resolution,'' for claims collection, 31 CFR 900.1(c), and requested HHS to amend the Claims Collection regulation to state that the Secretary may, in appropriate circumstances, explore the use of alternative dispute resolution mechanisms to resolve disputed debt. While the commenter does not request that CMS be required to use such alternative dispute resolution mechanisms, the commenter believes CMS should be granted the flexibility through regulation to develop creative and cost-effective ways of resolving disputed claims short of transfer to Treasury (and without incurring the significant costs associated with use of private collection agencies).

Response: We are making no changes to the final rule based on this comment. We believe that current CMS procedures provide adequate opportunity for the non-beneficiary or non-provider/ supplier MSP debtor (*e.g.*, employers/ unions or health plans/insurers) to dispute a debt. Employers, insurers, third party administrators, plans, or other plan sponsors that are issued a demand letter are provided adequate notice of the debt and an opportunity to rebut the debt prior to CMS referring the MSP debt to Treasury.

Comment: One commenter stated that it is aware of numerous situations in which offset of a claim occurred after CMS had determined that monies were not in fact due with respect to the particular claim. Accordingly, the commenter recommended HHS amend the Claims Collection regulations to include the following language adapted from 31 CFR 285.12 of the Treasury regulations: ''Once a debt is referred to Treasury, the Secretary must promptly notify Treasury of any change in the status of the debt, including any decision that the debt is not in fact owed.''

Response: We are making no changes to the final rule based on this comment. As noted by the commenter, Treasury's current regulations already provide for notification to Treasury of changes in the status of the legal enforceability of a debt. Since 30.10(c) states that the transfer of debts be in accordance with 31 CFR 285.12, and 31 CFR 285.12(i) includes this notification of status requirement, it is unnecessary to restate that requirement here.

Comment: One commenter noted that proposed § 30.18 requires the Department to assess administrative costs incurred for processing and handling delinquent debts and, ''[u]nless otherwise established by contract, repayment agreement, or statute,'' to impose a penalty of six percent a year on the amount due on a debt that is delinquent for more than 90 days. The commenter asserted that the mandatory imposition of administrative costs and penalties is not appropriate for MSP debt since the interest and penalty provision of the Debt Collection Improvement Act, 31 U.S.C. 3717, does not (with limited exceptions not here relevant) apply to ''a claim or debt under, or an amount payable under * * * the Social Security Act,'' 31 U.S.C. 3701(d). Accordingly, commenter requested that HHS amend § 30.18 to incorporate language from the current HHS Claims Collection regulations which states: ''[t]he Secretary will charge administrative costs or late payment penalties on debts arising under the Social Security Act where authorized by statute, regulations, or written agreement.'' *See* 45 CFR 30.13(d)(2).

Response: We are making no changes to the final rule based on this comment. The proposed regulation did not change the current CMS process for assessing administrative fees. As to comments on MSP debts not being subject to the interest and penalties provisions of the DCIA, the MSP provisions of the Medicare statute (section 1862(b) of the Social Security Act) and implementing regulations (42 CFR 411.24(m)) provide CMS separate, independent authority for assessing interest on delinquent MSP debts.

Comment: One commenter noted that proposed § 30.24(b) states ''[t]he Secretary will ensure that a compromise agreement with one debtor does not release the Department's claim against the remaining debtors.'' The commenter requested that given the unique nature of MSP claims, HHS delete or modify the text of the proposed regulation to expressly authorize the Secretary to release all potential debtors, where appropriate with respect to a particular debt. The commenter expressed a belief that historically, MSP settlements with the government have released claims against *all* potential debtors. The commenter urged HHS to amend the regulations to allow the Secretary to retain the flexibility to execute similar agreements in the future. The commenter believed that such comprehensive settlements are particularly appropriate in the MSP context where it is not cost-effective to adjudicate claims twice and health plans/insurers will have significantly less incentive to enter into MSP settlement agreements if potential claims against their group health plan customers are not released.

Response: The proposed regulation is intended to govern situations where agency (in this case, CMS) regulations are silent or fail to govern a specific debt situation. The proposed language in § 30.24(b) would not prohibit the Secretary from executing a compromise of selected debts where an insurer is negotiating on its own behalf and on behalf of others as authorized. However, HHS will insert the word ''automatically'' before the word ''release'' to make clear that some action could take place which would release all parties.

Comment: A commenter requested that HHS amend proposed § 30.11(b)(2)(vi) to provide that ''[a]ny amounts collected and ultimately found not to have been owed by the debtor will be refunded promptly.'' The commenter explained the proposed modification is fair and appropriate where monies are not in fact due. In addition, the commenter requested that HHS modify the proposed regulation to require individual agencies, including CMS, to establish clearly publicized processes for debtors to request reimbursement of disputed amounts that were paid in order to avoid the imposition of interest or were taken by offset and specific timelines for prompt adjudication of the amounts in dispute.

Response: We are making no changes to the final rule based on this comment. Applicable statutes and regulations do not mandate that the above quoted language be included in demand letters, nor do they mandate a specific time frame or published process for debtors to request reimbursement of disputed amounts or for refunding amounts previously collected. HHS will revisit this suggestion if it is problematic in practice.

Comment: One commenter stated that, when a debt is contested at the Treasury/private collection agency level, Treasury will often seek input from CMS concerning the validity of the

underlying debt. The commenter submitted that when this occurs, it is appropriate for Treasury to suspend all collection efforts, including offset. Accordingly, the commenter requested that HHS add a provision to the regulation authorizing suspension of all collection activities by Treasury or a private collection agency when Treasury seeks guidance from HHS regarding the validity of a particular debt in dispute.

Response: We are making no changes to the final rule based on this comment. This comment addresses current Treasury procedures and is outside the scope of the Claims Collection regulations.

Comment: One commenter supported HHS's proposed modifications of the regulations which would authorize HHS to compromise, suspend or terminate collection activity on a debt under $100,000 in principal amount without the concurrence of Justice. See Proposed §§ 30.21 and 30.28. The commenter also supports amendments set forth in proposed § 30.36 which raise the minimum amount of debt necessary for referral for litigation.

Response: No response to this comment is necessary.

Comment: One commenter supported proposed § 30.22(a)(3)(i) which authorizes the Secretary to compromise a debt where the cost of collecting the debt does not justify the enforced collection of the full amount, but requested that the regulation be amended to state that ''[t]he 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 and the age of the delinquent debt.'' Likewise, the commenter requested that proposed § 30.19 be amended to direct that the age of delinquent debt be considered in developing data on costs and corresponding recovery rates to be used (among other things) in establishing guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries. The commenter believed the age of alleged MSP debt directly affects the demand letter processing and collection costs for both the government and the alleged debtors and should be expressly considered in establishing collection guidelines. The commenter requested that HHS amend the Claims Collection regulation to expressly recognize that it is appropriate for agencies to (1) Take the age of a debt into account when determining what documentation must be provided by the alleged debtor to mount a defense, and (2) exercise flexibility in determining whether additional collection efforts are appropriate or justified concerning old debt.

Response: We are making no changes to the final rule based on this comment. We do not agree that it is necessary or appropriate to specifically require consideration of the age of the delinquent debt as a factor in pursuing or compromising a debt.

Comment: There were several comments related to the rule's impact on state collection activities when states seek to collect debts due under a program authorized under the Social Security Act for which Federal funds were provided (*i.e.*, Temporary Assistance to Needy Families (TANF), State Children's Health Insurance Program (SCHIP) and Medicaid). Certain commenters explained the difficulties and increased burdens on states in following the proposed rule. For example, one commenter offered that the particular state would need to change its computer system and the current way it did business. Other commenters explained the benefits of interpreting the rule to allow TANF debts to be collected pursuant to the rule and strongly recommended the rule be interpreted to include state debts and authorize states to submit TANF debts to the Treasury Offset Program.

Response: We are making no changes to the final rule based on these comments, but draw the commenters' attention to several points. In the TANF program, there is no direct Federal share in recipient overpayments because TANF is a block grant program. Therefore, these regulations would not affect state collection activities with respect to recipient families. In addition, states are not subject to the FCCS when seeking to collect state overpayments made to providers in the Medicaid and SCHIP programs. Because we do not believe that this regulation imposes any new requirement related to state collection activities in the referenced Social Security Act programs that are related to overpayments or other debts to or on behalf of individual recipients, we do not find any burden on states related to such collection activities.

Comment: One commenter recommended that many mandates in the regulation be made permissive (*i.e.*, changing ''shall'' to ''may'' in certain places in the regulation text) so as not to mandate certain state action.

Response: We are making no changes to the final rule based on this comment because, as explained in the response to the previous comments (directly above), the HHS regulation does not place these mandates on states.

Comment: One commenter asked whether states administering TANF, SCHIP or Medicaid should refer cases to the HHS Office of the Inspector General.

Response: The proposed rule was not intended to change the current way states refer to law enforcement entities claims that are suspected to involve fraud, false information, or misrepresentation on the part of the debtor. States should continue to refer such claims to the appropriate governmental entity pursuant to applicable Federal and State laws and agency guidance.

Other Changes Made to the Final Rule

We have also changed § 30.18(b)(2), regarding the percentage of interest to be charged on debts. The NPRM requirement that the Department document in writing the reasons for charging a higher rate was omitted and the following language was added: ''Any such higher rate of interest charged will be based on Treasury's quarterly rate certification to the U.S. Public Health Service for delinquencies in the National Research Services Awards and the National Health Services Corps Scholarship Program. The Department publishes this rate in the **Federal Register** quarterly.''

Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order (EO) 13132 (Federalism). We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the EO and, consequently, a federalism summary impact statement is not required.

Analysis of Impacts

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

Economic Impact

We have examined the impact of this rule as required by EO 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. No. 96–354); the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. No. 104–4); and the Truth in Regulating Act of 2000 (5 U.S.C. 801 note). EO 12866

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 rule is consistent with the principles set forth in EO 12866, and we find that the 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 EO 12866, 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 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 rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA.

Plain Language

EO 12866 and the President's memorandum of June 1, 1998, require all rules to be written in plain language. We believe we have done so.

List of Subjects in 45 CFR Part 30

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

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■ HHS revises 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.
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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 claims for 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 (Treasury), the Treasury-designated debt collection centers, or the Department of Justice (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 No. 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law No. 97–365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, Public Law No. 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.

§ 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.

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 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 holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of 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. (See 45 CFR 33.6(c)(2) for oral hearing procedures that may be provided by the Secretary).

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 this Department or other agencies 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 or other agencies 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.

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.

§ 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.

(2) 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.

(3) 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.

(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.

(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 EO 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, does not exceed $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 (HHS 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. Normally, an 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 Department shall transfer legally enforceable debts 180 days or more delinquent to 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 debts less than 180 days delinquent, including debts referred to the Department by another agency, to the Treasury in accordance with the requirements of 31 CFR 285.12, or with the consent 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 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 Justice for litigation; and

(F) Referring the debt to 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 or more 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 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 use every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, drivers 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) *Communications from debtors.* The Secretary should respond promptly to communications from debtor, within 30 days where feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(g) *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.

(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; 31 CFR 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 to 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 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 Treasury for collection, any subsequent reporting to or updating of a credit bureau or other automated database may be handled by 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 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 Treasury after the debt has been referred to Treasury 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 non-tax 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 licences, permits, or other privileges to debtors who fail to pay their debts to the Federal Government.

(b) The Secretary will report to 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 funds 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)(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) *Generally.* 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 and the Secretary has determined and documented a higher rate for delinquent debt is required to protect the Government's interests. Any such higher rate of interest charged will be based on Treasury's quarterly rate certification to the U.S. Public Health Service for delinquencies in the National Research Services Awards and the National Health Services Corps Scholarship Program. The Department publishes this rate in the **Federal Register** quarterly.

(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 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) *Cost of living adjustment.* 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.

(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.

(i) *Common law or other statutory authority.* 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.

§ 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 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 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 Justice using a Claims Collection Litigation Report (CCLR), which may be obtained from Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice approval is not required if the Secretary rejects a compromise offer.

§ 30.22 Bases for compromise.

(a) *Compromise.* 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 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 automatically release the Department's claim against the remaining debtor(s). 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 Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. 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 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 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 Justice, using the CCLR. The referral will specify the reasons for the Secretary's recommendation. If, prior to referral to 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 Justice concurrence.

§ 30.29 Suspension of collection activity.

(a) *Generally.* 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 or 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) *Bankruptcy.* 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 should 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 Justice for litigation even though termination of collection activity may otherwise be appropriate.

§ 30.32 Discharge of indebtedness; reporting requirements.

(a)(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 Treasury, 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 meet.

(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 Treasury or 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 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 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 Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington DC.

(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 at 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 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 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 Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

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

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

(2) Advise 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 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, Justice shall notify the Secretary of any payment received from the debtor.

§ 30.34 Claims Collection Litigation Report.

(a)(1) Unless excepted by 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 Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which 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 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 Justice to prove the Department's claim in court. When referring debts to 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 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 Justice prior to referring claims valued at less than the minimum amount.

Dated: November 27, 2006.

Michael O. Leavitt,

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: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) adds specific rules concerning involuntary salary