

## Department of Health and Human Services

## § 30.1

where appropriate, the release shall explain the nature of any studies performed, the sources of relevant data, the areas in which administrative findings of fact were made, and whether the information is based on allegations subject to subsequent adjudication.

### § 17.6 Advance notice.

Any respondent or prospective respondent in an agency proceeding shall, if practicable and consistent with the nature of the proceeding, be given advance notice of information to be released about the proceeding and a reasonable opportunity to prepare in advance a response to the information released.

### § 17.7 Retractions or corrections.

Where the Assistant Secretary for Public Affairs finds that information released by the Department was misleading or a misstatement of fact and any person named therein requests a retraction or correction, the Department shall issue a retraction or correction in the same manner to all of the media outlets that received the original information (or as many of them as is feasible). Where information shown to be misleading or misstatement of fact has been released by a principal operating component of the Department and any person named therein requests a retraction or correction, the agency head shall issue a retraction or correction in the same manner to all of the media outlets that received the original information (or as many of them as is feasible).

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AUTHORITY: Subchapter II of Chapter 37 of Title 31, United States Code, 5 U.S.C. 5514 and 5 U.S.C. 552a as amended by Pub. L. 97-365, 96 Stat. 1749.

SOURCE: 52 FR 264, Jan. 5, 1987, unless otherwise noted.

### Subpart A—General

#### § 30.1 Purpose and scope.

(a) This regulation prescribes standards and procedures for the officers and employees of the Department, including officers and employees of the various Operating Divisions and regional offices of the Department, charged with collection and disposition of debts owed to the United States.

(b) These standards and procedures will be applied where a statute, regulation or contract does not prescribe different standards or procedures. The authority for the regulation lies in the Federal Claims Collection Act of 1966,

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as amended, 31 U.S.C. 3711 and 3716–3718; the Federal Claims Collection Standards, at 4 CFR Parts 101–105; related statutes (5 U.S.C. 5512 and 5514, 5 U.S.C. 552a) and regulations (5 CFR Part 550); and the common law. The covered activities include collecting claims in any amount; compromising claims, or suspending or terminating collection of claims that do not exceed \$20,000, exclusive of interest and charges; and referring debts that cannot be disposed of by the Department to the Department of Justice or to the General Accounting Office for further administrative action or litigation. Further guidance may be found in the Departmental General Administration Manual, Personnel Manual, Accounting Manual and Grants Administration Manual, and any other manuals which may be issued by each Operating Division, office, or program.

### § 30.2 Definitions.

In this part, unless the context otherwise requires—

*Amounts payable under the Social Security Act* means payments by the Department to beneficiaries, providers, intermediaries, physicians, suppliers, carriers, States, or other contractors or grantees under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance and Medical 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 and Crippled Children's Services); Title IX (Unemployment Compensation Program); 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 (Supplemental Security Income for the Aged, Blind, and Disabled); Title XVII (Grants to States to Fight Mental Retardation); Title XVIII (Medicare); Title XIX (Medicaid); and Title XX (Block Grants to States for

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Social Services). Federal employee salaries and other payments made by the Department in the course of administering the provisions of the Social Security Act are not deemed to be “payable under” the Social Security Act for purposes of this regulation.

*Claim* or *Debt* means an amount of money or other property owed to the United States. Debts include, but are not limited to amounts owed on account of loans made, insured or guaranteed by the United States; salary overpayments to employees; overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to employees, grantees and contractors; civil penalties and assessments; theft or loss of money or property; and damages.

*Debtor* means an individual, organization, association, partnership, corporation, or a State or local government or subdivision indebted to the Department; 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, penalties or assessments owed by, beneficiaries, providers, intermediaries, physicians, suppliers, carriers, States or other contractors or grantees under Titles I, II, III, IV, V, IX, X, XI (Part B), XII, XIV, XVI, XVII, XVIII, XIX and XX 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 regulation.

*Department* means the United States Department of Health and Human Services and each of its Operating Divisions and regional offices.

*Liquidated or certain in amount* refers to a debt of an amount already fixed and determined by the Secretary, or which may be readily fixed and determined from the information available in the debt file, irrespective of any dispute by the debtor.

*Local government* means a political subdivision, instrumentality, or authority of any State; the District of

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Columbia; the Commonwealth of Puerto Rico; a territory or possession of the United States; or an Indian tribe, band or nation.

*Operating Division* means each separate component within the Department of Health and Human Services, and includes the Office of the Secretary, the Office of Human Development Services, the Family Support Administration, the Centers for Medicare & Medicaid Services, the Public Health Service and the Social Security Administration.

*Overdue* refers to a debt not paid by the payment due date specified in the notice of the debt to the debtor (see § 30.13(a)) and not the subject of a repayment agreement approved by the Secretary. Also, a debt subject to repayment agreement is considered overdue if the debtor fails to satisfy his or her obligations under that agreement. “Overdue” and “delinquent” have the same meaning. See 4 CFR 101.2(b).

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

### § 30.3 Interagency claims.

This regulation does not apply to debts owed by other Federal agencies. These debts will be resolved by negotiation or referral to the General Accounting Office.

### § 30.4 Other administrative proceedings.

This regulation does not supersede or require omission or duplication of administrative proceedings required under contract, statute, regulation or other agency procedures. Examples: Resolution of audit findings under grants or contracts, Chapter 1–105, Grants Administration Manual (GAM); informal grant appeals, 45 CFR Part 75 (Departmental), 42 CFR 50.401 et seq. (Public Health Service); formal appeals to the Departmental Grant Appeals Board, 45 CFR Part 16; and review under a procurement contract Disputes Clause and the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), 48 CFR Part 33.

### § 30.5 Other remedies.

The remedies and sanctions available to the Department under this regula-

tion when collecting debts are not intended to be exclusive. The Secretary may impose other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Secretary may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant from an advance to a reimbursement method; or revoke a grantee’s letter-of-credit.

### § 30.6 Property claims.

Any person who converts, or negligently loses or destroys personal property belonging, entrusted or loaned to the Department is liable for the return of the property or payment of its fair market value. A person who damages such property is liable for the cost of repairs or its fair market value, whichever is less. Collection of these debts means the recovery of the property, its fair market value, or the cost of repairs. Demand for payment of these claims means a demand for the return of the property or for payment of its fair market value or the cost of repairs.

### § 30.7 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds or property. Examples of such activity are fraud, embezzlement and theft or misuse of Government money or property. See 18 U.S.C. 641, 643. The Secretary will refer cases of suspected criminal activity or misconduct to the Office of Inspector General. That office will investigate such cases, refer them to the Department of Justice for criminal prosecution and/or return them to the Secretary for collection, application of administrative sanctions or other disposition.

(b) Debts involving anti-trust violations, fraud, false claims or misrepresentation—

(1) Shall be referred by the Secretary to the Office of Inspector General for review. The Office of Inspector General

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shall refer the claim back to the Secretary for collection or other disposition to the extent authorized by the Department of Justice.

(2) Shall not be compromised, terminated, suspended or otherwise disposed of by the Secretary under these regulations. Only the Department of Justice is authorized to compromise, terminate, suspend or otherwise dispose of such debts.

### § 30.8 Claims arising from GAO exceptions.

The Secretary may not compromise but will collect, suspend or terminate collection of debts due on account of illegal, improper or incorrect payments shown in General Accounting Office notices of exception issued to certifying or disbursing officers. Only the General Accounting Office has the authority to compromise such debts.

### § 30.9 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceilings imposed by 31 U.S.C. 3711(a) (2) and (3) on the Secretary's authority to compromise, suspend or terminate collection of debts. A debtor's liability arising from a particular incident or transaction will be considered a single debt in determining whether the claim exceeds \$20,000 for purposes of compromising, suspending or terminating collection efforts.

### § 30.10 Omissions not a defense.

Failure by the Secretary to comply with any provision of this regulation may not serve as a defense to any debtor.

## Subpart B—Collection of Claims

### § 30.11 Collection rule.

(a) *Aggressive agency action.* The Secretary will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall, at a minimum, normally include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals unless amounts are available for offset under section 30.15, or a response to the first or second demand indicates that further demand

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would be futile and the debtor's response does not require rebuttal.

(b) *Immediate action.* When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, such as withholding of amounts payable to the debtor or immediate referral of the debt for litigation or filing of a claim in bankruptcy court or against a decedent's estate.

(c) *Finding debtors.* The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the Internal Revenue Service, 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.

(d) *Joint and several liability.* Collection of the full amount of the debt will be pursued from each debtor jointly and severally liable.

(e) *Debtor disputes.* A debtor who disputes a debt must promptly provide available supporting evidence.

(f) *Debt files.* The Secretary will maintain an administrative file for each debt or debtor, documenting the debt(s), all administrative collection action, including communications to and from the debtor, and disposition of the debt(s). Information from a debt file relating to an individual may be disclosed only for purposes consistent with this regulation, the Privacy Act of 1974 (5 U.S.C. 552a), and any other applicable law.

### § 30.12 Notices to debtor.

(a) *Required notice.* The first written demand for payment must inform the debtor of—

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed; and

(3) The assessment under § 30.13 of interest from the date the notice was mailed, and full administrative costs if payment is not received within the 30 days.

(b) *Other notice.* Where applicable, the Secretary must inform the debtor in writing of—(1) His or her right to dispute the debt or request a waiver of the debt, citing the applicable review or waiver authority, the conditions for review or waiver, and the effect of the review or waiver request on collection of the debt, interest, charges and late payment penalties (see § 30.14);

(2) The office, address and telephone number that the debtor should contact to discuss repayment, reconsideration or waiver of the debt;

(3) The proposed sanctions if the debt is overdue, including assessment of late payment penalties under § 30.13 (if the debt is more than 90 days overdue) or referral of the debt to a credit reporting agency under § 30.17, or to a collection agency under § 30.18. (See also § 30.5).

(c) *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.

**§ 30.13 Interest, administrative costs and late payment penalties.**

(a) *Interest.* (1) Interest will accrue on all debts from the date notice of the debt and the interest requirement is first mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date of mailing of the notice. Except as provided in paragraph (a)(2) of this section, or unless the Secretary determines a higher rate is necessary to protect the Government's interests, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the FEDERAL REGISTER. Debtors who were not paying interest, or were paying interest at a different rate prior to October 25, 1982, may be charged interest at the above-stated rate in effect on the date that notice of the new interest requirement is mailed after 1982. The Secretary may

use the advance billing procedure and include the interest notification prior to the debt being owed. Bills sent before a debt is due will include notification of the interest requirement. In these cases, interest will begin to accrue on the day after the due date.

(2) The interest rate established in paragraph (a) of this section shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717, except that in the case of installment payment agreements under § 30.19, such rate shall be no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities."

(3) The Secretary may, at his or her discretion, extend the 30 day interest-free period an additional 30 days if the Secretary determines that such action is in the best interests of the Government, or otherwise warranted by equity and good conscience.

(4) The rate of interest, as initially assessed, will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(5) Interest will not be charged on interest, administrative costs or late payment penalties required by this section. However, if the debtor defaults on a previous repayment agreement, unpaid accrued interest, charges and late payment penalties under the defaulted agreement may be added to the principal to be paid under a new repayment agreement.

(b) *Administrative costs of collecting overdue debts.* Delinquent debtors will be assessed the administrative costs incurred by the Department as a result of handling and collecting the overdue debts, based on either actual or average costs incurred. These costs will include direct (personnel, supplies, etc.) and indirect costs of collecting inhouse and contracting with collection agencies and may include the costs of providing hearings or any other form of review requested by debtors. See § 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 additive to

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other administrative costs if collection is being made for another Federal agency or unit.

(c) *Late payment penalties.* A penalty charge of 6 percent a year will be assessed on a debt, a payment, or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. See also § 30.14.

(d) *Social Security Act debts.* (1) Unless specifically authorized by statute, regulations 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 Social Security Act. The charging of interest is appropriate on debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party, in which case the charging of interest would be appropriate.

(2) The 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.

(e) *Other debts not covered by 31 U.S.C. 3717.* The Secretary will charge administrative costs or late payment penalties on debts arising under a contract executed prior to, and in effect on October 25, 1982, or debts owed by State or local governments where authorized by statute, regulation, or written agreement.

(f) *Allocation of payments.* Partial or installment payments will be applied first to outstanding administrative cost charges and late payment penalties, second to accrued interest and third to outstanding principal.

(g) *Inactive claims.* Interest, but not administrative cost charges or late payment penalties, will continue to accrue when collection of a debt is suspended under § 30.33(a).

(h) *Waivers.* The Secretary may waive collecting all or part of interest, administrative costs or late payment penalties, if—

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(1) The debt or the charges resulted from the agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtors; or

(2) Collection in any manner authorized under this regulation would defeat the overall objectives of a Departmental program.

#### § 30.14 Interest and charges pending waiver or review.

(a) *Rule.* A debtor may either pay the debt, or be liable for interest on the uncollected debt, while a waiver determination, a bona fide dispute or a formal or informal review of the debt is pending. If a final determination is to the effect that any amount was properly a debt to HHS and the debtor chose to retain the amount in dispute, the Secretary shall collect or offset from any future payments to the debtor, an amount equal to the amount of the debt plus interest (as calculated under § 30.13(a)) on such debt amount starting from the date the debtor was first made aware of the debt and ending when such debt is repaid. The debtor will also be assessed administrative cost charges and late payment penalties on the unpaid debt for this period if the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

(b) *Exception.* Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver or review under a statute which prohibits collection of the debt during this period, unless the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

#### § 30.15 Administrative offset.

(a) *Rule.* The Secretary will collect debts owed to the Department by administrative offset if—

(1) The debt is liquidated or certain in amount;

(2) Offset is not expressly or implicitly prohibited by statute or regulation;

(3) Offset is cost-effective or has significant deterrent value;

(4) Offset does not substantially impair or defeat program objectives; and

(5) Overall, offset is best suited to further and protect the Government's interest.

The Secretary may consider financial impact of the proposed offset on the debtor in determining the method and amount of the offset.

(b) *Definitions.* (1) "Administrative Offset" means satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. Amounts available for offset include, for example, benefit payments to a program beneficiary overpaid under the same or a different program, amounts due a defaulting or overpaid contractor or grantee under the same or a different agreement, salaries of Federal employees, Federal income tax refunds and judgments held by the debtor against the United States. (Offset against judgments will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

(2) "Hearing" means either a review of the record or an oral hearing. A review of the record means a review of the documentary evidence by a designated hearing officer. An oral hearing means an informal conference before a designated hearing officer.

(3) "Hearing officer" is an individual appointed by the Secretary to review and issue a final decision on an employee's dispute of a debt. In the case of an employee debt subject to 5 U.S.C. 5514, the hearing officer may not be an individual under the supervision of the Secretary; will normally be an independent contractor of the Department or an employee of another Federal agency, *see* 4 CFR 102.1 and 5 CFR 550.1107; and may be an administrative law judge if appointment of an independent contractor or an employee of another Federal agency is not feasible.

(4) "Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

(5) "Disposable pay" means the amount that remains from an employee's Federal pay after withholding of all deductions listed in 5 CFR 581.105(b) and any other deductions required by law (including, but not limited to, Fed-

eral, State, and local income taxes; Social Security taxes, including Medicare taxes; and Federal retirement programs).

(c) *Scope.* This section satisfies the standards in 4 CFR 102.3 and 102.4 and 5 CFR Part 550, for offset under the common law, 31 U.S.C. 3716, 5 U.S.C. 5514 and any other statute under which standards and procedures for offset have not otherwise been promulgated, including:

(1) Offset of debts owed or to amounts payable, under a grant or contract; except that paragraphs (j)–(p) of this section do not apply. *See* § 30.4.

(2) Offset of debts owed by former employees from final salary and lump sum payments; and from the Civil Service Retirement and Disability Fund (which also requires compliance with 5 CFR Part 831, Subpart R);

(3) Offset of salary overpayments and other debts under statutes such as 5 U.S.C. 5514 (or 31 U.S.C. 3716 in the case of commissioned officers), travel advances under 5 U.S.C. 5705, training expenses under 5 U.S.C. 4108, debts of employees removed for cause under 5 U.S.C. 5511 and amounts owed by accountable officers under 5 U.S.C. 5512, from the current pay of Federal employees, including employees of the Social Security Administration and other offices administering a Social Security Act program;

(4) Offset of debts owed by state or local governments;

(5) Offset of debts arising, or from amounts payable, under the Social Security Act, except that unless specifically authorized by statute, regulation, or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, administrative offset will not be applied to recover debts arising from, or to withhold, payments to beneficiaries under Titles II, XVI, and XVIII of the Social Security Act with the exception of debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party.

(d) *Exceptions.* (1) So long as the conditions listed in paragraphs (a) (2)–(5) and (e) are met, offset may be effected

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with the debtor's consent without regard to the other provisions in this section.

(2) This section does not apply to debts reduced to judgment, debts already subject to a written repayment or settlement agreement, or debts with respect to which the specified procedures have already been otherwise afforded. Debts reduced to judgment may be offset from the current pay of a Federal employee under Federal Personnel Manual Supplement 552-1.

(3) This section does not apply to any adjustment to a Federal employee's pay arising out of the employee's request for, or change in, coverage under a Federal benefits program such as health or life insurance, which requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. Employees consent to deductions from pay whenever they elect or change coverage. Affected employees will receive a notice informing them of these retroactive adjustments to pay and the office to contact if the employee disputes the amount of the adjustment.

(e) *Advance payments.* Under many programs, the Department advances funds to pay for a recipient's anticipated costs. Before offsetting such an advance payment in order to collect a debt, the Secretary may request an assurance that the recipient will incur additional allowable costs whose Federal share is at least equal to the amount of the offset plus the amount of funds actually advanced. If the Secretary believes that the recipient will not incur sufficient costs, the advance will not be offset. In such case, the Secretary may request cash payment or convert the method of paying the recipient from an advance to a reimbursement basis and collect the debt by offsetting payments for costs already incurred.

(f) *Multiple debts.* Amounts available for offset will be applied to multiple debts in accordance with the best interests of the Department and the Government as determined on a case-by-case basis. Other factors being equal, recovery will be equally apportioned, except that debts owed to the Department will be satisfied before debts owed to other Federal agencies.

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(g) *Statutory bar to offset.* (1) Administrative offset will not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the officer responsible for discovering or collecting the debt. For this purpose, a debt accrues when it is administratively determined to exist, when it is affirmed by an administrative appeals board or a court having jurisdiction, or when a debtor defaults on a repayment agreement, whichever is later. Offset is initiated when the notice of the proposed offset is mailed to the debtor under paragraph (i) of this section or under other agency procedures, when money payable to the debtor is first withheld, or when the Department requests offset from money held by another agency, whichever is first.

(2) The 10 year statutory bar does not apply to offset of a debt arising out of the Social Security Act. However, offset against such debts will generally not be initiated more than 10 years after the debt accrued unless the Secretary did not previously have the necessary information or the means by which to collect the debt by administrative offset.

(h) *Offset against assigned claims.* The Assignment of Claims Act of 1940, 31 U.S.C. 3727, 41 U.S.C. 15, strictly limits the conditions under which a contractor or any other person or entity entitled to receive payments from the United States may assign his or her rights to the payments to a third party. The Federal Acquisition Regulations implement at 48 CFR Part 32, Subpart 32.8, the statutory conditions to assignment of a contractor's right to be paid by the United States for performance under a Federal procurement contract. A contractor may assign his or her right to payment by the United States only to a bank, trust company, or other financing institution, as security for a loan to the contractor.

(1) The Secretary normally may not collect a debt owed by a contractor by offset from payments due the contractor if the contractor has properly assigned his or her rights to such payments to a financing institution, the



assigned payments are due under a contract with a “no setoff” provision, and—

(i) The contractor’s debt to the United States arose independently of the contract; or

(ii) The debt arose under the contract because of renegotiation, fines, penalties (other than penalties for non-compliance with the terms of the contract), taxes or social security contributions, or withholding or nonwithholding of taxes or social security contributions. Notwithstanding the satisfaction of all the conditions of this paragraph, offset may be appropriate under certain circumstances, for example: If the financing institution has made neither a loan nor a firm commitment to make a loan under the assignment; or to the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment.

(2) The Secretary may not offset a debt from payments due any debtor if the debtor has properly assigned his or her right to such payments and the debt arose after the effective date of the assignment.

(3) The Secretary may not attempt to satisfy the assignor’s indebtedness by recovering payments already made to the assignee.

(i) *Amount of offset.* Whenever feasible debts will be offset in one lump sum, except that deductions from an employee’s current pay pursuant to 5 U.S.C. 5514 may not exceed 15 percent of the employee’s disposable pay for any pay period, unless the employee agrees in writing to a larger deduction. However, if the employee retires, resigns, or is discharged, or if his or her employment or active duty otherwise ends, an amount necessary to satisfy the debt may be offset immediately from payments of any nature due the individual.

(j) *Pre-offset requirements.* Before effecting offset, the Secretary will send the debtor written notice of the following—

(1) The nature and amount of the debt;

(2) The agency intention to collect the debt by offsetting the lump sum or installments (stating the amount, fre-

quency, proposed beginning date and duration of the installments) unless the debtor pays the debt or responds within 30 days from the date the notice was mailed to the debtor;

(3) The interest, administrative cost charges and penalties that will or may be assessed under §§ 30.13 and 30.14 if the debt is not paid, or the debtor has not consented to a lump sum offset, within 30 days from the date the notice was mailed to the debtor;

(4) The debtor’s right, if a previous opportunity was not provided, to request within 15 days (unless otherwise provided by statute or regulation) from the date of mailing of the notice—

(i) Copies of agency records pertaining to the debt;

(ii) An alternative repayment schedule; or

(iii) A hearing if the debtor contends no debt is owed, the debt is for a different amount, or the proposed offset does not comply with this section;

(5) The debtor’s right, if any, to request waiver of the debt, interest or charges, citing the applicable statutory authority, request procedures and waiver conditions and the effect of the waiver request on collection of the debt, interest and charges by offset;

(6) The office, address and telephone number of whom the debtor should address any inquiries or requests;

(7) The requirement that the hearing officer issue a decision at the earliest practical date; except that under 5 U.S.C. 5514, the decision may be issued no later than 60 days after the request for the hearing was filed unless the employee requested and was granted an extension;

(8) That any knowingly false or frivolous statements, representations or evidence may subject the debtor to criminal or civil penalties under 18 U.S.C. 286, 287, 1001 and 1002 or 31 U.S.C. 3729–3731; or also disciplinary action under 5 CFR Part 752 or any other applicable authority if the debtor is an employee;

(9) Any other rights and remedies available to the debtor under the statutes or regulations governing the program under which the debt is being collected; and

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(10) That, unless otherwise provided by statute or contract, amounts collected and later waived or found not owed will be promptly refunded.

(k) *Alternative repayment proposal.* A debtor may propose a different offset schedule or repayment by cash installments pursuant to § 30.19.

(l) *Request for hearing.* A debtor may submit to the address specified in the notice letter a written request for a hearing to dispute the administrative determination of the existence or amount of the debt, or whether the proposed offset schedule complies with this section, before the initiation of collection by offset. The request must be postmarked no later than 15 days (unless otherwise provided by statute or regulation) from the date the notice was mailed to the debtor. The debtor must sign the request and briefly state each agency conclusion being disputed and the reasons for the dispute. Supporting facts, witnesses, and documents must be identified in the request. The request, with supporting documents, must, on its face, sufficiently raise a genuine issue of fact or law. Receipt of the request will be acknowledged. The Secretary may grant an extension or excuse a delay if the debtor shows good cause for late filing of a request for a hearing. A reasonable extension will be granted only if the debtor shows that the delay was caused by circumstances beyond the debtor's control or because the debtor did not receive notice, and was not otherwise aware of the time limit. A debtor who fails to meet the filing deadline or to request an extension waives the right to a hearing and will be immediately subject to offset.

(m) *Denial of request.* The Secretary will summarily deny a request for an oral hearing pursuant to a written finding that the request raises no genuine issue of fact or law, or is otherwise spurious or frivolous. In addition, if the Secretary finds that the request raises issues which may properly constitute grounds for waiver of the debt under 5 U.S.C. 5584 or any other statute, the request will be deemed to be a request for a waiver and will be so handled with notification to the debtor.

(n) *Hearings—(1) Type of hearing.* The hearing will normally be a review of

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the record, unless the hearing officer determines that a decision cannot be made without resolving an issue of credibility or veracity, in which case the hearing officer will provide for an oral hearing.

(2) *Date and place of oral hearing.* The oral hearing will normally be held no later than 30 days from the date of receipt by the agency of the request for a hearing. The hearing officer will give the debtor and the Secretary at least 10 days prior notice of the hearing date, time, place, procedures and issues. The hearing officer, for good cause, may grant the parties each one request to change the hearing date and reschedule the hearing for the earliest practical date. To the extent feasible the hearing will be held at a location convenient to the debtor, and will be open to the public.

(3) *Oral hearing procedures.* The hearing officer will:

(i) Make a summary record of the hearing;

(ii) Decide the order of hearing the evidence;

(iii) Allow the debtor and the agency to introduce relevant evidence not previously submitted and informally call and cross examine witnesses;

(iv) Question parties and witnesses as appropriate;

(v) Allow the debtor and the agency to be represented by counsel; and

(vi) Limit review of the case to the particulars of the agency determination challenged by the debtor.

(o) *Decision of hearing officer.* The hearing officer will issue a written decision at the earliest practical date; but not later than 60 days after a request for a hearing or extension is filed under 5 U.S.C. 5514. The decision will, at a minimum, state the relevant facts, include the hearing officer's analysis, findings and conclusions based on the issues and, if unfavorable to the debtor, inform the debtor of any available rights or remedies.

(p) *Employee waiver requests.* Requests for waiver of overpayments of pay under 5 U.S.C. 5584 will continue to be handled under 4 CFR parts 91–93 and Chapter 4–40 of the HHS General Administration Manual, except that a waiver request made simultaneously

with, or during the pendency of a request for review under this section may be referred for a decision under the waiver standards to the hearing officer reviewing the debt under this section.

(q) *Deductions.* Unless an alternative repayment arrangement has been accepted, the Secretary may initiate offset 30 days after the date that notice of the proposed action was mailed to the debtor if no review or hearing is pending, or as soon as practical after a hearing officer's decision affirming the debt.

(r) *Protection of the Government's interest.* Notwithstanding the provisions of paragraphs (j) through (q) of this section, the Secretary may take immediate action to delay a lump sum or final payment to the debtor whenever such action is necessary to protect the Government's ability to recover the debt by offset. The amount withheld may not exceed the amount of the debt plus any accrued or anticipated interest, administrative cost charges and penalties. The Secretary shall promptly send the debtor the notice specified in paragraph (j) of this section. The Secretary may not take final action to effect offset of the debt from the withheld amount until the procedures required by paragraphs (j) through (l) of this section have been exhausted. The appropriate amount will be paid to the debtor as soon as practical after the debt, or a portion of the debt, is found not to be owed.

(s) *Interagency offsets.* The Secretary may offset a debt owed to another Federal agency from amounts due or payable by the Department to the debtor; or request another Federal agency to offset a debt owed to the Department. Pursuant to 31 U.S.C. 3720a, Department of the Treasury regulations, 26 CFR part 301, and HHS' implementing regulations, 45 CFR part 31, the Secretary may seek to offset an overdue debt from a Federal income tax refund due the debtor where reasonable attempts to obtain payment from the debtor have failed.

(1) In attempting to collect a debt from an employee of another Federal agency by deduction from the debtor's pay, the Secretary will follow the procedures set forth in this section. When those procedures are exhausted, a writ-

ten request for offset will be submitted to the employing agency. The request will—

(i) Certify that the debt is valid;

(ii) Certify the amount and basis of the debt;

(iii) Certify the date the Government's right to collect the debt first accrued;

(iv) Certify that this section has been approved by OPM;

(v) Either—

(A) Certify that the procedures required by this section have been complied with;

(B) Include the employee's written consent to the offset or acknowledgment of receipt of the required procedures; or

(C) If the debt is reduced to judgment, include a copy of the court judgment; and

(vi) Indicate whether collection is to be made in a lump sum or by installments and the number, amount and beginning date of the installments.

(2)(i) The Secretary may deduct from an employee's pay a debt owed to another Federal agency in accordance with this section. The creditor agency must submit the properly certified claim form described in paragraph (s)(1) of this section. No deductions will be made until a properly completed claim form is received.

(ii) Before initiating deductions, the Secretary must send the employee a letter:

(A) Transmitting a copy of the creditor agency's request;

(B) Notifying the employee of the proposed action;

(C) Instructing the employee to contact the creditor agency regarding payment or any dispute of the debt, the certification or the proposed collection; and

(D) Informing the employee of the date that deduction will begin (which should be at the next officially established pay interval) and that deductions will continue until the debt is paid unless the creditor agency directs otherwise.

(iii) The creditor agency must resolve any disputes concerning the debt or the offset and promptly inform the Department of any circumstances affecting the collection by offset. The

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Department may not review the merits of the creditor agency's decisions.

(iv) The Secretary may temporarily withhold lump sum or final leave payments to the employee who is in the process of separating or to a former employee for no more than 30 days beyond normal processing time periods pending certification.

(v) If the employee subject to salary offset is in the process of separating, and is entitled to payment from the Civil Service Retirement and Disability Fund, the Secretary will send OPM a copy of the creditor agency's original offset request. If the employee transfers to another Federal agency, the Secretary will certify in writing the total amount collected on the debt and send one copy of the certification to the employee and another to the creditor agency, with notice of the transfer. A copy of the certification, along with the creditor agency's original offset request will be inserted in the employee's official personnel folder.

(vi) When a new Department employee transfers from another Federal agency and the employee's official personnel folder contains a creditor agency's offset request to the former employing agency and the former employing agency's certification of the amount of the debt already collected, the Secretary will resume collection by offset. If either item is missing, the creditor agency must comply with paragraph (s)(1).

(t) *Non-waiver of debtor rights by payment.* Unless a statute or contract provides otherwise, a debtor does not waive any rights under law or contract by paying all or part of a debt by offset or cash payment.

(Approved by the Office of Management and Budget under control number 0990-0148)

#### § 30.16 Use of credit reporting agencies.

(a) *Overdue debts.* (1) The Secretary will report overdue debts over \$100 owed by individuals and all debts over \$100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies. Except as provided in paragraph (a)(3) of this section, beneficiary debts which arise under the Social Se-

curity Act may be reported under this section.

(2) Debts owed by individuals, except debts arising under the Social Security Act, will be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Secretary must first give the individual, but not the corporate debtor at least 60 days' written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review 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.

(3) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit reporting agencies subject to the conditions stated in paragraph (a)(2) of this section, except that such disclosure would be as a routine use under 5 U.S.C. 552a(b)(3), rather than a disclosure under 552a(b)(12).

(b) *Credit reports and locator services.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants and potential contractors and grantees; to obtain credit reports when collecting or disposing of debts 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, Social Security number and the purpose for which the information will be used.

(c) Disclosures pertaining to individuals may be made to credit reporting agencies generally from the primary

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systems of records containing information about the debt or the loan, contract or grant application.

(d) Addresses obtained from the Internal Revenue Service may be disclosed to credit reporting agencies only to obtain credit reports (see § 30.21).

### § 30.17 Contracting for collection services.

(a) *Rule.* Except as provided in paragraph (b) of this section, the Secretary may contract for collection services to recover outstanding debts and may pay the contractor's fee from the amounts collected, from funds specifically available for that purpose, or from a revolving fund. The amount of the fee must be consistent with prevailing commercial practice. The Secretary may contract for collection services only if reasonable in-house collection efforts and remedies were, or are likely to be, unsuccessful or not feasible; and the total amount of anticipated recoveries exceeds the total cost of the contract and incidental expenses. The Secretary must retain the authority to resolve disputes, compromise debts, terminate collection action (or recommend such action to the Department of Justice) and refer debts to the Department of Justice for litigation. Contracts for collection services must conform to the standards set forth in the Federal and Departmental Acquisitions Regulations at 48 CFR, Chapters 1 and 3. The Secretary may disclose to the contractor the information about debtors necessary to accomplish the purpose of the contract. The contractor must provide any data from its files relating to the account to the Secretary upon request or upon return of the account. The contractor will be subject to the Privacy Act of 1974, as amended, as specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations regarding debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor will be strictly accountable for all amounts collected.

(b) *Social Security Act debts.* (1) A contractor's fee for collecting debts arising under the Social Security Act may be paid from any funds available for that purpose, but not from the

amounts collected unless those amounts belong to a revolving fund.

(2) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be referred to private collection agencies for collection.

### § 30.18 Liquidation of collateral.

If the Secretary holds a security instrument with a power of sale or has physical possession of collateral, the Secretary will liquidate the security or collateral when it is cost-effective to do so and apply the proceeds to an overdue debt. 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.

### § 30.19 Installment payments.

The Secretary may enter into a written agreement with a debtor for payment of a debt in regular installments if payment in one lump sum, either by cash or offset, will cause the debtor extreme financial hardship. The debtor must submit sufficient information to determine his or her ability to pay. A request by a debtor for installment payment will delay initiation of offset under § 30.15 only if the request is in writing, is accompanied by a statement with supporting documents indicating how the proposed offset would cause extreme financial hardship and, unless an extension is granted for good cause, is received by the Secretary no later than 15 days (unless otherwise provided by statute or regulation) from the date that notice of the proposed offset was mailed to the debtor. The Secretary will consider factors such as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confession-judgment note or give collateral, past dealings with the debtor and documentation indicating that the offset will cause the debtor extreme financial hardship and that the debtor will be financially capable of adhering to the terms of the agreement. The size and

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frequency of the payments will reasonably relate to the size of the debt and the debtor's present and future 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, and include a security or confess judgment provision. The full balance, including accrued interest, charges and penalties, will be immediately due and payable if the debtor defaults on any installment made pursuant to a repayment agreement. Interest under installment agreements will be payable at the applicable rate as provided in §30.13. When a debtor owes several debts and does not designate how an installment payment should be applied as among the various debts, the payment will be applied in accordance with §30.15(f).

(Approved by the Office of Management and Budget under control number 0990-0148)

## § 30.20 Taxpayer information.

(a) The Secretary shall enter into reimbursable agreements with the Internal Revenue Service in accordance with IRS Revenue Procedure 83-29, 26 CFR 601.702, to obtain the current mailing addresses of debtors and to find out whether applicants under included Federal loan programs have overdue tax accounts.

(b) "Included Federal loan program" means any program under which the Department makes, guarantees or insures loans and which appears in the current list of included Federal loan programs published by the Director of the Office of Management and Budget in the FEDERAL REGISTER. An applicant for a loan under an included Federal loan program administered by the Department must furnish his or her taxpayer identification number, which, for an individual, means the Social Security number.

(c) Tax delinquency information may not be redisclosed or used for any other purpose. Addresses obtained from the Internal Revenue Service may be used by the Department, its officers, employees, agents or contractors and other Federal agencies to collect or dispose of debts, but may be disclosed to consumer reporting agencies only to obtain credit reports, unless otherwise independently verified.

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## § 30.21 Army hold-up list.

The Secretary may use the Army hold-up list to report indebted contractors to the Department of the Army for inclusion in the list and to check whether a prospective contractor is indebted to another agency. The reported information will be limited to the contractor's name, address and taxpayer identification number if available, and the amount of the debt. The Secretary will promptly report any partial or full satisfaction or waiver of a reported debt and will screen the hold-up list periodically and request removal of any debt of less than \$1,000 that has been on the list for over twelve months.

## Subpart C—Compromise of Claims

## § 30.22 Compromise rule.

The Secretary may attempt to dispose of debts, including accrued interest, charges and penalties, by compromise settlement whenever the Department's ability to collect the full amount is uncertain because of the debtor's financial status or the litigation risks or because enforced collection would not be cost-effective. When the outstanding principal amount of the debt before compromise exceeds \$20,000 and the debtor has exhausted all Departmental administrative remedies, the debt may be compromised only with the approval of the Department of Justice.

## § 30.23 Exceptions.

The Secretary may not compromise debts—

(a) Which arise out of exceptions made by the General Accounting Office in the accounts of accountable officers (only the General Accounting Office has authority to compromise such debts); or

(b) Where there is an indication of fraud, the presentation of a false claim or misrepresentation by the debtor or any other party having an interest in the claim, or where the claim is based on conduct in violation of antitrust laws. (Only the Department of Justice has authority to compromise or terminate collection of these claims.)

**§ 30.24 Inability to collect the full amount.**

(a) The Secretary may compromise a debt if the full amount cannot be collected because the debtor—

(1) Is unable to pay the full amount within a reasonable time; or

(2) Refuses to pay the full amount and the Government is unable to enforce full collection within a reasonable time.

(b) *Ability to pay.* In determining a debtor's ability to pay, the Secretary may consider the age and health of the individual debtor; present and future income and assets; and the possibility of an improper transfer or concealment of assets by the debtor.

(c) *Amount of compromise.* The amount of compromise will reasonably relate to the amount recoverable by enforced action, considering such factors as State or Federal exemptions available to the debtor, and the price that collateral will bring at a forced sale.

(d) *Installments.* Compromises will be paid in one lump sum whenever possible. Payment by installments may be accepted on a case-by-case basis bearing in mind the conditions specified in § 30.20.

(e) *Credit information.* If reasonably up-to-date credit information to evaluate a compromise proposal is not available, the Secretary may obtain credit reports from credit reporting agencies or a statement from the debtor executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses.

**§ 30.25 Litigative probabilities.**

The Secretary may compromise a debt if the Government's ability to prove its case in court for the full amount claimed is doubtful either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the issues and the prospects for full or partial recovery of a judgment, paying due regard to the availability of evidence and witnesses, and related pragmatic considerations.

**§ 30.26 Cost of collecting claim.**

The Secretary may compromise a debt if the cost or deterrence value of collection do not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into account the time which it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small debts, but not normally in the settlement of large debts.

**§ 30.27 Enforcement policy.**

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if not prohibited by law and consistent with the agency's enforcement policy.

**§ 30.28 Joint and several liability.**

When two or more debtors are jointly and severally liable, a compromise with one debtor will not release the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount which will be required from other debtors jointly and severally liable on the debt.

**§ 30.29 Further review of compromise offers.**

A debtor's firm written offer of compromise for a substantial amount may be referred to the General Accounting Office or to the Department of Justice when the acceptability of the offer is in doubt. (See 30.36).

**§ 30.30 Restriction.**

The Secretary may not accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a debt.

**Subpart D—Termination or Suspension of Collection Action****§ 30.31 Termination rule.**

(a) The Secretary may terminate collection activity and write off a debt, including accrued interest, charges and

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penalties if the outstanding principal does not exceed \$20,000 and:

(1) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's ability to pay (see § 30.25(b)) and the exemptions available to the debtor under State and Federal law;

(2) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;

(3) The cost of further collection action is likely to exceed the recoverable amount;

(4) The basis for the claim has proved to be unsupported; or

(5) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable.

(b) As required by section 61(a)(2) of the Internal Revenue Code, income arising from the discharge in whole or in part of a debt is to be included in the debtor's gross income for the year in which the debt is discharged. The Secretary will report to the Internal Revenue Service, using Form 1099G, any amount over \$600 which becomes uncollectible because the applicable statute of limitations expires or because the Government agrees with the debtor to forgive or compromise a debt. An amount which is in dispute, which is discharged under Title 11 of the Bankruptcy Act or which arises out of an overpayment which was already taxed, will not be reported. See IRS Instructions for Form 1096 and Revenue Procedure 83-48 for further instructions.

### § 30.32 Exceptions.

(a) The Secretary may suspend, rather than terminate collection of a debt that arises out of its activities if the outstanding principal does not exceed \$20,000 and the Government cannot collect or enforce collection of any significant sum from the debtor (*e.g.*, the debtor cannot be located or is financially unable to pay), but the prospects of future collection are promising enough to justify periodic review of the debt, and there is no statute of limita-

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tions problem. Interest will accrue under § 30.13(a).

(b) Where a significant enforcement policy is involved, the Secretary will, instead of terminating or suspending collection, refer debts to the Department of Justice for litigation.

### Subpart E—Referrals to the Department of Justice or GAO

#### § 30.33 Litigation.

(a) Debts over \$600 that cannot be collected or otherwise disposed of by the Secretary or its agents will be referred to the appropriate United States Attorney (if the amount does not exceed \$100,000) or the Civil Division of the Department of Justice (if the amount exceeds \$100,000) for litigation. Each referral will include all pertinent information, as required by the Claims Collection Litigation Report, including:

(1) The most current address of the debtor or the name and address of the agent for a corporation upon whom service may be made;

(2) Reasonably current credit data in the form of a credit report or a financial statement showing reasonable prospects of enforcing collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government; and

(3) A summary of prior collection efforts. Credit data may be omitted if a surety bond, insurance, or the sale of collateral will satisfy the claim in full; or the debtor is in bankruptcy or receivership, or is a unit of State or local government.

(b) Debts of \$600 or less, exclusive of interest and charges, may be referred for litigation if a significant enforcement policy is involved or the debtor is clearly able to pay and the Government can effectively enforce payment.

#### § 30.34 Claims over \$20,000.

The Secretary may compromise or suspend or terminate collection of debts where the outstanding principal exceeds \$20,000 only with the approval of, or referral to, the appropriate United States Attorney (if the debt



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does not exceed \$100,000) or the Department of Justice (if the debt exceeds \$100,000).

### § 30.35 GAO exceptions.

The Secretary will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

## PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.

31.1 Scope.

31.2 Notice of requirements before offset.

31.3 Review within the Department of a determination that an amount is past due and legally enforceable.

31.4 Determination of the hearing officer.

31.5 Review of departmental records related to the debt.

31.6 Stay of offset.

31.7 Application of offset funds: Single debt.

31.8 Application of offset funds: Multiple debts.

31.9 Application of offset funds: Tax refund insufficient to cover amount of debt.

31.10 Time limitation for notifying the IRS to request offset of tax refunds due.

31.11 Correspondence with the Department.

AUTHORITY: 31 U.S.C. 3711, 3716, 3718; Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A); 26 CFR 301.6402-6T; and 45 CFR Part 30.

SOURCE: 53 FR 25593, July 8, 1988, unless otherwise noted.

### § 31.1 Scope.

(a) The standards set forth in §§ 31.1 through 31.11 are the Department's procedures for requesting the Internal Revenue Service (IRS) to offset tax refunds due taxpayers who have a past due debt obligation to the Department. These procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), as implemented by regulation at 26 CFR 301.6402-6T, and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

(b) The Secretary will use the IRS tax refund offset to collect claims which are liquidated or certain in amount, past due and legally enforceable, and which are eligible for tax refund offset under regulations issued by the Secretary of the Treasury.

(c) Except as provided in paragraph (d) of this section, the Secretary will

not report debts to the IRS except for the purpose of using the offset procedures described in §§ 31.1 through 31.11. Debts of less than \$25.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of the lapse of the statute of limitations but otherwise valid, a debt amounting to over \$600 will be reported to the IRS as a discharged debt on Form 1099G. (Form 1099G is an information return which government agencies file with the IRS to report discharged debt, and the discharged amount is considered as income to the taxpayer.) [See § 31.9; 45 CFR 30.31(b).]

### § 31.2 Notice of requirements before offset.

A request for reduction of an IRS tax refund will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 60 calendar days written notice. The Department's Notice of Intent to Collect by IRS Tax Refund Offset (Notice of Intent) will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 60 calendar days from the date of the Department's Notice of Intent, the Secretary intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to obtain review, within the Department, of the Secretary's initial determination that the debt is past due and legally enforceable (*See* § 31.3); and

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested (*See* § 31.5).