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**Department of the
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**Department of
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**General Accounting
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31 CFR Chapter IX and Parts 900, et al.

4 CFR Chapter II

**Federal Claims Collection Standards;
Federal Claims Collection Standards,
Removal of Obsolete Chapter; Final Rules**

DEPARTMENT OF THE TREASURY**DEPARTMENT OF JUSTICE****31 CFR Chapter IX and Parts 900, 901, 902, 903, and 904**

[A.G. Order No. 2325-2000]

RIN 1510-AA57 and 1105-AA31

Federal Claims Collection Standards

AGENCIES: Department of the Treasury; Department of Justice.

ACTION: Final rule.

SUMMARY: The final rule revises the Federal Claims Collection Standards issued by the Department of Justice and the General Accounting Office on March 9, 1984. The revised Federal Claims Collection Standards clarify and simplify Federal debt collection procedures and reflect changes under the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

DATES: This rule is effective December 22, 2000.

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SUPPLEMENTARY INFORMATION:**Background**

The Federal Claims Collection Standards (FCCS) provide Government-wide debt collection procedures and policies. This final rule revises the FCCS issued by the Department of Justice (DOJ) and the General Accounting Office on March 9, 1984. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Detailed rules governing several of these new DCIA debt collection procedures have been published in the Federal Register. See, e.g., Transfer of Debts to Treasury for Collection (64 FR 22906, Apr. 28, 1999); Administrative Wage

Garnishment (63 FR 25136, May 6, 1998); Offset of Federal Benefit Payments to Collect Past-Due, Legally Enforceable Nontax Debt (63 FR 711204, Dec. 23, 1998); and Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees (63 FR 67754, Dec. 8, 1998). The Financial Management Service (FMS) of the Department of the Treasury (Treasury) will publish other detailed rules governing debt collection tools authorized by the DCIA, including additional centralized administrative offset rules, to be codified under 31 CFR part 285.

The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures.

The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3826 (Oct. 19, 1996). Treasury and DOJ are publishing the revised FCCS as a joint final rule under new chapter IX, Title 31, Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR parts 101-105. On December 31, 1997, Treasury and DOJ requested public comment on a proposed revision of the FCCS. This final rule is being promulgated after consideration of the comments received. A final rule removing the current FCCS from Title 4 of the Code of Federal Regulations is being published elsewhere in this issue of the Federal Register.

Discussion of Comments

In response to the Notice of Proposed Rulemaking (NPRM) concerning revisions to the FCCS (62 FR 68476, Dec. 31, 1997), Treasury and DOJ received comments from various Federal agencies, a private law firm, a private collection agency, and a private citizen. Several agency commenters recommended changes pertinent to the requirements of specific agency programs. Since the FCCS focus on Government-wide debt collection procedures and policy, suggested changes pertinent only to specific agencies were not incorporated into the final rule. Nevertheless, the final rule provides sufficient flexibility for agencies to adopt agency-specific regulations tailored to the legal and

policy requirements of their particular programs.

Other commenters requested clarification of the applicability of the FCCS rules regarding debt collection and compromise when specific agency statutory or regulatory authorities address those activities. As noted in § 900.1 (Prescription of Standards) of the revised FCCS, the FCCS apply unless agency-specific statutory or regulatory provisions specifically govern particular debt collection activities. Consequently, the FCCS govern when an agency has been given only general debt collection authority to manage debt obligations arising under its particular programs. See, e.g., 42 U.S.C. 3211(4) (generally authorizing the Secretary of Commerce to collect obligations arising under the Economic Opportunity Program; therefore, the FCCS apply).

A few commenters recommended that the FCCS be reconciled with specific provisions of Treasury's "Report on Receivables Due from the Public." Treasury's "Report on Receivables" has been revised for several reasons, one of which is to ensure consistency with the FCCS and the DCIA. Information concerning the revised "Report on Receivables" is available from FMS's website at <http://www.fms.treas.gov>.

Several of the commenters suggested technical revisions to the proposed rule; pertinent or necessary technical suggestions were incorporated into the final rule. A review of the substantive comments received in response to the FCCS NPRM is provided in the following "Comment Analysis," which includes a discussion of Treasury and DOJ's determination whether to incorporate specific suggestions into the final rule. The Comment Analysis is organized by reference to the paragraphs in the NPRM that were the subject of public comment.

Comment Analysis**NPRM § 900.1—Prescription of Standards**

One commenter recommended that Treasury publish an updated "Managing Federal Receivables," a supplement to the Treasury Financial Manual, to ensure consistency with the FCCS and the DCIA. NPRM § 900.1(a) references the "Managing Federal Receivables" publication as a source for agencies to locate additional guidance on debt collection issues. Treasury will update this publication consistent with the final rule and the DCIA. The guidance in the current edition of "Managing Federal Receivables" applies to the

extent that it is not inconsistent with the final rule and the DCIA.

The final rule does not incorporate one commenter's suggestion to prescribe a standard under the FCCS for the "write-off" of debts (*i.e.*, removal of the debt from the agency's accounting records), consistent with "Managing Federal Receivables" guidance. The DCIA gives the Office of Management and Budget (OMB) the responsibility to review the standards and policies of Federal agencies regarding the "write-off" of delinquent debts, which is an accounting process. See 31 U.S.C. 3711 note. OMB Circular A-129, "Policies for Federal Credit Programs and Nontax Receivables," is being revised to incorporate new policy guidelines for writing off uncollectible Federal debt.

One commenter's recommendation to delete the reference in NPRM § 900.1(a) to OMB Circular A-129 was not adopted. OMB Circular A-129 continues to provide valuable guidance and applies to the extent not inconsistent with the final rule and DCIA requirements. OMB Circular A-129 is being revised to incorporate new policy guidelines consistent with the final rule and the DCIA.

NPRM § 900.2—Definitions and Construction

Several commenters suggested that the definition of a "delinquent" debt under NPRM § 900.2(b) is too vague and that the date of delinquency should be more clearly defined. Under NPRM § 900.2(b), a debt is delinquent "if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made." The final rule has not been amended to incorporate this comment. The "delinquency" definition applies to all agency programs and obligations owed to the United States. Agency-specific regulations may further clarify the definition of "delinquency" as applicable to specific agency program requirements and particular types of debt. See Treasury's final rule, *Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees* (63 FR 67754, Dec. 8, 1998), for an example of the term "delinquent" being defined for a specific, limited purpose.

NPRM § 900.3—Antitrust, Fraud, and Tax and Interagency Claims Excluded

One commenter suggested amending NPRM § 900.3(a) to provide that the exclusion from the application of the

FCCS to debts involving fraud (whereby DOJ retains authority over such debts) applies only to debts known to involve fraud at the time a debt is transferred to, or processed by, a private collection agency. No change has been made to the final rule to incorporate this comment since only DOJ has the authority to compromise, suspend, or terminate collection action on such claims. Accordingly, DOJ retains sole authority under the final rule over activity on all debts involving fraud. Private collection agencies that become aware of fraudulent activity on the part of the debtor (or any third party) at any time must cease collection activity and promptly return the debt back to the referring agency for coordination with DOJ.

NPRM § 901.1—Aggressive Agency Collection Activity

Comments involving the provisions under NPRM § 901.1 related to the DCIA requirement that agencies transfer to Treasury nontax debts that have been delinquent for more than 180 days are outside the scope of the FCCS. A final rule, published by Treasury (64 FR 22906, Apr. 28, 1999), provides guidance regarding the DCIA transfer of debt requirement. See also 31 U.S.C. 3711(g).

One commenter suggested that the final rule be amended to clarify whether the 180-day delinquency period begins before or after the 30-day period within which a debtor may pay a debt without penalties or interest. See NPRM § 901.10(g). No change has been made to the final rule to incorporate this comment. The 180-day delinquency period begins to run on the date a debt becomes delinquent, that is, when the debt is not paid on the date due or the date as specified in accordance with § 900.2(b) of the NPRM and final rule. A debt is delinquent notwithstanding any statutory or regulatory grace period for the assessment or payment of interest, administrative costs, or penalties.

NPRM § 901.2—Demand for Payment

One commenter recommended that the final rule clarify that the provision under NPRM § 901.2(a) providing that "[g]enerally, one demand letter should suffice" does not prohibit agencies from sending progressively stronger demand letters. No change is necessary to the final rule to incorporate this comment. NPRM § 901.2(a) does not prohibit agencies from sending more than one demand letter.

In accordance with one commenter's suggestion, § 901.2(b)(3) of the final rule has been amended to clarify that the

term "late charges" refers to interest, penalties, and administrative costs.

The final rule does not adopt one commenter's suggestion to delete the requirement under NPRM § 901.2(d) that agency demand letters discuss alternative methods of payment. The NPRM did not include such a requirement. Contrary to the commenter's concern, NPRM § 901.2(d) does not limit agency discretion; it merely provides that a demand letter should inform a debtor of the agency's "willingness to consider" alternative methods of payment to satisfy the debt. Many debt collection tools require agencies to give debtors the opportunity to enter into a written agreement with the head of an agency to repay the debt. See, *e.g.*, 31 U.S.C. 3716(a)(4) (administrative offset authority); 31 U.S.C. 3720A (tax refund offset); 31 U.S.C. 3720D (wage garnishment); see also NPRM § 901.9 (establishing standards for the collection of delinquent debts in installment payments).

A related comment, recommending that agencies be given the flexibility to include only those provisions of demand letters listed in NPRM § 901.2(d) "as appropriate to the circumstances," has not been incorporated into the final rule. Section 901.2(d), as proposed, does not restrict an agency's discretion to tailor its use of particular debt collection tools in specific cases. NPRM § 901.2(d) provides only that an agency should provide notice to a debtor in a demand letter of its willingness to discuss alternative methods of payment, the agency's remedies to enforce payment of the debt, information concerning the requirement that debts over 180 days delinquent be transferred to Treasury (see discussion involving NPRM § 901.1 above), and applicable waiver consideration information. Demand letters also must satisfy the other requirements of NPRM § 901.2, including, but not limited to, providing notice to the debtor of the basis of the indebtedness and the opportunity available to the debtor for a review within the agency.

Another commenter suggested deleting the second reference to "collection agencies" under NPRM § 901.2(d) to avoid duplication. The final rule has not been amended to incorporate this suggested technical amendment. The first reference to "collection agencies" relates to an agency's policy with regard to the use of this debt collection tool. The second reference refers to the enforcement action that will be taken regarding the

specific debt referenced in the demand letter.

One commenter suggested deleting the requirement under NPRM § 901.2(g) that agencies advise litigation counsel for the Government that a debtor has been given notice that litigation may be initiated unless the debt can be collected administratively. The commenter incorrectly interprets this provision as requiring agencies to advise litigation counsel at the time the agency's notice is given to the debtor, rather than at the time the debt is referred to DOJ for litigation. No change has been made to the final rule to incorporate this comment.

NPRM § 901.3—Collection by Administrative Offset

The administrative offset section has been redrafted in the final rule to emphasize that disbursing official offset, which is renamed as centralized administrative offset in the final rule, is the primary administrative offset collection tool, consistent with the DCIA. See 31 U.S.C. 3716(c)(6) (requiring Federal agencies to notify the Secretary of the Treasury of all debts over 180 days delinquent for purposes of conducting centralized administrative offset).

Consistent with this approach, the final rule provides that the non-disbursing official administrative offset process, which is renamed as non-centralized administrative offset in the final rule, is a backup procedure to be used by creditor agencies on an *ad hoc* case-by-case basis when centralized administrative offset is otherwise not available or appropriate. For example, agencies should utilize the *ad hoc* non-centralized offset process to offset payments that have not been incorporated into the centralized administrative offset process. In any event, an agency's collection by the non-centralized administrative offset process shall not provide the grounds to invalidate any offset on the basis that centralized offset was not used.

In addition, NPRM § 901.4 (authorizing creditor agencies to request the Office of Personnel Management (OPM) to conduct administrative offsets) has been merged into revised § 901.3 of the final rule since the procedure described in NPRM § 901.4 is a form of non-centralized administrative offset. Revised § 901.3(d) of the final rule refers to OPM offsets of Civil Service Retirement and Disability Fund (Fund) payments. The Fund includes payments made under the Federal Employee Retirement System.

One commenter suggested that NPRM § 901.3(a)(5) is overly restrictive in that

it permits administrative offset only after the debtor has been given written notice of the type and amount of debt, the intent to collect the debt by offset, an opportunity to inspect and copy agency records pertaining to the debt, an opportunity for review of indebtedness, and an opportunity to make a written repayment agreement. No change has been made to the final rule to incorporate this comment. NPRM § 901.3(a)(5) and the final rule track the statutory due process requirements under 31 U.S.C. 3716(a).

Another commenter noted that NPRM § 901.3(a)(5) provides that agency regulations must specify that administrative offset can be initiated only after the debtor has "received" written notice of the due process requirements under 31 U.S.C. 3716(a). The commenter suggested that an agency would have no way of verifying that a debtor has actually received the notice required by NPRM § 901.3(a)(5). Revised § 901.3(b)(4)(ii) of the final rule has been changed to clarify that the required due process notice must be "sent" to the debtor. This is consistent with constitutional and statutory due process requirements, provided that creditor agencies ensure that reasonable steps are taken to send the notice to the debtor's last known address. See, e.g., *Setlech v. United States*, 816 F. Supp. 161 (E.D.N.Y. 1993) (mailing of tax refund offset notice on behalf of Department of Education to debtor's last known address satisfied due process even though debtor did not receive notice prior to offset; notice was reasonably calculated to apprise debtor of impending action); see also *United States v. 51 Pieces of Real Property*, 17 F.3d 1306, 1316 (10th Cir. 1996) (due process does not require actual receipt of notice provided Government acts reasonably in selecting means likely to inform the persons affected).

Another commenter suggested that all references under NPRM §§ 901.3(a) and 901.4(d) to pre-administrative offset "oral hearings" be deleted since the statutory authority for administrative offset under 31 U.S.C. 3716(a)(3) only provides the debtor with an "opportunity for a review" within the agency. No change has been made to revised § 901.3(e) of the final rule to incorporate this comment because oral hearings may be required in those instances where the determination of indebtedness cannot be made by a review of the written record. An oral hearing is not required when the question of indebtedness can be resolved by a review of the written record. See revised § 901.3(e) of the final rule.

A second commenter suggested deleting the provision under NPRM § 901.3(a)(7)(i)(A) requiring an oral hearing under certain circumstances when a waiver statute authorizes or requires an agency to consider waiver of the indebtedness. This provision has been deleted from revised § 901.3 of the final rule since oral hearing requirements involving waiver requests are governed by specific statutory and regulatory waiver authorities, rather than the FCCS.

One commenter suggested revising NPRM § 901.3(b)(1) to provide that the administrative offset of a reimbursement payment could substantially interfere with, or defeat the purposes of, the program giving rise to the payment. The final rule was not changed to incorporate this comment. Under the DCIA, the Secretary of Treasury determines whether a particular type of payment should be exempt from administrative offset. See 31 U.S.C. 3716(c)(3)(B). Therefore, exemption is not addressed in this rule.

One commenter suggested that NPRM § 901.3(c)(5) be revised to clarify its application to non-Treasury disbursing officials, such as the Department of Agriculture's Commodity Credit Corporation. No change to the final rule is necessary. The debtor/payee notification requirements under revised § 901.3(b)(3) of the final rule apply to both Treasury and non-Treasury disbursing officials conducting centralized administrative offsets. As required by the DCIA, Treasury disbursing officials and non-Treasury disbursing officials, such as officials of the Department of Defense, United States Postal Service, any other Government corporation, or any Treasury-designated United States disbursing office, are required to conduct administrative offsets. See 31 U.S.C. 3716(c)(1)(A).

Another commenter recommended adding a provision to NPRM § 901.3(c)(5) requiring disbursing officials to notify payment and creditor agencies once an administrative offset of a payment has been made. This comment is beyond the scope of the final rule. Detailed regulations involving various types of DCIA administrative offset procedures are codified under 31 CFR part 285.

NPRM § 901.4—Administrative Offset Against Amounts Payable From Civil Service Retirement and Disability Fund and the Federal Employee Retirement System

NPRM § 901.4 addresses *ad hoc* non-centralized administrative offsets conducted by OPM to satisfy debts that

have not been referred for centralized administrative offset. Under the final rule, this provision has been merged into § 901.3 since the procedure described under NPRM § 901.4 is a type of non-centralized administrative offset that should be utilized when centralized administrative offset is not available or appropriate. Accordingly, NPRM §§ 901.5, 901.6, 901.7, 901.8, 901.9, 901.10, 901.11, 901.12, 901.13 have been redesignated in the final rule as §§ 901.4, 901.5, 901.6, 901.7, 901.8, 901.9, 901.10, 901.11, 901.12, respectively. This change properly emphasizes the requirement for centralized administrative offset under the DCIA. See, e.g., 31 U.S.C. 3716(c)(6) (mandating that Federal agencies notify the Secretary of the Treasury of all debts over 180 days delinquent for purposes of centralized administrative offset).

NPRM § 901.5—Reporting Debts

The final rule does not incorporate one commenter's suggestion to delete the requirement under NPRM § 901.5(a) that agencies develop and implement procedures for reporting delinquent debts to credit bureaus. The commenter stated that this provision is not necessary because Treasury and Treasury-designated debt collection centers, not creditor agencies, will be responsible for reporting debts that have been transferred to Treasury or Treasury-designated debt collection centers, as required by the DCIA and NPRM § 901.1(e). Creditor agencies are reminded that the DCIA mandates credit bureau reporting for delinquent debts (see 31 U.S.C. 3711(e)), and that debts should be reported early in the debt collection process. Nevertheless, agencies could develop procedures, consistent with this rule, to provide that credit bureau reporting will be handled by Treasury or Treasury-designated debt collection centers for transferred debts.

Another commenter suggested that the mandatory language of NPRM § 901.5(a) requiring agencies to develop credit bureau reporting procedures should not apply to an agency whose statutory authority provides that the agency "may," but is not required to, report delinquent debts to credit bureaus. No change is necessary to address this concern because § 900.1 of the final rule specifically provides that the FCCS govern an agency's debt collection activity "unless specific agency statutes or regulations apply to such activities."

Section 901.4(b) of the final rule has not been amended to incorporate a commenter's suggestion to mandate that agencies report delinquent debts to the Department of Housing and Urban

Development's Credit Alert Interactive Voice Response System (CAIVRS). Agencies are strongly encouraged to report to CAIVRS when feasible. Reporting will assist agencies in complying fully with the DCIA provision, codified at 31 U.S.C. 3720B, barring delinquent debtors from obtaining Federal financial assistance. Agencies can utilize CAIVRS to determine whether a loan applicant is delinquent on obligations owed the United States. However, because reporting to CAIVRS may not be feasible in every case, reporting, while strongly encouraged, is not mandatory.

NPRM § 901.6—Contracting for Private Collection Contractors and To Locate and Recover Unclaimed Assets

NPRM § 901.6(b) has been revised to clarify that Federal agencies may refer debts to private collection contractors pursuant to a contract between the agency and the private collection contractor only if such debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services, e.g., debts are less than 180 days delinquent. See 31 U.S.C. 3711(g); 31 CFR 285.12(e). Agencies also may refer debts to a private collection contractor listed on FMS's schedule of private collection contractors provided they do so in accordance with procedures established by FMS.

The final rule does not incorporate one commenter's recommendation that NPRM § 901.6(a)(1) be amended to allow agencies to authorize private collection contractors to compromise, suspend, or terminate collection activity, and refer for litigation debts less than a specific threshold amount. Federal law requires agencies to retain the authority "to resolve a dispute, compromise a debt, end collection action, and refer a matter to the Attorney General to bring a civil action." 31 U.S.C. 3718(a)(1). Nothing in § 901.5(a)(1) of the final rule prohibits agencies from establishing agency-specific compromise review procedures within the scope of 31 U.S.C. 3718(a)(1). For example, agencies could set parameters within which private collection contractors could compromise debt.

Another commenter suggested that the final rule clarify that private collection contractors collecting debts on behalf of creditor agencies are authorized to invoke certain agency rights, including cross-default on obligations, set-off, and certain Governmental defenses. No change has been made to incorporate this comment which is beyond the scope of the final rule. Private collection contractors

should contact the creditor agency before invoking any rights with respect to the agency's debt.

One commenter suggested that NPRM § 901.6 be amended to clarify that agencies are authorized to contract for debtor asset and income search reports. Such reports could be used by DOJ litigation attorneys and other agencies to determine whether, and to what extent, debtors have assets which could be pursued to satisfy delinquent obligations. Section 901.5(e) has been added to the final rule to incorporate this comment.

The final rule also provides that debtor asset and income search report contracts, private collection contractors contracts, and contracts to locate and recover unclaimed assets of the United States may be paid for out of amounts collected, consistent with 31 U.S.C. 3718(d), unless otherwise prohibited by law.

The final rule does not incorporate one commenter's suggestion to amend NPRM § 901.6 to limit the time a debt may remain with a private collection contractor to a 180-day period, after which the debt should be referred to DOJ for enforced collection. The time period that a debt is at a private collection contractor is more appropriately a matter of contract between the private collection contractor and the Federal agency; the setting of a regulatory time limit would not further the goal of the FCCS to provide agencies with greater flexibility. In addition, debts are referred to DOJ after a private collection contractor has been unable to collect the debt, and only when it is appropriate to do so. See part 904 (Referrals to Department of Justice).

NPRM § 901.9—Collection by Installments

One commenter suggested amending NPRM § 901.9(a) to allow agencies to accept installment payments without independent verification of the debtor's inability to pay. The commenter stated that the change would give agencies more flexibility in cases involving very small debts. The final rule does not incorporate this suggestion because the FCCS only require such verification "whenever possible."

One commenter suggested amending NPRM § 901.9 to clarify the application of installment payments to satisfy multiple debts as provided in the 1984 FCCS (4 CFR 102.11(b)). The application of installment payments under such circumstances varies depending on the type of debt. Agencies may address this issue in agency-specific regulations. In addition, further guidance will be issued in the Treasury Financial Manual

supplement "Managing Federal Receivables."

NPRM § 901.10—Interest, Penalties, and Administrative Costs

One commenter suggested that the final rule clarify whether NPRM § 901.10(a) applies to Social Security Administration debts. Section 204(f)(1) of the Social Security Act (Act) governs the charging of interest, penalties, and administrative costs for social security debts. The Act provides that the Social Security Administration "may," but is not required to, charge interest, penalties, and administrative costs. No change to the final rule is required since the FCCS do not apply when specific statutes or regulations govern particular agency debt collection activities. See NPRM § 900.1 (Prescription of Standards).

Several commenters suggested that the final rule provide a more precise standard for the "date of delinquency" that triggers the charging of interest, penalties, and administrative costs under NPRM § 901.10. One commenter recommended defining the "date of delinquency" as the "day after the due date contained in the initial demand letter." A second commenter suggested retaining the current standard under 4 CFR 102.13(b) of the FCCS ("Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor."). The final rule has not been changed to incorporate these comments. Consistent with the intent of the FCCS to provide Government-wide debt collection standards, the NPRM § 900.2(b) general definition of "delinquency" is broad enough to apply to all Federal agency programs that give rise to delinquent debts. Federal agencies should promulgate debt collection regulations tailored to specific agency program requirements. Nothing in the FCCS prohibits an agency from specifying that, for purposes of a particular type of debt, "date of delinquency" is the date on which notice of the debt and the accrual of interest is first mailed or hand-delivered to the debtor, or some other appropriate standard.

NPRM § 902.2—Bases for Compromise

As suggested by one commenter, the final rule amends NPRM § 902.2(g) to clarify that, when evaluating a compromise proposal, agencies need only obtain a current financial statement from a debtor to assess the merits of a proposal that is based on the debtor's inability to pay.

NPRM § 902.6—Consideration of Tax Consequences to the Government

In response to one commenter's suggestion that NPRM § 902.6 be amended to require agencies to report discharges of indebtedness to the Internal Revenue Service (IRS), new § 903.5 (Discharge of indebtedness; reporting requirements) has been added to the final rule. Section 903.5(a) of the final rule requires agencies to make a determination that further collection action is not warranted before making a determination to discharge a debt (also referred to as "close out" for Federal government accounting purposes). Specifically, § 903.5(a) of the final rule requires an agency to take all appropriate steps to collect a debt in accordance with 31 U.S.C. 3711(g), as appropriate. It also provides that agencies may not discharge a debt until the requirements of 31 U.S.C. 3711(i) (sale of debt) have been met. After a debt has been reported to the IRS as discharged, the Federal government may not take any further legal action to collect such debt, including the filing or continuation of judgment liens. The IRS is responsible for the collection of taxes due, if any, when the discharge is reported as income to the debtor.

Before discharging a debt, agencies must terminate debt collection action. The FCCS contain provisions related to the termination of debt collection action at § 903.3 of the final rule. Policies and standards with respect to write-off, an accounting process outside the scope of the FCCS, are found in OMB Circular A-129, "Policies for Federal Credit Programs and Nontax Receivables," which is being revised to incorporate new write-off policy guidelines.

Section 903.5(c) provides that agencies must report a discharge of indebtedness in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. Discharge of indebtedness is reported on IRS Form 1099-C. An agency may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the agency's behalf. A cross reference to § 903.5 has been added to § 902.6 in the final rule.

NPRM § 902.7—Mutual Releases of Debtor and the Government

In response to one commenter's suggestion, NPRM § 902.7 has been revised to emphasize the mutuality of the debtor and Government releases. Additional language has been added in the final rule to NPRM § 902.7 to clarify the impact of a compromise on potential related claims against the Government

when a mutual release has not been executed. Specifically, unless prohibited by law, when a debt is compromised but a mutual release has not been executed, the debtor is deemed to have waived any claims and causes of action against the Government or its officials arising from the same transaction related to the compromised debt.

NPRM § 903.2—Suspension of Collection Activity

The final rule does not incorporate one commenter's suggestion that NPRM § 903.2(c)(2) be amended to give agencies the flexibility to suspend collection activity for groups or categories of debtors. NPRM § 903.2(c)(2) addresses a request for waiver or administrative review of a debt when a statute does not mandate suspension of collection activity during the pendency of such requests. The determination of whether to suspend collection activity in these cases should be reviewed on a case-by-case basis. A case-by-case standard is appropriate because it ensures that agencies review individual cases to confirm that waiver or indebtedness reconsideration requests are not frivolous or made primarily for the purpose of delaying collection. Nothing in the FCCS prohibit suspension of collection activity by the agency for groups or categories of debtors when appropriate.

[NEW] § 903.5—Discharge of Indebtedness; Reporting requirements

See the discussion related to NPRM § 902.6, above, for an analysis of new § 903.5 of the final rule (Discharge of indebtedness; reporting requirements).

NPRM § 904.1—Prompt Referral

One commenter suggested amending NPRM § 904.1 to provide that debts arising from audit exceptions taken by the General Accounting Office (GAO) be reviewed by GAO prior to referral to DOJ. No change has been made to incorporate this comment because the Comptroller General's role in the Federal debt collection process has been eliminated. Although the opinions and legal interpretations of the Comptroller General often provide helpful guidance on audit exception matters and related issues, they are not binding upon departments, agencies, or officers of the executive branch. See e.g., *Bowsher v. Synar*, 478 U.S. 714, 727-32 (1986).

NPRM § 904.3—Preservation of Evidence

NPRM § 904.3 requires agencies to provide original documents immediately upon request by DOJ. The

final rule does not incorporate one commenter's suggestion to amend NPRM § 904.3 to authorize agencies to certify copies of essential documents related to a debt referred to DOJ instead of providing original documents in certain types of cases, such as in debts for fire suppression costs. The essential purpose behind NPRM § 904.3 is to require agencies to "take care to preserve all files and records that may be needed by the Department of Justice" to prove debts in court. The amendment of § 904.3 to incorporate the commenter's concern would not further this intent.

NPRM § 904.4—Minimum Amount of Referrals to the Department of Justice

One commenter suggested reducing the threshold amount of debts (exclusive of interest, penalties, and administrative costs) to be referred to DOJ for litigation from \$2,500 to \$1,500. No change has been made to the final rule to incorporate this comment. The DOJ may waive the minimum threshold amount in appropriate cases, including cases which are referred by DOJ to private counsel under 31 U.S.C. 3718.

Regulatory Analysis

Executive Order 12866

The Department of the Treasury and the Department of Justice have determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for Federal agencies to streamline their own debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

List of Subjects

31 CFR Part 900

Antitrust, Claims, Fraud.

31 CFR Part 901

Administrative practice and procedure, Claims, Federal employees, Penalties, Privacy.

31 CFR Part 902

Claims.

31 CFR Part 903

Claims.

31 CFR Part 904

Claims.

Authority and Issuance

For the reasons set out in the preamble, chapter IX, consisting of parts 900 through 904, is established in title 31 of the Code of Federal Regulations to read as follows:

CHAPTER IX—FEDERAL CLAIMS COLLECTION STANDARDS (DEPARTMENT OF THE TREASURY—DEPARTMENT OF JUSTICE)

Part

- 900 Scope of standards
- 901 Standards for the administrative collection of claims
- 902 Standards for the compromise of claims
- 903 Standards for suspending or terminating collection activity
- 904 Referrals to the Department of Justice

PART 900—SCOPE OF STANDARDS

Sec.

- 900.1 Prescription of standards.
- 900.2 Definitions and construction.
- 900.3 Antitrust, fraud, and tax and interagency claims excluded.
- 900.4 Compromise, waiver, or disposition under other statutes not precluded.
- 900.5 Form of payment.
- 900.6 Subdivision of claims not authorized.
- 900.7 Required administrative proceedings.
- 900.8 No private rights created.

Authority: 31 U.S.C. 3711.

§ 900.1 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States are issuing the regulations in parts 900–904 of this chapter under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this chapter prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations. The regulations in this chapter also prescribe standards for referring debts to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables," the Department of the Treasury's "Managing Federal Receivables," and other publications concerning debt collection and debt management. These publications are available from the Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street SW., Room 151, Washington, DC 20227.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debt to the Department of the Treasury (Treasury) or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), are issued in separate regulations by Treasury. Rules governing the use of certain debt collection tools created under the Debt Collection Improvement Act of 1996, such as administrative wage garnishment, also are issued in separate regulations by Treasury. See generally 31 CFR part 285.

(c) Agencies are not limited to the remedies contained in parts 900–904 of

this chapter and are encouraged to use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Public Law 89-508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97-365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, or other relevant statutes. The regulations in this chapter are not intended to impair agencies' common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

§ 900.2 Definitions and construction.

(a) For the purposes of the standards in this chapter, the terms "claim" and "debt" are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by 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.

(b) A debt is "delinquent" if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(c) In parts 900-904 of this chapter, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but do include matters that are in the same general class.

(d) Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(e) For purposes of the standards in this chapter, unless otherwise stated, "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

§ 900.3 Antitrust, fraud, and tax and interagency claims excluded.

(a) The standards in parts 900-904 of this chapter 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 the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in parts 900-904 of this chapter relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, agencies shall promptly refer the case to the Department of Justice for action. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the standards in parts 900-904 of this chapter.

(b) Parts 900-904 of this chapter do not apply to tax debts.

(c) Parts 900-904 of this chapter do not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409-412).

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

Nothing in parts 900-904 of this chapter precludes agency disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this chapter. See, e.g., the Federal Medical Care Recovery Act, Public Law 87-693, 76 Stat. 593 (September 25, 1962) (codified at 42 U.S.C. 2651 *et seq.*), and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of a particular

agency generally take precedence over parts 900-904 of this chapter.

§ 900.5 Form of payment.

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

§ 900.6 Subdivision of claims not authorized.

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 is one of less than \$100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

§ 900.7 Required administrative proceedings.

Agencies are not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 900.8 No private rights created.

The standards in this chapter do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of an agency to comply with any of the provisions of parts 900-904 of this chapter be available to any debtor as a defense.

PART 901—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

- 901.1 Aggressive agency collection activity.
- 901.2 Demand for payment.
- 901.3 Collection by administrative offset.
- 901.4 Reporting debts.
- 901.5 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 901.6 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
- 901.7 Liquidation of collateral.
- 901.8 Collection in installments.
- 901.9 Interest, penalties, and administrative costs.
- 901.10 Analysis of costs.
- 901.11 Use and disclosure of mailing addresses.
- 901.12 Exemptions.

Authority: 31 U.S.C. 3701, 3711, 3716, 3717, 3718, and 3720B.

§ 901.1 Aggressive agency collection activity.

(a) Federal agencies shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary. Nothing contained in parts 900-904 of this chapter requires the Department of Justice, Treasury, or other Treasury-designated debt collection centers, to duplicate collection activities previously undertaken by other agencies or to perform collection activities that other agencies should have undertaken.

(b) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) Agencies shall cooperate with one another in their debt collection activities.

(d) Agencies should consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) Agencies shall transfer to the Secretary any debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action. See 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that:

- (1) Is in litigation or foreclosure;
- (2) Will be disposed of under an approved asset sale program;
- (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;
- (4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);
- (5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. Agencies may request that the Secretary exempt specific classes of debts.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost (see § 901.10).

§ 901.2 Demand for payment.

(a) Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. 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 agency's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), agencies should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 904.1 of this chapter or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under parts 900-904 of this chapter, including immediate referral for litigation.

(b) Demand letters shall inform the debtor of:

- (1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;
- (2) The applicable standards for imposing any interest, penalties, or administrative costs;
- (3) The date by which payment should be made to avoid late charges (*i.e.* interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered; and
- (4) The name, address, and phone number of a contact person or office within the agency.

(c) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether

the debt can be resolved administratively or must be referred for litigation.

(d) Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) Agencies 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.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see § 901.3). The availability of funds or money for debt satisfaction by offset and the agency's determination to pursue collection by offset shall release the agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, agencies should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of

filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from their agency counsel to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from their agency counsel to determine whether recoupment is available.

§ 901.3 Collection by administrative offset.

(a) *Scope.* (1) The term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(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) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) 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, and 31 CFR 285.7, Federal Salary Offset);

(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 of 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, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted 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 official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) Creditor agencies are required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts which are less than 180 days delinquent also may be referred to the Secretary for this purpose. See § 901.3(b)(5) for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4)(i) Before referring a delinquent debt to the Secretary for administrative offset, agencies must have prescribed administrative offset regulations consistent with this section or have adopted this section without change by cross-reference.

(ii) Such regulations shall provide that offsets may be initiated only after the debtor:

(A) Has been sent written notice of the type and amount of the debt, the intention of the agency to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(B) The debtor has been given:

(1) The opportunity to inspect and copy agency records related to the debt;

(2) The opportunity for a review within the agency of the determination of indebtedness; and

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

(iii) Agency regulations may provide for the omission of the procedures set forth in paragraph (a)(4)(ii) of this section when:

(A) The offset is in the nature of a recoupment;

(B) 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 accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the agency 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 agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iv) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see, e.g., § 901.2), the agency need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Agencies referring delinquent debts to the Secretary must certify, in a form acceptable to the Secretary, that:

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

(ii) The agency has complied with all due process requirements under 31 U.S.C. 3716(a) and the agency's regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary 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 may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are *ad hoc* case-by-case offsets that an agency conducts, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Before requesting a payment authorizing agency to conduct a non-centralized administrative offset,

agencies must adopt regulations providing that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section; and

(ii) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, 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.

(4) When collecting multiple debts by non-centralized administrative offset, agencies should 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.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, creditor agencies 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 regulations codified at 5 CFR 831.1801-831.1808. 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. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) For purposes of this section, whenever an agency is required to afford a debtor a review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency 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 agency should carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

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

§ 901.4 Reporting debts.

(a) Agencies shall develop and implement procedures for reporting delinquent debts to credit bureaus and other automated databases. Agencies also may develop procedures to report non-delinquent debts to credit bureaus. See 31 U.S.C. 3711(e).

(1) In developing procedures for reporting debts to credit bureaus, agencies shall comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus.

(2) Agency procedures for reporting delinquent consumer debts to credit bureaus shall be consistent with the due process and other requirements contained in 31 U.S.C. 3711(e). When an agency has given a debtor any of the required notice and review opportunities with respect to a particular debt, the agency need not duplicate such notice and review opportunities before reporting that delinquent consumer debt to credit bureaus.

(b) Agencies should report delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about the CAIVRS program, agencies should contact the Director of Information Resources Management Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

§ 901.5 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, Federal agencies may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts provided that:

(1) Agencies retain the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts 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 agency 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) Agencies shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, agencies may refer debts to private collection contractors pursuant to a contract between the agency and the private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. See 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) Agencies may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) Agencies may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets. Agencies must establish procedures that are acceptable to the Secretary before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) Agencies 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 agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 901.6 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the head of the agency, agencies are not permitted to

extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of the agency. Agencies may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a "delinquency" is "resolved" for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims should consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor should be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges. Any agency making, guaranteeing, insuring, acquiring, or participating in, loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to the Treasury. The Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked by the Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also should extend to Federal programs or activities that are 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. Therefore, states that manage Federal activities, pursuant to approval from the agencies, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or

privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 901.7 Liquidation of collateral.

(a) Agencies should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial 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 interest of the United States. 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.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency should seek legal advice from its agency counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 901.8 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 902.2(g) of this chapter). Agencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases.

Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 901.9 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. An agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. 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) Agencies shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) 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 agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury 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. If, however, a 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) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs

incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed 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) Agencies may increase an "administrative debt" 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. Increases to administrative debts shall be computed annually. Agencies should use this alternative only 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.

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

(g) Agencies 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. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) Agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review.

(i) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 901.10 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 901.11 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under parts 900-904 of this chapter or other authority, agencies may send a request to the Secretary (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 901.12 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

PART 902—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

- 902.1 Scope and application.
 902.2 Bases for compromise.
 902.3 Enforcement policy.
 902.4 Joint and several liability.
 902.5 Further review of compromise offers.
 902.6 Consideration of tax consequences to the Government.
 902.7 Mutual releases of the debtor and the Government.

Authority: 31 U.S.C. 3711.

§ 902.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. An agency may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, that agency 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. Agency heads may designate officials within their respective agencies to exercise the authorities in this section.

(b) 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 the compromise rests with the Department of Justice. The agency should evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of \$100,000 is acceptable to the agency, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR). Agencies may obtain the CCLR from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the agency rejects a compromise offer.

§ 902.2 Bases for compromise.

(a) Agencies may compromise a debt if the Government cannot collect the full amount because:

- (1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;
- (2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, agencies should consider relevant factors such as the following:

- (1) Age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;
- (4) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) Agencies should verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. Agencies should consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. Agencies also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. 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.

(d) 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 given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, agencies should 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.

(e) Agencies 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 in such cases may reflect an appropriate discount for the administrative and litigative 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. In determining whether the cost of collecting justifies enforced collection of the full amount, agencies should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) Agencies generally should 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, agencies should 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. Whenever possible, agencies also should obtain security for repayment in the manner set forth in part 901 of this chapter.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, agencies should obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers. Agencies may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 902.3 Enforcement policy.

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

§ 902.4 Joint and several liability.

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

(b) Agencies should ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The

amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 902.5 Further review of compromise offers.

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

§ 902.6 Consideration of tax consequences to the Government.

In negotiating a compromise, agencies should consider the tax consequences to the Government. In particular, agencies should 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 § 903.5 of this chapter.

§ 902.7 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by an agency should be implemented by means of a mutual release, in which 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.

PART 903—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTIVITY

Sec.

- 903.1 Scope and application.
- 903.2 Suspension of collection activity.
- 903.3 Termination of collection activity.
- 903.4 Exception to termination.
- 903.5 Discharge of indebtedness; reporting requirements.

Authority: 31 U.S.C. 3711.

§ 903.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice for litigation, agencies may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, that agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice, using the CCLR. The referral should specify the reasons for the agency's recommendation. If, prior to referral to the Department of Justice, an agency determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining Department of Justice concurrence.

§ 903.2 Suspension of collection activity.

(a) Agencies may suspend collection activity on a debt when:

- (1) The agency 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) Based on the current financial condition of the debtor, agencies 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; or
- (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)(1) Agencies 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 agency from collecting the debt during that time.

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

(d) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the agency can clearly establish that the automatic stay has been lifted or is no longer in effect. Agencies should seek legal advice immediately from their agency counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

§ 903.3 Termination of collection activity.

(a) Agencies may terminate collection activity when:

- (1) The agency is unable to collect any substantial amount through its own efforts or through the efforts of others;
- (2) The agency 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) Before terminating collection activity, the agency should have pursued all appropriate means of collection and determined, based upon

the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the agency from retaining a record of the account for purposes of:

- (1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;
- (2) 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;
- (3) Offsetting against future income or assets not available at the time of termination of collection activity; or
- (4) Screening future applicants for prior indebtedness.

(c) Generally, agencies shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. Agencies 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, the claims of an agency that it is a known creditor of a debtor may survive a discharge if the agency did not receive formal notice of the proceedings. Agencies should seek legal advice from their agency counsel if they believe they have claims or offsets that may survive the discharge of a debtor.

§ 903.4 Exception to termination.

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

§ 903.5 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), agencies shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under part 903 of this title 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 chapter. When an agency discharges a debt in full or in part, further collection action is prohibited. Therefore, agencies should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, agencies must terminate debt collection action.

(b) Section 3711(i), title 31, United States Code, requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary 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), agencies may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

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

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

PART 904—REFERRALS TO THE DEPARTMENT OF JUSTICE

Sec.

- 904.1 Prompt referral.
- 904.2 Claims Collection Litigation Report.
- 904.3 Preservation of evidence.
- 904.4 Minimum amount of referrals to the Department of Justice.

Authority: 31 U.S.C. 3711.

§ 904.1 Prompt referral.

(a) Agencies shall promptly refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with part 901 of this chapter and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with parts 902 and 903 of this chapter. Agencies may refer those debts arising out of activities of, or referred or transferred for collection services to, that agency. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the Civil Division or other division responsible for litigating such debts at the Department of Justice.

Washington, D.C. 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 or penalties, shall be referred to the Department of Justice's Nationwide Central Intake Facility as required by the CCLR instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in parts 900-904 of this chapter, and, in any event, well within the period for initiating timely lawsuits against the debtors. Agencies shall make every effort to refer delinquent debts to the Department of Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, agencies should make every effort to refer these delinquent debts to the Department of Justice for litigation within one year from the date the loan was presented to the agency for payment or re-insurance.

(b) The Department of Justice has exclusive jurisdiction over the debts referred to it pursuant to this section. The referring agency shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to the Department of Justice. The agency should advise the Department of Justice of the collection activities which have been utilized to date, and their result. The referring agency shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to the Department of Justice. The referring agency shall immediately notify the Department of Justice of any payments credited by the agency to the debtor's account after referral of a debt under this section. The Department of Justice shall notify the referring agency, in a timely manner, of any payments it receives from the debtor.

§ 904.2 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice, agencies shall complete the CCLR (*see* § 902.1(b) of this chapter), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation. Referring agencies shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) Agencies shall indicate clearly on the CCLR the actions they wish the Department of Justice to take with

respect to the referred claim. The CCLR permits the agency to indicate specifically any of a number of litigative activities which the Department of Justice may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) Agencies also shall use the CCLR to refer claims to the Department of Justice to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

§ 904.3 Preservation of evidence.

Referring agencies must take care to preserve all files and records that may be needed by the Department of Justice to prove their claims in court. Agencies ordinarily should include certified copies of the documents that form the basis for the claim in the packages referring their claims to the Department of Justice for litigation. Agencies shall provide originals of such documents immediately upon request by the Department of Justice.

§ 904.4 Minimum amount of referrals to the Department of Justice.

(a) Agencies shall not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice shall promptly notify referring agencies if the Attorney General changes this minimum amount.

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

(1) Litigation to collect such smaller claims is important to ensure compliance with the agency's policies or programs;

(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 referring agency 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) Agencies should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the Department of Justice prior to referring claims valued at less than the minimum amount.

Dated: November 6, 2000.

Lawrence H. Summers,
Secretary of the Treasury.

Dated: September 21, 2000.

Janet Reno,
Attorney General of the United States.
[FR Doc. 00-29284 Filed 11-21-00; 8:45 am]
BILLING CODE 4810-35-P; 4410-26-P

GENERAL ACCOUNTING OFFICE

DEPARTMENT OF JUSTICE

4 CFR Chapter II

[A.G. Order No. 2326-2000]

Federal Claims Collection Standards; Removal of Obsolete Chapter

AGENCIES: General Accounting Office;
Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule removes from Title 4 of the Code of Federal Regulations the Federal Claims Collection Standards (FCCS), which were issued jointly by the Department of Justice and the General Accounting Office (GAO). The GAO no longer has the statutory authority to issue or maintain the FCCS.

DATES: This rule is effective December 22, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Armstrong, General Accounting Office, (202) 512-8257; or Kathleen A. Haggerty, Department of Justice, (202) 514-5343.

SUPPLEMENTARY INFORMATION: The FCCS were promulgated jointly by the Department of Justice and GAO on March 9, 1984. 49 FR 8889. The Comptroller General was removed as a co-promulgator of the FCCS by section 115(g) of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3826 (Oct. 19, 1996). Consequently, the FCCS are being removed from Title 4 of the Code of Federal Regulations.

The Secretary of the Treasury was added as a co-promulgator of the FCCS with the Department of Justice under section 31001(g)(1)(C) of the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321, 1321-358 (Apr. 26, 1996), as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS, to be published in Title 31 of the Code of Federal Regulations, will be administered jointly by the Department of Justice and the Department of the Treasury. A final rule establishing a revised FCCS is being published elsewhere in this issue of the Federal Register.

Regulatory Analysis

Administrative Procedure Act
(5 U.S.C. 553)

This rule is a rule of agency organization and is therefore exempt from the notice requirement of 5 U.S.C. 553(b), and is made effective upon issuance.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

Executive Order 12866

This action has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. This rule is limited to agency organization and management as described by Executive Order 12866 section 3(d)(3) and, therefore, is not a