

the debt collection center or FMS. Debt collection centers may charge fees for the debt collection services in accordance with the provisions of paragraph (j) of this section.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA, agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS immediately of any change in the

status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(j) *Fees.* FMS and other debt collection centers (as defined in paragraph (a) of this section) may charge fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a creditor agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

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§ 285.13 Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees.

(a) *Definitions.* For purposes of this section:

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

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States or an agency thereof by a person, including debt administered by a third party as an agent for the Federal Government.

Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

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

Nontax debt means any debt other than a debt under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Secretary means the Secretary of the Treasury.

(b) *Purpose and scope.* (1) This section prescribes standards for determining whether an outstanding nontax debt owed to the Federal Government is in delinquent status and whether such delinquency is resolved for the purpose of denying Federal financial assistance to a debtor. In addition, this section prescribes the circumstances under which the Secretary may exempt a class of debts from affecting a debtor's loan eligibility. This section also outlines the factors an agency should consider when determining whether waiver of the general rule in paragraph (c) of this section is appropriate.

(2) Additional guidance concerning debt collection and debt management is provided in "Managing Federal Receivables" and other FMS publications.

(3) Nothing in this section requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation, or agency policies and procedures. For example, if an agency requires borrowers to have a satisfactory credit history, the agency may deny financial assistance even if a delinquent debt has been resolved.

(4) This section does not confer any new rights or benefits on persons seeking Federal financial assistance.

(5) This section applies to any person owing delinquent nontax debt and to any agency that administers a program that grants Federal financial assistance.

(c) *General rule.* (1) As required by the provisions of 31 U.S.C. 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. This eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. This eligibility requirement applies to all Federal financial assistance even if creditworthiness or credit history is not otherwise a factor for eligibility

purposes, e.g., student loans. A person may be eligible for Federal financial assistance only after the delinquency is resolved in accordance with this section. An agency may waive this eligibility requirement in accordance with paragraph (g) of this section.

(2) An agency from which a person seeks Federal financial assistance may determine, under standards issued by the agency, that a person is ineligible for Federal financial assistance under this section if:

(i) The person is controlled by a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation is controlled by an officer, director, or shareholder who owes a debt); or

(ii) The person controls a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation controls a wholly-owned or partially-owned subsidiary which owes a debt).

(3) A creditor agency may obtain information concerning whether or not a person seeking Federal financial assistance owes a delinquent debt from, among other sources, credit reports, information contained on credit applications, and the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about participating in 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, S.W., Washington, DC 20410.

(d) *Delinquent status.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a debt is in "delinquent status" for purposes of this section if the debt has not been paid within 90 days of the payment due date. The payment due date is the date specified in the creditor agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency repayment agreement).

(2) For purposes of this section, a debt is not in delinquent status if:

(i) The person seeking Federal financial assistance has been released by the

creditor agency from any obligation to pay the debt, or there has been an adjudication or determination that such person does not owe or does not have to pay the debt;

(ii) The debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person seeking Federal financial assistance is current on any court authorized repayment plan; or

(iii) The existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner. Unless otherwise prohibited, an agency may defer making a determination as to whether or not to extend credit until the appeal process is completed.

(3) Unless the provisions of paragraph (d)(2) apply, a debt is in delinquent status even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) is in delinquent status for purposes of this section.

(4) Nothing in this section defines the terms "delinquent" or "delinquent status" for any purposes other than those described in this section.

(e) *Delinquency resolution.* (1) For purposes of this section, a person's delinquent debt is resolved only if the person:

(i) Pays or otherwise satisfies the delinquent debt in full;

(ii) Pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full;

(iii) Cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or

(iv) Enters into a written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

(2) Unless the provisions of paragraph (e)(1) of this section apply, a delinquent debt is not resolved even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) would not be "resolved." If the provisions of paragraph (e)(1) of this section do apply, a delinquent debt is considered resolved. For example, if a portion of a debt has been written off after the person has paid the debt in part where the creditor agency accepts such part payment as a compromise in lieu of payment in full, the entire debt would be deemed "resolved" for purposes of this section in accordance with paragraph (e)(1)(ii) of this section.

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of the head of the creditor agency to which a class of debts is owed, the Secretary may exempt any class of debts from affecting a debtor's eligibility for Federal financial assistance based on the provisions of 31 U.S.C. 3720B and this section.

(2) The creditor agency recommending an exemption for a class of debts will provide the Secretary with information about:

(i) The nature of the program under which the delinquencies have arisen;

(ii) The number, dollar amount, and age of the debts in the program for which exemption is recommended;

(iii) The reasons why an exemption is justified, including why the granting of financial assistance to persons owing the type of debt for which exemption is requested would not be contrary to the Government's goal to reduce losses by requiring proper screening of potential borrowers; and,

(iv) Other information the Secretary deems necessary to consider the exemption request.

(3) The Secretary may exempt a class of debts if exemption is in the best interests of the Federal Government.

(g) *Waivers by the agency.* (1) The head of an agency from which a person seeks to obtain Federal financial assistance may waive the eligibility requirement

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described in paragraph (c) of this section. Waivers shall be granted only on a person by person basis. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency. The Chief Financial Officer may redelegate the authority only to the Deputy Chief Financial Officer of the agency.

(2) The authorized agency official should balance the following factors when deciding whether to grant a waiver under paragraph (g)(1) of this section:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal Government; and

(ii) Whether the agency's granting of the financial assistance to the person is contrary to the Government's goal to reduce losses from debt management

activities by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (d)(2) of this section, the authorized agency official should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) Each agency shall retain a centralized record of the number and type of waivers granted under this section.

(h) *Effect of denial of Federal financial assistance.* Nothing contained in this section precludes a person who has been denied Federal financial assistance from obtaining such assistance after that person's delinquent debt has been resolved in accordance with paragraph (e)(1) of this section.

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