

CHAPTER 4-60

CLAIMS COLLECTION REGULATIONS

**4-60-10 REGULATIONS**

The following Department regulations (32 FR 241, December 14, 1967, 33 F.R. 17292, November 22, 1968, 36 F.R. 3816, February 27, 1971) implement the Federal Claims Collection Act of 1966.

Title 45 • PUBLIC WELFARE  
Subtitle A • Department of Health,  
Education, and Welfare  
General Administration

Part 30 • CLAIMS COLLECTION

Part 30 of Title 45 of the Code of Federal Regulations is added to read as follows:

- Sec.  
30.1 Incorporation by reference.  
30.2 Scope of regulations.  
30.3 Delegation of authority.

AUTHORITY: The provisions of this Part 30 issued under sec. 3, Federal Claims Collection Act of 1966, Public Law 89-508, 80 Stat. 309, 31 U.S.C. 951-953; Joint Regulations of GAO and Department of Justice, 4 CFR Ch. II Parts 101-105; Statement of Organization and Delegation of Authority of the Department as amended, 31 F.R. 16375.

§ 30.1 Incorporation by reference.

The regulations of this part incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding \$20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

§ 30.2 Scope of regulations.

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

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**§ 30.3 Delegation of Authority.**

- (a) The Secretary delegated to the Department Claims Officer the authority to perform the duties vested in him by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) as amended, except with respect to erroneous payments under Titles II and XVIII of the Social Security Act.
- (b) The Department Claims Officer shall compromise, suspend, or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.
- (c) The appropriate office, local, regional or headquarters, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of \$800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer, or the following specific delegates:
1. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel.
  2. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of General Counsel.
  3. The Regional Attorneys except with respect to claims arising out of activities of the Public Health Service.

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§ 101.1

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**PART 101—SCOPE OF STANDARDS**

- Sec.  
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101.3 Fraud, antitrust, and tax claims excluded.  
101.4 Compromise, waiver, or disposition under other statutes not precluded.  
101.5 Conversion claims.  
101.6 Subdivision of claims not authorized.  
101.7 Required administrative proceedings.  
101.8 Referral for litigation.

AUTHORITY: Sec. 3, CC Stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13381, Oct. 15, 1966, unless otherwise noted.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as part of its audit of the agency's activities.

144 FR 22701, Apr. 17, 1979

§ 101.2 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

§ 101.3 Fraud, antitrust, and tax claims excluded.

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indi-

cation of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

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

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, providing for the compromise, termination of collection action, or waiver in whole or in part of such a claim. See, e.g., "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2851, et seq., and applicable regulations, 28 CFR 43.1, et seq. The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

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**§ 101.5 Conversion claims.**

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

**§ 101.6 Subdivision of claims not authorized.**

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than \$20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 308.

**§ 101.7 Required administrative proceedings.**

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

**§ 101.8 Referral for litigation.**

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

**PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS**

**Sec.**

**102.1 Aggressive agency collection action.**

**102.2 Demand for payment.**

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**102.4 Reporting delinquent debts to commercial credit bureaus.**

**102.5 Personal interview with debtor.**

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**102.8 Liquidation of collateral.**

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**102.10 Exploration of compromise.**

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**102.13 Documentation of administrative collection action.**

**102.14 Automation.**

**102.15 Prevention of overpayments, delinquencies, and defaults.**

**102.18 Additional administrative collection action.**

**AUTHORITY: Sec. 3, 80 Stat. 309, 31 U.S.C. 952.**

**§ 102.1 Aggressive agency collection action.**

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

**131 FR 13381, Oct. 15, 1985]**

**§ 102.2 Demand for payment.**

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which the payment is to be made (date due). The date due should be specified and, normally, should be not more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g., the statute of

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limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

[44 FR 22702, Apr. 17, 1979]

**§ 102.3 Collection by offset.**

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

[31 FR 13352, Oct. 15, 1986]

**§ 102.4 Reporting delinquent debts to commercial credit bureaus.**

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the date due specified in the initial notification, unless satisfactory payment arrangements are made by the date due. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which includes the following requirements: (a) Promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureaus with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be re-

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ported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

[44 FR 22702, Apr. 17, 1979]

**§ 102.5 Personal interview with debtor.**

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

**§ 102.6 Contact with debtor's employing agency.**

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130 (30 FR 8469).

[31 FR 13381, Oct. 15, 1956. Redesignated at 44 FR 22702, Apr. 17, 1979]

**§ 102.7 Suspension or revocation of license or eligibility.**

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other

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debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

[31 FR 13331, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.3 Liquidation of collateral.

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is *not* a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

3 102.9 Collection in installments.

Claims, with interest in accordance with § 102.10 should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such 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 Government's claim in not more than 3 years. Installment Payment of less than \$10 per month should be accepted in only the most

unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.10 Exploration of compromise.

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of \$20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.11 Interest.

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract, or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See *Rodgers v. United States*, 332 U.S. 371.

[44 FR 22702, Apr. 17, 1979]

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§ 102.12 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 debt 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 the 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. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

144 FR 22702, Apr. 17, 1979

§ 102.13 Documentation of administrative collection action.

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

§ 102.14 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

144 FR 22702, Apr. 17, 1979

§ 102.15 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

144 FR 22702, Apr. 17, 1979

§ 102.16 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of

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any other administrative remedy which may be available.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

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103.2 Inability to pay.

103.3 Litigative probabilities.

103.4 Cost of collecting claim.

103.5 Enforcement policy.

103.6 Joint and several liability.

103.7 Settlement for a combination of reasons.

103.8 Further review of compromise offers.

103.9 Restrictions.

AUTHORITY: sec. 3 80 stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13382, Oct. 15, 1966, unless otherwise noted.

§ 103.1 Scope and application.

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation.

§ 103.2 Inability to pay.

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time.

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or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

**§ 103.3 Litigative probabilities.**

A claim may be compromised pursuant to this part if there is a real 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 a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Pub. L. 89-507, 80 Stat. 308.

**§ 103.4 Cost of collecting claim.**

A claim may be compromised pursuant to this part if the cost of collecting the claim 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 having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

**§ 103.5 Enforcement policy.**

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

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§ 103.6 Joint and several liability.

When two or more debtors are **jointly and severally liable** collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not **release** the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Settlement for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§ 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

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**PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION**

Sec.

**104.1** Scope and application.

**104.2** Suspension of collection activity.

**104.3** Termination of collection activity.

**104.4** Transfer of claims.

**AUTHORITY:** Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

**SOURCE:** 31 FR 13383, Oct. 15, 1966, unless otherwise noted.

§ 104.1 Scope and application.

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

§ 104.2 Suspension of collection activity.

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports; and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

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Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 505, 80 Stat. 304, to permit filing of suit if such action is warranted. If the missing debtor has confessed-judgment note and is unable to make payments on a claim when the note has no substantial equity in it and is unable to make payments on the Government's claim or effect collection thereof at the time but the prospects justify retention of the claim for periodic review and (a) the applicable statute of limitations has been tolled or started anew or (b) future collection effected by offset notwithstanding the statute of limitations.

3383, Oct. 15, 1966, as amended at 702, Apr. 17, 1979]

**Termination of collection activity.**

The head of an agency or his designee may terminate collection activity on a claim under the agency's file on the closed under the following conditions:

**Inability to collect any substantial amount.** Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of a significant sum from the debtor due to the debtor's financial prospects, the debtor's future financial prospects, the exemptions available to the debtor under State and Federal law. In terminating the debtor's inability to collect on a claim, the following factors, among others, may be considered: Age and income of the debtor; present and potential income; inheritance prospects; possibility that assets have been liquidated or improperly transferred to the debtor; the availability of assets which may be realized upon enforced collection proceedings.

**Inability to locate debtor.** Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining on the claim, and the debtor is liquidated, the applicable statute

of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

**(c) Cost will exceed recovery.** Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

**(d) Claim legally without merit.** Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

**(e) Claim cannot be substantiated by evidence.** Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

**§ 104.4 Transfer of claims.**

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

**PART 105—REFERRALS TO GAO OR FOR LITIGATION**

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105.1 Prompt referral.  
105.1 Current address of debtor.  
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105.4 Report of prior collection actions.  
105.5 Preservation of evidence.  
105.6 Minimum amount of referrals to the  
Department of Justice.  
105.7 Referrals to GAO.

**AUTHORITY:** Sec. 3, 80 Stat. 309; 31 U.S.C. 951.

**SOURCE:** 31 FR 13384, Oct. 15, 1966, unless otherwise noted

§ 105.1 Prompt referral.

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an except on from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with aggressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

§ 105.2 Current address of debtor.

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

§ 105.3 Credit data. --

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current

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credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

§ 105.4 Report of prior collection actions.

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

**Chapter II—Federal Claims Collection Standards**

**§ 105.7**

**§ 105.5 Preservation** of evidence.

Care **will** be taken to preserve all files, records and exhibits on **claims** referred or **to** be referred **to** the General Accounting Office, or to the Department of Justice for litigation.

**§ 105.6** Minimum amount of **referrals** to the Department of Justice.

**Agencies will not refer claims of less than 5600, exclusive of Interest** for litigation unless **(a)** referral is important to a significant enforcement policy or **(b)** the debtor has not only *the clear* ability to pay the claim **but** the Gov-

**ernment can** effectively enforce payment having due regard **to** the **exemptions** available to the debtor under State or Federal **Law** and **the** judicial remedies available **to** the **Government**.

(42 FR 38891, Aug. 1, 1977)

**§ 305.7 Referrals** to GAO.

Referrals of **claims** to the General Accounting Office **will** be in accordance with **instructions**, including **monetary limitations**, contained in the **General Accounting Office Policy and Procedures Manual** for the **Guidance** of Federal **Agencies**.