

Subject: CLAIMS COLLECTION PROCEDURES

- 4-70-00 Summary
- 4-70-10 What Debts Are Covered
- 4-70-20 What Debt Claims Are Not Covered; Exhaustion Requirement
- 4-70-30 How Debts Arise
- 4-70-40 Prevent Debt Collection Problems
- 4-70-50 Designate a Claims Collection Officer
- 4-70-60 How to Collect Debts
- 4-70-70 How to Compromise Claims
- 4-70-80 How to Suspend Collection Action
- 4-70-90 How to End Collection Action
- 4-70-100 How to Refer Claims to the General Accounting Office or to the Department of Justice
- 4-70-110 Delegation of Authority Required Under the Federal Claims Collection Act
- 4-70-120 Delegations of Authority by the Secretary Under the Federal Claims Collection Act
- 4-70-130 Further Delegations of Authority by Department Claims Officer
- Exhibit 4-70-A - Instructions for Reporting Uncollectible Claims to the General Accounting Office and the Department of Justice

4-50-00 SUMMARY

The provisions of this part implement for the Department and its principal operating components the Federal Claims Collection Standards issued by the General Accounting Office and the Department of Justice. Whether a debt exists is generally a program question to be determined under the law and policy applicable to the activity under which the debt arises. The procedures govern the way the Department collects a debt; how the Department compromises, suspends or terminates debt collection of \$20,000 or less (exclusive of interest) under written delegations of authority from the Secretary; and how a defaulted debt claim and an uncollectible claim over \$20,000 are referred to GAO and the Department of Justice for litigation. The instructions below apply unless otherwise specified in a statute, regulations, contract or agreement. Advice on how to implement the Act and these provisions is available from the Department Claims Officer and delegates (see 4-70-130).

4-70-10 WHAT DEBTS ARE COVERED

The procedures apply to a debt owing to the Government through this Department and its principal operating components in the form of money or property. The debtor may be an individual or corporation or another Government entity. The debt is one which remains due **after exhausting** all remedies available to the Government for **collection**, settlement or waiver under the specific statutes or regulations applicable to the programs in which the **debt** arises.

4-70-20 WHAT DEBT CLAIMS ARE NOT COVERED: EXHAUSTION REQUIREMENT

- A. The following types of debt claims are not covered by these procedures:
1. A claim arising from an **exception made** by the GAO in the account of an accountable officer, including a claim against the payee (GAO will provide guidance in such cases). Only **the** Comptroller General or his designee may compromise such **claim**.
 2. A **claim** related to fraud, **a** false claim, misrepresentation, or criminal activity. The claim should be referred promptly to the Office of the Inspector General, which may refer it to the Criminal Division of the Department of **Justice**. The Department of Justice will return the claim for collection, suspension or termination under this chapter if it determines that criminal action is not warranted.
- B. As a general rule, these standards should not be used until all statutory and other administrative procedures applicable to a particular debt are exhausted. For example:
1. Claims under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653; 28 CFR 43).
 2. Claims under the Waiver of Overpayment of Pay Act (5 U.S.C. 5584; 4 CFR 91-93; 5 U.S.C. 5514; HHS Personnel Manual Instructions 550-8 and 550-9).

3. Claims under the various statutes authorizing student loans **and** scholarships.
4. Claims **involved** in cases pending **before** the Contract Appeals Board or Grants Appeals Board (see 45 CFR 16). However, nothing precludes negotiation and settlement under these standards of claims pending before the Boards.

4-70-30 HOW DEBTS ARISE

A debt is any **property** or money owed to the Department. A debt arises when a **person** or organization such as a **Departmental** employee, a **person** with a student loan or fellowship, a grantee or **party** to a cooperative agreement (both referred to here as "**assistees**"), or a contractor, **receives** something of **value** from the Department and fails to fulfill the resulting obligation to the **Department**. Examples are: an **employee** who obtains travel allowance money and is not **entitled** to it, or doesn't use it as authorized, or has some left over; an **employee** who is erroneously overpaid and knows or should know that it is a mistake and has exhausted administrative remedies trying to obtain a waiver of the debt; an **assiste** which improperly obtains funds from more than one agency to perform identical research; an **assiste** which uses funds for **purposes** not **allowed** under the grant or cooperative agreement; an **assiste** which defaults in performing the research or other project for which it received assistance; and a contractor which fails to perform the services or supply materials according to specifications in the contract. Generally, the debt is disputed by the **debtor**, and there may be other procedures which must be completed before collection action can be initiated (see 4-70-20).

4-70-40 PREVENT DEBT COLLECTION PROBLEMS

- A. Each principal operating component should **prevent** collection problems. For example, to the extent feasible, before **approving** an initial application or renewing a contract, grant or agreement, the principal operating **component** should make sure the applicable regulations are **followed**; investigate the integrity and **responsibility** of the **assiste** or contractor; investigate the current financial soundness of the **recipient**; find out whether the **recipient** owes money to the Government (by

- certification where appropriate); check whether the recipient is in default on payment or performance; and require prospective awardees to disclose whether any present officers of the corporation were ever employed or connected in an official capacity with a corporation which defaulted on a debt to the Government.
- B. Each principal operating component may request that each prospective assistee or contractor furnish with its submission its employer identification number, the name of each corporate officer, his/her social security number, home and office addresses, as well as the name, current address, and social security number of each officer authorized to accept: service of process involving any legal action against the corporation. However, the principal operating component must by law advise the applicant that this information is relevant and necessary to accomplish the purposes of the Federal Claims Collection Act and that furnishing this information is voluntary (5 U.S.C. 552a(e); PL 93-579 §7).
- C. Each principal operating component shall promptly notify the Departmental Federal Assistance Financing Branch (of DFAPS) or other appropriate payments or finance office, when it learns of default, change of ownership, bankruptcy of the debtor, or has other reason to believe continued payments to the debtor would be contrary to good judgment.
- D. The principal operating component, its finance office or DFAPS should commence immediate collection action as outlined below. A debt owed by an employee, contractor or grantee should be reported to all offices and agencies which may be able to set off the debt against funds due to the debtor. If all reasonable efforts to collect or resolve the debt are not successful, referral to the Claims Collection Officer should not be delayed.

d-70-50 DESIGNATE A **CLAIMS** COLLECTION OFFICER

The head of each principal operating component should designate an officer to be responsible for the administrative collection of debts (the Claims Collection Officer (CCO)). The CCO shall take prompt and aggressive action to collect all debts.

4-70-63 HOW TO COLLECT DEBTS

- A. Do not delay collection efforts since delay often reduces the likelihood of collection. Collection procedures should not be overloaded with unnecessary internal clearance or review requirements.
- B. Send the first request for payment to the debtor telling the debtor how much is owed the Government, and the following:
1. The basis for the indebtedness, and the rules that apply.
 2. That payment is due within 30 days from the date of the initial request for payment. Thirty days notice generally is a reasonable time. A principal operating component may determine, however, that particular circumstances warrant earlier or later payment.
 3. That interest charges will be added starting on a specified date which is generally within 30 days from the date of the initial request for payment (see C below for percent of interest).
- C. Send no more than three progressively stronger demand letters, unless circumstances indicate this is useless (for example, where the debtor explicitly refuses to pay, or clearly cannot pay) and alternative remedies would better protect the Government's interest. Demand letters should be sent by certified mail, return receipt requested. A prompt response should be made to any communication from the debtor. Alternative remedies include promptly filing suit in the case of an imminent statutory bar (28 U.S.C. 2415); attaching property in case of imminent departure of debtor or removal of assets or dissolution of corporation; and filing a claim in bankruptcy. If alternative remedies are contemplated, contact your servicing division of the Office of General Counsel or the Department Claims Officer.
- D. Where feasible, the CCO will offset a debt against pay or compensation due the debtor from the same principal operating component or elsewhere in the Government. Examples of funds against which offset can be made are:

1. Current **pay** of an employee (with respect to travel expenses, overpayment of pay or benefits).
 2. Continuing entitlements to the **same** benefits originally overpaid.
 3. Civil service retirement annuities or contributions.
 4. Lump sum leave **payments**, severance pay of Federal **employees**.
 5. Amounts due indebted contractors and judgments obtained against the United **States**.
 6. Grant payments.
- E. if the principal operating component holds security or collateral, the **CCO** has several options:
1. **Where** there is a surety or insurance company, the **CCO** should demand payment from **that** company unless sale of **collateral** is expressly required 'by statute or contract.
 2. The **CCO** may also sell the collateral and apply it to the debt as provided in the security instrument unless the cost of sale is excessive compared to the value of the collateral or special circumstances require judicial foreclosure.
 3. Proceeds remaining after **payment** of the debt and the costs of collection must be paid over to the debtor.
- F. If a debtor cannot pay the debt in a single payment, the **CCO** may negotiate installment **payments**.
1. The **CCO** should obtain satisfactory evidence of the debtors inability to pay in a single payment. The agreement for installment payments should provide for repayment within the shortest period possible, generally not to exceed three years. All installment **payment plans** should **include** interest. If the payment plan exceeds six months, every effort should be made to reduce the agreement to writing signed by the debtor and obtain security.

2. Use an automated billing system for all payment plans where feasible.
 3. Apply installment payments first to accrued interest and then to principal. When an installment payment is past due, the entire debt should become due and payable, with interest.
- G. Repayment agreements should stipulate interest for late payments.
1. If a debt is to be paid in one lump sum, a late charge should be assessed at the current prevailing rate prescribed in Part 5 of the Treasury Fiscal Requirements Manual.
 2. Liability for interest or a late charge commences when the debtor is in default on payment. Generally, this is 30 days from the initial request for payment unless the debtor makes satisfactory arrangements to pay by the due date. If the debtor disputes the validity of the debt, the interest or late charge should be assessed pending resolution of the dispute. If the debtor was correct, appropriate adjustment should be made.
 3. If a debt is paid in installments, the interest rate should be the rate published in the Treasury Department's monthly "Schedule of Certified Interest Rates with Range of Maturities."

4-70-70 HOW TO COMPROMISE CLAIMS

- A. If the CCO finds that collection in full is unlikely, the CCO should try to settle the case. Claims may be compromised:
1. When there is a bona fide dispute as to the facts or the law. The amount accepted in compromise should fairly reflect the probability of full or partial recovery in the event of litigation based upon expected testimony of witnesses, the adequacy of evidence supporting the Government's claim and other practical considerations.

2. When the cost of further collection efforts or litigation is likely to exceed the difference between the proposed compromise amount and the full amount of the claim. This criterion carries greater weight when small claims are involved.
 3. When the debtor cannot pay the full amount within a reasonable time. In determining the debtor's inability to pay, the following factors, among others, may be considered:
 - a. Age and health of debtor.
 - b. Present and potential income.
 - c. Inheritance prospects.
 - d. Possibility that assets have been concealed or improperly transferred by the debtor.
 - e. Availability of assets or income. If the CCO's file does not contain reasonably up-to-date credit information as a basis for evaluating a compromise proposal, the CCC should try to obtain credit information from such sources as credit bureaus, a verified statement from the individual debtor and in the case of a corporate debtor, balance sheets and profit and loss statements.
- B. Discourage installment payments of a compromised amount. If installment payment is necessary based on reasonably current credit information, the CCO should enter into a compromise agreement which should provide that on default the full amount of the debt, less payments made, shall become due and payable with interest. Obtain security where possible.
- C. Where there is joint and several liability for a debt, the CCO shall collect the debt as quickly as possible without allocating the burden as between debtors. A compromise with one debtor shall neither release the remaining debtors, nor determine the amount required from the other debtors jointly and severally liable on the claim: .

4-70-80 HOW TO SUSPEND COLLECTION ACTION

- A. In the event that the whereabouts of the debtor or the debtor's assets are unknown, the CCO may need to suspend collection action. Diligent efforts should be pursued to locate the missing debtor. The following sources should be utilized: telephone directories, city directories, postmasters, drivers license records, automobile title and license records, state and local government agencies, District Directors of Internal Revenue, Social Security Administration, other Federal agencies, employees, relative, friends, and credit agency skip locator reports.
- B. The CCO should make sure all efforts listed above to collect or compromise a debt have been exhausted. Collection action may be suspended temporarily where the future prospects of the debtor to repay look good or where future offset is possible. Wherever feasible, the CCO should obtain written acknowledgement of the debt, a partial payment, or a judgment to forestall application of the statute of limitations which is generally six years. The CCO should develop a system to be sure that suspended claims will always be reviewed periodically.

d-70-90 HOW TO END COLLECTION ACTION

The official who has written delegation of authority to do so may terminate collection action on claims of \$20,000 or less when it becomes clear that one or more of the following circumstances is present:

- A. The Government, cannot collect any significant sum from the debtor and will not in the future be able to collect from the debtor, taking into account the judicial remedies available, the debtor's present and future prospects, the debtor's exemptions under State and Federal law, the age and health of the debtor, inheritance prospects present and potential income and possibly concealed or illegally transferred assets.
- B. The debt is discharged in bankruptcy.

- C. The debtor has died. An effort should be made to ascertain whether the decedent left an estate, through inquiries to relatives, representatives, or clerks of probate courts. Debts should not be reported, regardless of amount, when positive evidence shows the decedent left no estate. If decedent left an estate GAO will file the formal proof of claim. (See 70.1, **GAO Claims Manual** for details on how to report to GAO.)
- D. The corporate debtor has **been dissolved** and there are no corporate assets or security and the whereabouts of the officers and directors are unknown.
- E. The debt is barred by the statutes of limitations (28 U.S.C. 2415, 2416) and there has been no partial payment or written **acknowledgment** of the debt and no prospect for collecting by offset.
- F. The cost of collecting will exceed recovery.
- G. The claim is legally without merit or cannot be substantiated by evidence.

4-70-100 HOW TO REFER CLAIMS TO THE GENERAL ACCOUNTING OFFICE OR TO THE DEPARTMENT OF JUSTICE

- A. The **CCO** shall refer a debt **claim** which is potentially collectible through legal action and which cannot be either collected after aggressive **collection** efforts, temporarily suspended, or terminated to **the General Accounting Office** or to the **Department** of Justice. The claim must be referred promptly. Generally no later than four months from the past due date. The **CCO** will clear such referral with **the Division** of the Office of the General **Counsel** serving that principal operating component.
- B. **When** you refer claims to GAO, GAO requires certain specific information, set forth in **Exhibit 4-70-A**.
- C. **The** General Accounting Office does not accept a referred claim for less than \$600 exclusive of interest **unless** a significant policy is involved or the debtor clearly has ability to pay **and** no reasonable basis for refusing to pay.

- D. The CCO shall **preserve** all records on the referred claim until the case is closed.

4-70-110 DELEGATION OF AUTHORITY REQUIRED UNDER THE
FEDERAL CLAIMS COLLECTION ACT

Only one who has **written delegated authority** (see §120 and §130) may approve a compromise, suspension, or termination of a claim and **then** only if the **claim** is \$20,000 or less. Resolution of claims over \$20,000 requires the concurrence of CAO.

4-70-120 DELEGATION OF AUTHORITY BY THE SECRETARY UNDER
THE FEDERAL CLAIMS COLLECTION ACT

- A. The Secretary has delegated to the Department Claims Officer, who is the Assistant General Counsel, Business and Administrative Law Division, the authority to perform the duties and exercise the **authority** vested in the Secretary by the Federal Claims Collection Act of 1965, 31 U.S.C. 951-953, as amended, to collect claims in any amount; to compromise, suspend or terminate collection action in claims of \$20,000 or less, **exclusive** of interest; and to issue rules and procedures for investigating, reporting and otherwise handling claims throughout the Department. (31 FR 16375, 12/14/66). The Department Claims Officer has **redelegated** this authority. As explained under B and C, there is a concurrent **delegation** of such authority **from the Secretary** to two principal operating components.
- B. The Secretary has delegated to the Commissioner of Social Security the authority vested in the Secretary under **the Federal Claims Collection Act** insofar as such authority relates to the mission of the **Social Administration** (33 FR 5836, 5843, 4/16/63).
- C. The Secretary has delegated to the **Administrator** of Health Care Financing Administration the authority vested in the Secretary under the Federal Claims Collection Act insofar as such authority relates to the mission of **the Health Care Financing Administration** (42 FR 57352, 11/2/77; 42 CFR 405.374).

4-70-130 FURTHER DELEGATION OF AUTHORITY BY THE DEPARTMENT
CLAIMS OFFICER

The authority of the Department Claims Officer is delegated to the following officials within the scope identified:

- A. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- B. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- C. The Regional Attorneys (Region-wide) except for claims relating to Titles II and XVIII of the Social Security Administration and the Public Health Service.
- D. The Assistant Secretary for Health, insofar as such authority relates to the mission of the Public Health Service.

**Appendix A - INSTRUCTIONS FOR REPORTING UNCOLLECTIBLE DEBT
CLAIMS TO GAO AND THE DEPARTMENT OF JUSTICE**

A. Contents of Administrative Reports

1. The debtor's full name and current address. If unknown, prior known addresses and a statement of the steps taken to locate the debtor.
2. The debtor's identifying number, if known.
3. The debtor's date of birth and social security number, if known. For business firms, the employer's identification number which corresponds to the social security number of an individual, shall be shown if obtainable.
4. All evidence necessary to support the Government's claim: a complete statement of relevant facts, including the date the debt first accrued, the date of partial payments, copies of correspondence which might acknowledge the debt, in order to determine whether the statute of limitation applies (28 U.S.C. 2415); computations explaining how the amount owed was arrived at; citations to applicable laws and regulations; copies of correspondence in which the debtor has questioned his liability and copies of the Government's responses.
5. If the debtor is currently employed by the Government or serving in the uniformed services, show the actions taken to recover the amount through the agency in which the debtor is employed or serving and the results.
6. A summary of actions taken to collect or compromise the indebtedness.
7. Reasonably current credit information obtained within the last six months.

B. Where Administrative Reports Should be Sent to GAO

Reports of administratively uncollectible debts shall be mailed to the following address: Claims Division, U.S. General Accounting Office, Washington, D.C. 20548.

HHS Exhibit 4-70-A,
General Administration Manual
HHS Transmittal 81.01 (2/6/81)

C. Where Administrative Reports Should be Sent to **Department** of Justice

When authorized to send reports of **administratively** uncollectible debts to the Department of Justice, they must be sent by the appropriate Office of the **General Counsel** to the Commercial Litigation Branch, **Safeway Building, 521** 12th Street, N.W., Washington, D.C. 20530.