

§ 901.4

31 CFR Ch. IX (7-1-08 Edition)

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 opportuni-

ties 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 guarantees, 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