

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which 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.

### Subpart 1261.5—Administrative Offset of Claims

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

#### § 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by subpart 1261.6, *infra*. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

#### § 1261.501 Definition.

*Administrative offset*—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

#### § 1261.502 Notification procedures.

(a) Before collecting any claims through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;