

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declaration submitted by NDEP may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: November 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 62.7130 is amended by adding paragraph (c) to read as follows:

§ 62.7130 Identification of plan.

* * * * *

(c) The Nevada Division of Environmental Protection submitted on October 16, 2003, a letter certifying that there are no existing commercial/ industrial solid waste incineration units in its jurisdiction that are subject to 40 CFR part 60, subpart DDDD.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–55

[GSPMR Amendment 2003–01; GSPMR Case 2003–105–1]

RIN 3090–AH84

General Services Administration Property Management Regulations; Collection of Claims Owed the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending and reissuing its regulations concerning the procedures used to collect debts owed to GSA by incorporating applicable provisions as required by the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards.

DATES: Effective date: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, Office of the Chief Financial Officer Room 3121, 1800 F Street, NW., telephone (202) 501–2029; electronic mail mike.kosar@gsa.gov. Please cite GSPMR Amendment 2003–01, GSPMR case 2003–105–1.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending and reissuing its debt collection procedures to incorporate changes presented in the amended Federal Claims Collection Standards (FCCS) issued jointly on November 22, 2000, by the Department of the Treasury (Treasury) and the Department of Justice (DOJ), under the Debt Collection Improvement Act of 1996 (DCIA). GSA currently has rules for collecting unpaid debts through three offset methods: administrative, salary, and tax refund. These rules were adopted with then existing provisions of the Debt Collection Act of 1982, the FCCS of 1966, and other authorities governing the collection of Federal debts.

Discussion of Comments. GSA received no comments in response to its proposed rule concerning Collection of Claims Owed the United States published in the **Federal Register** at 68 FR 41274, July 11, 2003.

B. Executive Order 12866

GSA has determined this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105-55

Claims owed the United States, Antitrust, Fraud, Taxes, Interagency claims, Offset, Payments, Administrative practice and procedure, Credit bureaus, Compromise, Suspension, Termination and discharge of debts, Hearing and appeals procedures, Debts.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

CHAPTER 105—[AMENDED]

■ 1. Revise part 105-55 to read as follows:

PART 105-55—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

- 105-55.001 Prescription of standards.
- 105-55.002 Definitions.
- 105-55.003 Antitrust, fraud, tax, interagency claims, and claims over \$100,000 excluded.
- 105-55.004 Compromise, waiver, or disposition under other statutes not precluded.
- 105-55.005 Form of payment.
- 105-55.006 Subdivision of claims not authorized.
- 105-55.007 Required administrative proceedings.
- 105-55.008 No private rights created.
- 105-55.009 Aggressive agency collection activity.
- 105-55.010 Demand for payment.
- 105-55.011 Collection by administrative offset.
- 105-55.012 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 105-55.013 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
- 105-55.014 Liquidation of collateral.
- 105-55.015 Collection in installments.
- 105-55.016 Interest, penalties, and administrative costs.
- 105-55.017 Use and disclosure of mailing addresses.
- 105-55.018 Exemptions.
- 105-55.019 Compromise of claims.
- 105-55.020 Bases for compromise.
- 105-55.021 Enforcement policy.
- 105-55.022 Joint and several liability.
- 105-55.023 Further review of compromise offers.
- 105-55.024 Consideration of tax consequences to the Government.
- 105-55.025 Mutual releases of the debtor and the Government.
- 105-55.026 Suspending or terminating collection activity.
- 105-55.027 Suspension of collection activity.

- 105-55.028 Termination of collection activity.
- 105-55.029 Exception to termination.
- 105-55.030 Discharge of indebtedness; reporting requirements.
- 105-55.031 Prompt referral to the Department of Justice.
- 105-55.032 Claims Collection Litigation Report.
- 105-55.033 Preservation of evidence.
- 105-55.034 Minimum amount of referrals to the Department of Justice.

Authority: 5 U.S.C. 552-553; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3719, 3720B, 3720D; 31 CFR parts 900-904.

§ 105-55.001 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States issued regulations for collecting debts owed the United States under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this part prescribe standards for the General Services Administration (GSA) use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific GSA statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The regulations in this part also prescribe standards for referring debts to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables," the Department of the Treasury's "Managing Federal Receivables," and other publications concerning debt collection and debt management.

(b) GSA is not limited to the remedies contained in this part and will use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Chapter 37 of Title 31, United States Code; the Debt Collection Act of 1982, 5 U.S.C. 5514; the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, or other relevant statutes. The regulations in this part are not intended to impair GSA's common law rights to collect debts.

(c) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

§ 105-55.002 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Compromise* means the reduction of a debt as provided in §§ 105-55.019 and 105-55.020.

(c) *Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(d) *Debtor* means an individual, organization, association, corporation, partnership, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(e) *Delinquent or past-due non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) For the purposes of the standards in this part, unless otherwise stated, the term *Administrator* refers to the Administrator of General Services or the Administrator's delegate.

(g) For the purposes of the standards in this part, the terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) For the purposes of the standards in this part, unless otherwise stated, the terms *GSA* and *Agency* are synonymous and interchangeable.

(i) For the purposes of the standards in this part, unless otherwise stated, *Secretary* means the Secretary of the Treasury or the Secretary's delegate.

(j) For the standards in this part, Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

(k) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(l) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals.

(m) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms *includes* and *including* do not exclude matters not listed but do include matters that are in the same general class.

(n) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(o) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(p) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

(q) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105–55.003 Antitrust, fraud, tax, interagency claims, and claims over \$100,000 excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the

antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. The standards of this part relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice (DOJ) in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the General Services Administration (GSA) will promptly refer the case to the GSA Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to DOJ for action. At its discretion, DOJ may return the claim to GSA for further handling in accordance with the standards of this part.

(b) This part does not apply to tax debts.

(c) This part does not apply to claims between GSA and other Federal agencies.

(d) This part does not apply to claims over \$100,000.

§ 105–55.004 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the General Services Administration (GSA) disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this part. *See, e.g.,* the Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653, and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations specifically applicable to claims collection activities of GSA generally take precedence.

§ 105–55.005 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the General Services Administration may demand the return of specific property or the performance of specific services.

§ 105–55.006 Subdivision of claims not authorized.

Debts will not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than \$100,000 (excluding interest, penalties, and administrative

costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension or termination of collection activity.

§ 105–55.007 Required administrative proceedings.

The General Services Administration is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 105–55.008 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of the General Services Administration to comply with any of the provisions of this part be available to any debtor as a defense.

§ 105–55.009 Aggressive agency collection activity.

(a) The General Services Administration (GSA) will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, GSA. Collection activities will be undertaken promptly, including letters, telephone calls, electronic mail (e-mail), and Internet inquiries, with follow-up action taken as necessary.

(b) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), will be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) GSA will cooperate with other agencies in their debt collection activities.

(d) GSA will consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) GSA will transfer to the Secretary any debt that has been delinquent for a

period of 180 days or more so the Secretary may take appropriate action to collect the debt or terminate collection action. See 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that—

- (1) Is in litigation or foreclosure;
 - (2) Will be disposed of under an approved asset sale program;
 - (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;
 - (4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);
 - (5) Will be collected under internal offset procedures within three years after the debt first became delinquent;
 - (6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. GSA may request the Secretary to exempt specific classes of debts;
 - (7) Is in bankruptcy (see § 105–55.010(h));
 - (8) Involves a deceased debtor;
 - (9) Is owed to GSA by a foreign government; or
 - (10) Is in an administrative appeals process, until the process is complete and the amount due is set.
- (f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and will be added to the debt as an administrative cost (see § 105–55.016).

§ 105–55.010 Demand for payment.

(a) Written demand, as described in paragraph (b) of this section, will be made promptly upon a debtor of the United States in terms informing the debtor of the consequences of failing to cooperate with the General Services Administration (GSA) to resolve the debt. The specific content, timing, and number of demand letters (usually no more than three, thirty days apart) will depend upon the type and amount of the debt and the debtor's response, if any, to GSA's letters, telephone calls, electronic mail (e-mail) or Internet inquiries. In determining the timing of the demand letter(s), GSA will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 105–55.031. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions

under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor—

- (1) The basis and the amount of the indebtedness and the rights, if any, the debtor may have to seek review within GSA (see § 105–55.011(e));
- (2) The applicable standards for imposing any interest, penalties, or administrative costs (see § 105–55.016);
- (3) The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally will not be more than 30 days from the date the demand letter is mailed or hand-delivered; and
- (4) The name, address, and phone number of a contact person or office within GSA.

(c) GSA will exercise care to ensure that demand letters are mailed or hand-delivered on the same day they are dated. For the purposes of written demand, notification by electronic mail (e-mail) and/or Internet delivery is considered a form of written demand notice. There is no prescribed format for demand letters. GSA will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) GSA may include in demand letters such items as the willingness to discuss alternative methods of payment; Agency policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; Agency remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days will be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) GSA will respond promptly to communications from debtors, within 30 days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if GSA determines to pursue, or is required to pursue, offset, the procedures applicable to offset will be followed (see § 105–55.011). The

availability of funds or money for debt satisfaction by offset and GSA's determination to pursue collection by offset will release the Agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, GSA will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp. pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document.

(h) When GSA learns a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Agency will ascertain the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Agency determines the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor will stop immediately.

(1) A proof of claim will be filed in most cases with the bankruptcy court or the Trustee. GSA will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If GSA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, GSA will determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the Agency until relief from the automatic stay can be obtained from the bankruptcy court. GSA also will determine whether recoupment is available.

§ 105–55.011 Collection by administrative offset.

(a) *Scope.* (1) The term “administrative offset” has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to—
(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code

(see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that 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.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the General Services Administration's (GSA's) right to collect the debt first accrued, unless facts material to GSA's right to collect the debt were not known and could not reasonably have been known by the official or officials of GSA who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, GSA will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) GSA is required to refer past due, legally enforceable non-tax debts that are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts that are less than 180 days delinquent also may be referred to the Secretary for this purpose. See paragraph (b)(5) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and

disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of GSA as the creditor agency requesting the offset, and a contact point within GSA who will respond to questions regarding the offset.

(4)(i) Offsets may be initiated only after the debtor—

(A) Has been sent written notice of the type and amount of the debt, the intention of GSA to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716(c)(7); and

(B) The debtor has been given—

(1) The opportunity to inspect and copy Agency records related to the debt;

(2) The opportunity for a review within GSA of the determination of indebtedness (see paragraph (e) of this section); and

(3) The opportunity to make a written agreement to repay the debt.

(ii) The procedures set forth in paragraph (b)(4)(i) of this section may be omitted when—

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, GSA first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, GSA will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the Government.

(iii) When GSA previously has given a debtor any of the required notice and review opportunities with respect to a

particular debt (see, e.g., § 105–55.010), the Agency need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When referring delinquent debts to the Secretary, GSA will certify, in a form acceptable to the Secretary, that—

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) GSA has complied with all due process requirements under 31 U.S.C. 3716(a) and Agency regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the Administrator. Also, the Secretary may exempt other classes of payments from centralized offset upon the written request of the Administrator.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from GSA that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that GSA conducts, at the Agency's discretion, internally or in cooperation with another agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, GSA may make a

request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for GSA to request the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Such offsets will occur only after—

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section; and

(ii) The payment authorizing agency has received written certification from GSA that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that GSA has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies will comply with offset requests by GSA to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, GSA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, GSA may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) A debtor may seek review of a debt by sending a signed and dated petition for review to the official named in the demand letter. A copy of the petition must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (e)(6) of this section.

(2) For purposes of this section, whenever GSA is required to afford a debtor a review within the Agency, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the hearing official 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.

(3) Witnesses will be asked to testify under oath or affirmation, and a written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701–706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(4) In those cases when an oral hearing is not required by this section, the hearing official will accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

(5) Hearings will be conducted by a Board Judge of the GSBCA. GSA must provide proof that a valid non-tax debt exists, and the debtor must provide evidence that no debt exists or that the amount of the debt is incorrect.

(6) If an oral hearing is provided, the debtor may choose to have it conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or may choose a hearing by telephone. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(7) If the debtor is an employee of GSA, the employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(8) A written decision will be issued by the hearing official no later than 60 days from the date the petition for review is received by GSA. The decision will state the—

(i) Facts supporting the nature and origin of the debt;

(ii) Hearing officials analysis, findings, and conclusions as to the debtor's and/or GSA's grounds;

(iii) Amount and validity of the debt; and

(iv) Repayment schedule, if applicable.

(9) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(f) *Waiver requirements.* (1) Under certain circumstances, a waiver of a claim against an employee of GSA arising out of an erroneous payment of pay, allowances, travel, transportation, or relocation expenses and allowances may be granted in whole or in part.

(2) GSA procedures for waiving a claim of erroneous payment of pay and allowances can be found in GSA Order CFO 4200.1, "Waiver of Claims for Overpayment of Pay and Allowances".

(3) GSA will follow the procedures of 5 U.S.C. 5584 when considering a request for waiver of erroneous payment of travel, transportation, or relocation expenses and allowances.

§ 105–55.012 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, the General Services Administration (GSA) may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts provided that—

(1) GSA 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 GSA 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) GSA will use Governmentwide debt collection contracts to obtain debt collection services provided by private collection contractors. However, GSA 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) GSA may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(b), or as otherwise permitted by law.

(d) GSA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) GSA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(b), 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.

§ 105-55.013 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the Administrator, the General Services Administration (GSA) will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a non-tax 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 re-delegated only to the Deputy Chief Financial Officer of GSA. GSA 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.

(b) In non-bankruptcy cases, GSA, when seeking the collection of statutory penalties, forfeitures, or other types of claims, will 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 GSA regulations or governing procedures. The debtor will be advised in GSA's written demand for payment of the Agency's ability to suspend or revoke licenses, permits, or privileges. If GSA makes, guarantees, insures, acquires, or participates in loans, the Agency will 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 will be reported to the Treasury. The Treasury will forward notification to all interested agencies 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 may extend to GSA programs or activities administered by the states on behalf of GSA, to the extent they affect GSA's ability to collect money or funds owed by debtors.

(d) In bankruptcy cases, before advising the debtor of GSA's intention to suspend or revoke licenses, permits, or privileges, the Agency will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 105-55.014 Liquidation of collateral.

(a) The General Services Administration (GSA) will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When GSA learns a bankruptcy petition has been filed with respect to a debtor, the Agency will ascertain the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 105-55.015 Collection in installments.

(a) Whenever feasible, the General Services Administration (GSA) will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, GSA may accept payment in regular installments. GSA may obtain financial statements from debtors who represent they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 105-55.020(g)). When GSA agrees to accept payments in regular installments, a legally enforceable written agreement

from the debtor will be obtained specifying all of the terms of the arrangement and containing a provision accelerating the debt in the event of default. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is paid.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in three years or less, unless circumstances warrant a longer period.

(c) Security for deferred payments may be obtained in appropriate cases. GSA may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Agency's option.

§ 105-55.016 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, the General Services Administration (GSA) will charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. GSA will send by U.S. mail, overnight delivery service, or hand-delivery a written notice to the debtor, at the debtor's most recent address available to the Agency, explaining the Agency's requirements concerning these charges, except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) GSA will charge interest on debts owed the United States as follows:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged will be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717(a)(1). Pursuant to 31 U.S.C. 3717, GSA may charge a higher rate of interest if it is reasonably determined that a higher rate is necessary to protect the rights of the United States. GSA will document the reason(s) for a

determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, GSA may require payment of interest at a new rate that reflects the Current Value of Funds Rate (CVFR) at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) GSA will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the Agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, GSA will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) GSA may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt" includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. GSA will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by GSA will be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) GSA will waive the collection of interest, penalty and administrative charges imposed pursuant to this

section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. GSA may extend this 30-day period on a case-by-case basis. In addition, GSA may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the Agency determines that collection of these charges resulted from Agency error, is against equity and good conscience, or is not in the best interest of the United States.

(h) Unless a statute or regulation specifically prohibits collection, interest, penalties and administrative costs will continue to accrue for periods during which collection activity has been suspended pending Agency review or waiver consideration.

(i) GSA is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 105–55.017 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or other authority, the General Services Administration (GSA) may send a request to the Secretary (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) GSA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 105–55.018 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent

they are authorized under some other statute or the common law.

(b) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 will be determined, collected, compromised, terminated or settled in accordance with regulation published under the authority of 31 U.S.C. 3726 (*see* 41 CFR part 101–41, administered by the Director, Office of Transportation Audits) and are otherwise exempted from this part.

§ 105–55.019 Compromise of claims.

(a) The standards set forth in this section apply to the compromise of debts pursuant to 31 U.S.C. 3711. The General Services Administration (GSA) may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General. The Administrator may designate other GSA officials to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. GSA will evaluate the compromise offer, using the factors set forth in § 105–55.020. If an offer to compromise any debt in excess of \$100,000 is acceptable to the Agency, GSA will refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if GSA rejects a compromise offer.

§ 105–55.020 Bases for compromise.

(a) The General Services Administration (GSA) may compromise a debt if the full amount cannot be collected because—

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information.

(2) GSA is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(3) The cost of collecting the debt does not justify the enforced collection of the full amount.

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, GSA will consider relevant factors such as the following:

- (1) Age and health of the debtor.
- (2) Present and potential income.
- (3) Inheritance prospects.

(4) The possibility that assets have been concealed or improperly transferred by the debtor.

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) GSA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. GSA will consider the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. GSA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant 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 because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases will fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, GSA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412 that may be imposed against the Government if it is unsuccessful in litigation.

(e) GSA may compromise a debt if the cost of collecting the debt 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, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collection justifies enforced collection

of the full amount, GSA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) GSA generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, GSA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, GSA will obtain security for repayment in the manner set forth in § 105-55.015.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, GSA may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. GSA also may obtain credit reports or other financial information to assess compromise offers. GSA may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 105-55.021 Enforcement policy.

Pursuant to this section, the General Services Administration may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the Agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the Agency's acceptance of the sum to be agreed upon.

§ 105-55.022 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the General Services Administration (GSA) may pursue collection activity against all debtors, as appropriate. GSA will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) GSA will ensure that a compromise agreement with one debtor does not release the Agency's claim against the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the

amount that will be required from other debtors jointly and severally liable on the claim.

§ 105-55.023 Further review of compromise offers.

If the General Services Administration (GSA) is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice (DOJ), using a Claims Collection Litigation Report accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to GSA with instructions or advice.

§ 105-55.024 Consideration of tax consequences to the Government.

In negotiating a compromise, the General Services Administration (GSA) may consider the tax consequences to the Government. In particular, GSA may consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 105-55.030.

§ 105-55.025 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the General Services Administration may be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

§ 105-55.026 Suspending or terminating collection activity.

(a) The standards set forth in §§ 105-55.027 and 105-55.028 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the

Department of Justice (DOJ) for litigation, the General Services Administration (GSA) may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, the Agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If GSA believes suspension or termination of any debt in excess of \$100,000 may be appropriate, the Agency will refer the debt to the Civil Division or other appropriate litigating division in DOJ, using the Claims Collection Litigation Report. The referral will specify the reasons for the Agency's recommendation. If, prior to referral to DOJ, GSA determines a debt is plainly erroneous or clearly without legal merit, the Agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 105-55.027 Suspension of collection activity.

(a) The General Services Administration (GSA) may suspend collection activity on a debt when—

- (1) The Agency cannot locate the debtor;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, GSA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and—

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) GSA will suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the

debt if the statute under which the request is sought prohibits the Agency from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, GSA will use discretion, on a case-by-case basis, to suspend collection. Further, GSA ordinarily will suspend collection action upon a request for waiver or review if the Agency is prohibited by statute or regulation from issuing a refund of amounts collected prior to Agency consideration of the debtor's request. However, GSA will not suspend collection when the Agency determines the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When GSA learns a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt will be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Agency can clearly establish the automatic stay has been lifted or is no longer in effect. GSA will, if legally permitted, take the necessary legal steps to ensure no funds or money are paid by the Agency to the debtor until relief from the automatic stay is obtained.

§ 105-55.028 Termination of collection activity.

(a) The General Services Administration (GSA) may terminate collection activity when—

- (1) The Agency is unable to collect any substantial amount through its own efforts or through the efforts of others;
- (2) The Agency is unable to locate the debtor;
- (3) Costs of collection are anticipated to exceed the amount recoverable;
- (4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
- (5) The debt cannot be substantiated; or
- (6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, GSA will pursue all appropriate means of collection and determine, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude GSA from retaining a record of the account for purposes of—

- (1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;
- (2) Pursuing collection at a subsequent date in the event there is a

change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants of loans and loan guaranties, licenses, permits, or privileges for prior indebtedness.

(c) Generally, GSA will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. GSA may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of GSA that it is a known creditor of a debtor may survive a discharge if the Agency did not receive formal notice of the proceedings.

§ 105-55.029 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the General Services Administration may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 105-55.030 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the General Services Administration (GSA) will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When GSA discharges a debt in full or in part, further collection action is prohibited. Therefore, GSA will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, GSA will terminate debt collection action.

(b) Section 3711(i), Title 31, United States Code, requires GSA to sell a delinquent non-tax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), GSA may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of a debt of more than \$600, GSA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. GSA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the Agency's behalf.

(d) When discharging a debt, GSA will request the GSA Office of General Counsel to release any liens of record securing the debt.

§ 105-55.031 Prompt referral to the Department of Justice.

(a) The General Services Administration (GSA) will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 105-55.009 and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 105-55.027 and 105-55.028. GSA may refer those debts arising out of activities of, or referred or transferred for collection services to, the Agency. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, will be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, will be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report instructions. Debts will be referred as early as possible, consistent with aggressive GSA collection activity and the observance of the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. GSA will make every effort to refer delinquent debts to DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, GSA will make every effort to refer these

delinquent debts to DOJ for litigation within one year from the date the loan was presented to the Agency for payment or re-insurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. GSA, as the referring agency, will immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. GSA will advise DOJ of the collection activities which have been utilized to date, and their result. GSA will refrain from having any contact with the debtor and will direct all debtor inquiries concerning the debt to DOJ, except as otherwise agreed between GSA and DOJ. GSA will immediately notify DOJ of any payments credited by the Agency to the debtor's account after referral of a debt under this section. DOJ will notify GSA of any payments it receives from the debtor.

§ 105-55.032 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice (DOJ), the General Services Administration (GSA) will complete the Claims Collection Litigation Report (CCLR) (see § 105-55.019(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. GSA will complete all sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) GSA will indicate clearly on the CCLR the actions DOJ should take with respect to the referred claim. The CCLR permits the Agency to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) GSA also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate Agency collection activity.

§ 105-55.033 Preservation of evidence.

The General Services Administration (GSA) will take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove their claims in court. GSA ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring their claims to DOJ for litigation. GSA will

provide originals of such documents immediately upon request by DOJ.

§ 105-55.034 Minimum amount of referrals to the Department of Justice.

(a) The General Services Administration (GSA) will not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) will notify GSA if the Attorney General changes this minimum amount.

(b) GSA will not refer claims of less than the minimum amount unless—

(1) Litigation to collect such smaller claims is important to ensure compliance with the Agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to GSA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) GSA will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in DOJ prior to referring claims valued at less than the minimum amount.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-56

[GSPMR Amendment 2003-02; GSPMR Case 2003-105-3]

RIN 3090-AH86

Salary Offset for Indebtedness of Federal Employees to the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the salary offset procedures used to collect debts that are owed to the United States by Federal employees. The change conforms GSA regulations to the legislative changes enacted in the Debt