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Part II

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**31 CFR Part 285
Transfer of Debts to Treasury for
Collection; Final Rule**

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AA68

Transfer of Debts to Treasury for Collection

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule; adoption of interim rule with changes.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) requires Federal agencies to transfer any nontax debt that is over 180 days delinquent to the Department of the Treasury for debt collection action. This is known as "cross-servicing." On April 2, 1998, the Financial Management Service (FMS) published an interim rule, with request for comments, which established the procedures and criteria for transferring delinquent debt to the Department of the Treasury for cross-servicing, explained the statutory exceptions to this requirement, and established standards by which the Secretary of the Treasury will determine whether to grant exemptions. The interim rule also required that agencies refer debts to private collection contractors and to debt collection centers in accordance with procedures established by the FMS. This final rule adopts the interim rule, with changes, and addresses issues raised in the comments received in response to the interim rule. In addition, this rule includes a technical amendment to the final rule published on May 6, 1998 concerning administrative wage garnishment.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6859; or James J. Regan, Attorney-Advisor, at (202) 874-6680. A copy of this rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov/debt>.

SUPPLEMENTARY INFORMATION:

Background

Section 31001(m)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (1996), codified at 31 U.S.C. 3711(g), requires Federal agencies to transfer to the Secretary of the Treasury any nontax debt that has been delinquent for a period of 180 days, subject to certain exemptions. This

centralized collection of government-wide debt is known as "cross-servicing." Under the DCIA, the Secretary is authorized to prescribe regulations to carry out this requirement. Additionally, the DCIA authorizes the Secretary to designate other Federal agencies as debt collection centers, and to maintain a schedule of private collection contractors eligible for referral of debts owed to the United States.

On April 2, 1998, the Financial Management Service (FMS), a bureau of the Department of the Treasury responsible for promulgating the regulations governing this and other provisions of the DCIA, issued an interim rule, with a request for comments, governing the transfer of debts to Treasury for collection (63 FR 16354).

Summary of Comments

FMS received comments from five (5) Federal agencies (executive departments). Following is a discussion of the substantive issues raised in the comments.

Relationship Between Cross-Servicing and Administrative Offset

Several of the commenters failed to differentiate between (1) the requirement that agencies transfer debts for general collection purposes (referred to as "cross-servicing") under this rule and (2) the requirement that agencies notify Treasury of delinquent debts for the limited purpose of administrative offset.

The DCIA includes separate provisions governing the requirements that agencies (1) transfer delinquent debts to Treasury for general collection purposes (cross-servicing) in accordance with 31 U.S.C. 3711(g)(1), and (2) notify Treasury of delinquent debts for the purpose of administrative offset in accordance with 31 U.S.C. 3716(c)(6). Section 3711(g)(1) requires an agency to transfer to Treasury all collection activity for a given debt. Under section 3711(g), Treasury will use all appropriate debt collection tools to collect the debt including referral to a designated debt collection center or private collection agency and administrative offset. Once a debt has been transferred to Treasury the creditor agency must cease all collection activity related to that debt. This rule specifies when creditor agencies are required to transfer debts and when debts are exempt from the general transfer requirement.

In contrast, administrative offset is one of many debt collection tools available to Federal agencies for the

collection of delinquent debt. Under section 3716(c)(6), creditor agencies are required to notify Treasury of debts that are over 180 days delinquent for purposes of administrative offset. As a practical matter, agencies are required to notify Treasury of such debts for administrative offset only when a debt has not been transferred to Treasury pursuant to section 3711(g)(1), i.e., when a debt is exempt from transfer to Treasury under section 3711(g)(1) and this rule. Since offset is one of the collection tools used by Treasury for all eligible debts referred to Treasury pursuant to section 3711(g)(1), referral of a debt to Treasury for cross-servicing also satisfies the requirement under section 3716(c)(6). With respect to debts that are not referred to Treasury pursuant to section 3711(g)(1), creditor agencies are required to continue to collect the delinquent debts using all appropriate debt collection tools, including administrative offset. Rules governing the use of administrative offset are being published in separate regulations in this part, and, as a consequence, questions regarding administrative offset are not addressed in this rule.

Section 285.12(a)—Definitions

In response to a comment by one agency, a definition for the term "debt collection center" was moved to section 285.12(a) from section 285.12(f) of the interim rule.

Section 285.12(c)—Mandatory Transfer of Debts to FMS

FMS received several comments regarding the mandatory transfer of debts and the use of designated debt collection centers (DCCs) and private collection agencies (PCAs). In particular, the comments related to whether, and when, agencies may refer debts directly to DCCs and PCAs, and whether the debts must be referred to such entities through FMS.

Section 285.12(c) applies only to debts that are more than 180 days delinquent. Therefore, agencies are not required to refer debts to FMS during the initial 180 days of delinquency (the pre-180 day period). During the pre-180 day period agencies should take all appropriate actions to collect delinquent debts, including referring such debts to DCCs and PCAs. Agencies may, with the consent of FMS, refer debts directly to DCCs during the pre-180 day period. Similarly, agencies may refer debts to PCAs during the pre-180 day period either pursuant to a contract entered into by the agency directly with a PCA, or by referring the debts to FMS for referral to PCAs under existing FMS

contracts (a process known as "pass-through"). Unlike when debts are transferred to Treasury as required by section 3711(g)(1), FMS takes no collection action when debts are referred to FMS for pass-through, other than referring the debts to a PCA. The pass-through process is necessary to allow FMS to assess and monitor fully the performance of its PCA contractors. FMS will provide additional procedural guidance to agencies regarding use of the "pass-through" referral process.

Another agency suggested that section 285.12(c)(3) be clarified with respect to the transfer of debts that are under appeal. Specifically, the agency asked FMS to define whether the 180 day period begins to run on the date the debt was originally due prior to the filing of the appeal, or the date of the decision of the reviewing official at which time the amount of the debt is made final. Alternatively, the agency suggested that the regulation be revised to allow agencies 60 days, following the date of the appeal decision, to collect a debt prior to referring amounts to Treasury for cross-servicing.

FMS agrees that immediate transfer of a debt to FMS following a decision on an appeal might, in some cases, be impractical. Therefore, section 285.12(c)(3) has been revised to allow agencies up to 30 days following a decision on an appeal to transfer debts over 180 days delinquent to FMS. A 30 day period provides debtors with an opportunity to pay the debt or to enter into a repayment plan with the creditor agency before further collection action is taken. Debts should be transferred to FMS immediately following a decision on an appeal when the agency determines that it is unlikely that the debtor will pay or enter into a repayment plan within the 30 day period.

In section 285.12(c)(1) of the final rule, FMS incorporated a suggestion by one agency that the mandatory requirement to transfer debts be limited to debts having a balance of more than \$25. The commenter suggested that transferring debts having a balance of less than \$25 would not be cost-effective. Under this final rule, agencies may, after consulting with FMS, transfer debts in amounts less than \$25 when failure to transfer such debts to FMS for collection would weaken the creditor agency's ability to enforce compliance with the program (see section 285.12(c)(4) of the final rule). The final rule provides that agencies may combine small debts owed by the same debtor to meet the \$25 threshold, and that FMS may change the threshold amount from time to time.

Section 285.12(d)—Exceptions to Mandatory Transfer

One agency questioned whether the foreclosure provisions in paragraph (d)(2) cover debts referred to private counsel (when an agency has specific authority to use private counsel) for non-judicial foreclosure proceedings. The rule has not been revised because paragraph (d)(2)(ii)(A)(1) of the rule, which provides that a debt is in foreclosure if pre-foreclosure notice has been issued in a non-judicial proceeding, does not exclude notices issued by private counsel on behalf of an agency.

One commenter questioned whether the recent Supreme Court decision in *Cohen v. Cruz*, 118 S.Ct. 1212 (1998), affects this rule. The case holds that punitive damages, attorney fees and costs related to an amount awarded as actual fraud, are not dischargeable under the fraud exception of the Bankruptcy Code. Since the rule does not address whether or not a particular debt or class of debts is dischargeable in bankruptcy, the *Cohen* case does not affect this rule. Creditor agencies are not required to transfer debts to FMS that are the subject of pending bankruptcy proceedings regardless of whether the debt is dischargeable (see section 285.12(d)(2)(i)(B)).

In response to a comment, paragraph (d)(4) has been revised to clarify that a debt is in the process of being collected by internal offset (and, therefore, exempt from the mandatory transfer provisions of the DCIA and this rule) so long as the required pre-offset notice has been issued by the creditor agency whether issued before or after the 180 day delinquency period. Note, however, the creditor agency is required to transfer to Treasury for collection debts over 180 days delinquent that are not subject to collection by internal offset (or another exemption). If the creditor agency determines that internal offset is available after a debt has been transferred to Treasury, the debt will be returned to the creditor agency for collection by internal offset.

In response to an agency's request for clarification, paragraph (d)(5)(i) has been revised. In recognition of the Congressional mandate to centralize delinquent debt collection at Treasury, requests for exemption require consideration by a creditor agency's top officials. Under paragraph (d)(5)(i) of the final rule, an exemption request will be considered only if it is made by the head of the creditor agency, the creditor agency's Chief Financial Officer (CFO), or the agency's Deputy CFO. Heads of subordinate agencies or organizations,

such as the head of a bureau within a department, are not considered heads of agencies for purposes of this paragraph (d)(5)(i).

One commenter suggested that agencies be permitted to seek exemptions for individual debts or small groups of debts within a class of debts. The DCIA limits exemptions to specific classes of debts or claims (see 31 U.S.C. 3711(g)(2)(B)). As a consequence, requests for the exemption of individual debts or claims, or small groups of debts or claims within a specific program or discrete activity, will not be considered.

Paragraph 285.12(d)(6) was added to the final rule to provide additional guidance on debts being collected by third parties. Several agencies, in accordance with statutory or contractual requirements, have debts more than 180 days past due that are being collected by third parties such as private lenders or guaranty agencies. In accordance with the provisions of 31 U.S.C. 3711(g)(2)(B) and this rule, the Secretary has determined that it is in the best interest of the Government that debts being collected by third parties be exempt from the provisions of paragraph 285.12(c)(1) because the transfer of such debts would interfere with the program goals and requirements of the subject debts. Debts more than 180 days past due must be transferred to FMS for collection under paragraph 285.12(c)(1) upon their return to a creditor agency by a third party.

Section 285.12(f)—Debt Collection Centers

In response to comments received from one agency, paragraph (f) is revised to state that debt collection centers may charge and collect fees (see 31 U.S.C. 3711(g)(6)), and to include a reference to paragraph (j) which provides additional information on fees that may be charged.

Section 285.12(i)—Certification

One agency asked whether agencies are required, under the certification provision, to maintain contact with all debtors to determine whether the debtor has filed a bankruptcy petition. Agencies are not required to maintain such contact. However, agencies are required to notify FMS immediately when they receive notice that a debtor has filed for bankruptcy protection so that FMS can immediately take action to stop collection proceedings that would be in violation of the automatic stay.

Section 285.12(j)—Fees

One agency asked whether FMS or the creditor agency will be responsible for

notifying the debtor that fees charged for collecting delinquent debt will be added, as an administrative cost, to the debt balance. Under paragraph (i), creditor agencies are required to certify to FMS that they have complied with all prerequisites to various collection actions, including any applicable requirements to notify the debtor regarding the agency's policies with respect to the addition of interest, penalties, and administrative costs to the principal amount of the debt if the debt is not paid by the due date.

Technical Amendment to Section 285.11 (Administrative Wage Garnishment)

On May 6, 1998, FMS published a final rule implementing the administrative wage garnishment provisions of section 31001(o) of the DCIA, codified at 31 U.S.C. 3720D. This rule amends section 285.11(g)(2) by deleting the words "on the agency's letterhead." This non-substantive, technical amendment allows Federal agencies to use the form to be prescribed by the Secretary for the issuance of an administrative wage garnishment order without preparing the form on agency letterhead. The requirement that agencies issue the order on agency letterhead was impractical and interfered with the requirement that agencies use a standard form prescribed by Treasury. The agency issuing the wage garnishment order will be clearly identified on the form without the use of agency letterhead.

Regulatory Analysis

This final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant impact on a substantial number of small entities. The basis for this certification is that the DCIA requires agencies to transfer debts that have been delinquent for more than 180 days to Treasury for further collection action unless the debts have been granted an exemption by the Secretary of the Treasury. This rule establishes the procedures and criteria for transferring such debts, explains the statutory exceptions to this requirement, and establishes the required standards under which the Secretary of the Treasury will grant exemptions. Therefore a regulatory flexibility analysis is not required.

Authority and Issuance

Accordingly, the interim rule amending 31 CFR part 285 which was published at 63 FR 16354 on April 2, 1998, is adopted as a final rule with the following changes:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.11 is amended by revising paragraph (g)(2) to read as follows:

§ 285.11 Administrative wage garnishment.

* * * * *
(g) Wage garnishment order.
* * * * *

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury and signed by the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

* * * * *

3. Section 285.12 is amended to correct the heading; to revise the definition for "debt" and add a definition for "debt collection center" in paragraph (a); to revise paragraphs (b) and (c)(3); to add paragraphs (c)(4), (d)(5)(iii) and (d)(6); and to revise paragraphs (d)(4), (f), (g), (h), and (j) to read as follows:

§ 285.12 Transfer of debts to Treasury for collection.

(a) * * *
Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person. As used in this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986.

Debt collection center means an agency or a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center.

* * * * *

(b) *In general.* Cross-servicing means that FMS or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof.

(c) * * *

(3)(i) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past-due if it has not been paid by the date specified in the agency'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. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due.

(ii) When a final agency determination is made after an administrative appeal or review process, the creditor agency must transfer such debt to FMS, if more than 180 days delinquent, within 30 days after the date of the final decision.

(iii) Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(4) Agencies are not required to transfer to FMS debts which are less than \$25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Agencies may transfer debts less than \$25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency's policies or programs. Agencies may combine individual debts of less than \$25 owed by the same debtor for purposes of meeting the \$25 threshold.

(d) * * *

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. A debt is being collected by internal offset if the creditor agency is withholding funds payable to the debtor by the creditor agency, or if the creditor agency has issued notice to the debtor of the creditor agency's intent to offset such funds.

(5) * * *

(iii) Requests for exemption must be made by the head of the agency requesting the exemption, the Chief Financial Officer of the agency, or the Deputy Chief Financial Officer of the

agency. For purposes of this section, the head of an agency does not include the head of a subordinate organization within a department or agency.

(6) In accordance with paragraph (d)(5)(i) of this section, debts being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies are exempt from the requirements in paragraph (c)(1) of this section.

* * * * *

(f) *Debt collection centers.* A creditor agency may transfer debt that has not been transferred to FMS, such as debt less than 180 days delinquent, to a Treasury-designated debt collection center, with the consent of, and in accordance with procedures established by FMS. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency and subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts, in accordance with terms and conditions agreed upon in writing by the creditor

agency and the debt collection center or FMS. Debt collection centers may charge fees for the debt collection services in accordance with the provisions of paragraph (j) of this section.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA, agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

* * * * *

(j) *Fees.* FMS and other debt collection centers (as defined in paragraph (a) of this section) may charge fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a creditor agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

Dated: November 2, 1998.

Kenneth R. Papaj,

Acting Commissioner.

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