

§ 89.13

United States General Accounting Office and the United States Department of Justice, and published at 4 CFR chapter II, as those standards may be amended.

§ 89.13 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.15 Regulations, reports, and supporting documentation.

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

49 CFR Subtitle A (10-1-03 Edition)

Subpart B—Collection of Claims

§ 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date (see § 89.23 for details regarding interest, collection charges, and late payment penalty charges);

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see § 89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel

contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 4 CFR parts 101 through 105, pursuant to 31 U.S.C. 3701-3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701-3720A.

(d) DOT may collect by administrative offset, (see § 89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR part 7, the debtor may inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the copying and inspection of the records shall be borne by the debtor. (Payment of cost is governed by 49 CFR part 7, subpart I.) The debtor shall give reasonable notice in advance to the agency of the date on which it intends to inspect and copy the records involved;

(f)(1) Except for debts established by settlement agreement, court order or judgment, or final administrative decision, the debtor may request review of the validity or amount of a claim. To do so, the debtor shall make a request in writing for review of the claim prior to it becoming delinquent. (See 4 CFR 101.2 for definition of when a debt is considered delinquent.) The debtor's written response shall state the basis for the dispute, and provide all factual information, documents, citation to authority, argument and any other matters to be considered. If only part of the claim is disputed, the undisputed portion shall be paid by the delinquency date stated in the initial de-

mand. During the period that the claim is being reviewed, the amount of the debt is owed, but the accrual of interest and accrual of time to delinquency may be suspended on the disputed portion of the debt.

(2) Review of claims shall be based upon the written record unless an oral hearing is required by 4 CFR 102.3(c). Upon completion of review, within 30 days whenever feasible, the Department shall advise the debtor whether the debt has been found to be valid in any amount, or that collection will be terminated. If the claim is found to be valid in any amount, the accrual of interest and time to delinquency shall commence 15 days after mailing of the notification of the review results. The notification of the review may also include notice of a specific collection action to be undertaken if payment is not received.

(g) The debtor may offer to make a written agreement to pay the amount of the claim. The acceptance of such an agreement is discretionary with DOT. If the debtor requests an installment payment arrangement because a lump sum payment would create a financial hardship, DOT may agree to a written installment payment schedule with the debtor (see 4 CFR 102.11(a)). The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement and includes a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest shall be provided in the note (see § 89.23). The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation, which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Evidence of these facts shall be maintained in DOT's file on the debtor in accordance with the practice of the DOT operating element.