

Department of Energy

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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, DOE 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) DOE 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 collecting justifies enforced collection of the full amount, DOE should 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) DOE 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, DOE 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, DOE also will obtain security for repayment in the manner set forth in subpart B of this part.

(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, DOE will, if feasible, obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. DOE also may obtain credit reports or other financial information to assess compromise offers. DOE may use its own fi-

nancial information form or may request suitable forms from the DOJ or the local United States Attorney's Office.

§ 1015.303 Enforcement policy.

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

§ 1015.304 Joint and several liability.

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

(b) DOE will seek to ensure that a compromise agreement with one debtor does not release DOE's claim against the remaining debtors. The amount of a compromise with one debtor shall 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.

§ 1015.305 Further review of compromise offers.

If DOE is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within DOE's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. The DOJ may act upon such an offer or return it to DOE with instructions or advice.

§ 1015.306 Consideration of tax consequences to the Government.

In negotiating a compromise, DOE will consider the tax consequences to the Government. In particular, DOE will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-

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back rights of the debtor. For information on discharge of indebtedness reporting requirements see §1015.405 of this part.

§ 1015.307 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by DOE will 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.

Subpart D—Standards for Suspending or Terminating Collection Activity

§ 1015.400 Scope.

The subpart sets forth the standards for terminating collection activity. This subpart corresponds to 31 CFR part 903 of the Treasury Federal Claims Collection Standards.

§ 1015.401 Scope and application.

(a) The standards set forth in this subpart 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 DOJ for litigation, DOE may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred to, DOE.

(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

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Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If DOE believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, DOE shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for DOE's recommendation. If, prior to referral to the DOJ, DOE determines that a debt is plainly erroneous or clearly without legal merit, DOE may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 1015.402 Suspension of collection activity.

(a) DOE may suspend collection activity on a debt when:

- (1) DOE 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, DOE 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) DOE shall 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 DOE from collecting the debt during that time. As indicated in §1015.212(h), DOE will continue to accrue interest, penalties,