

## § 30.10

### § 30.10 Omissions not a defense.

Failure by the Secretary to comply with any provision of this regulation may not serve as a defense to any debtor.

## Subpart B—Collection of Claims

### § 30.11 Collection rule.

(a) *Aggressive agency action.* The Secretary will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall, at a minimum, normally include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals unless amounts are available for offset under section 30.15, or a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal.

(b) *Immediate action.* When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, such as withholding of amounts payable to the debtor or immediate referral of the debt for litigation or filing of a claim in bankruptcy court or against a decedent's estate.

(c) *Finding debtors.* The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the Internal Revenue Service, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located.

(d) *Joint and several liability.* Collection of the full amount of the debt will be pursued from each debtor jointly and severally liable.

(e) *Debtor disputes.* A debtor who disputes a debt must promptly provide available supporting evidence.

(f) *Debt files.* The Secretary will maintain an administrative file for each debt or debtor, documenting the debt(s), all administrative collection action, including communications to

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and from the debtor, and disposition of the debt(s). Information from a debt file relating to an individual may be disclosed only for purposes consistent with this regulation, the Privacy Act of 1974 (5 U.S.C. 552a), and any other applicable law.

### § 30.12 Notices to debtor.

(a) *Required notice.* The first written demand for payment must inform the debtor of—

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed; and

(3) The assessment under § 30.13 of interest from the date the notice was mailed, and full administrative costs if payment is not received within the 30 days.

(b) *Other notice.* Where applicable, the Secretary must inform the debtor in writing of—(1) His or her right to dispute the debt or request a waiver of the debt, citing the applicable review or waiver authority, the conditions for review or waiver, and the effect of the review or waiver request on collection of the debt, interest, charges and late payment penalties (see § 30.14);

(2) The office, address and telephone number that the debtor should contact to discuss repayment, reconsideration or waiver of the debt;

(3) The proposed sanctions if the debt is overdue, including assessment of late payment penalties under 30.13 (if the debt is more than 90 days overdue) or referral of the debt to a credit reporting agency under § 30.17, or to a collection agency under § 30.18. (See also § 30.5).

(c) *Exception.* This section does not require duplication of any notice already contained in a written agreement, letter or other document signed by, or provided to the debtor.

### § 30.13 Interest, administrative costs and late payment penalties.

(a) *Interest.* (1) Interest will accrue on all debts from the date notice of the debt and the interest requirement is first mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date of mailing of the notice. Except as

provided in paragraph (a)(2) of this section, or unless the Secretary determines a higher rate is necessary to protect the Government's interests, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the FEDERAL REGISTER. Debtors who were not paying interest, or were paying interest at a different rate prior to October 25, 1982, may be charged interest at the above-stated rate in effect on the date that notice of the new interest requirement is mailed after 1982. The Secretary may use the advance billing procedure and include the interest notification prior to the debt being owed. Bills sent before a debt is due will include notification of the interest requirement. In these cases, interest will begin to accrue on the day after the due date.

(2) The interest rate established in paragraph (a) of this section shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717, except that in the case of installment payment agreements under § 30.19, such rate shall be no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities."

(3) The Secretary may, at his or her discretion, extend the 30 day interest-free period an additional 30 days if the Secretary determines that such action is in the best interests of the Government, or otherwise warranted by equity and good conscience.

(4) The rate of interest, as initially assessed, will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(5) Interest will not be charged on interest, administrative costs or late payment penalties required by this section. However, if the debtor defaults on a previous repayment agreement, un-

paid accrued interest, charges and late payment penalties under the defaulted agreement may be added to the principal to be paid under a new repayment agreement.

(b) *Administrative costs of collecting overdue debts.* Delinquent debtors will be assessed the administrative costs incurred by the Department as a result of handling and collecting the overdue debts, based on either actual or average costs incurred. These costs will include direct (personnel, supplies, etc.) and indirect costs of collecting inhouse and contracting with collection agencies and may include the costs of providing hearings or any other form of review requested by debtors. See § 30.14. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be additive to other administrative costs if collection is being made for another Federal agency or unit.

(c) *Late payment penalties.* A penalty charge of 6 percent a year will be assessed on a debt, a payment, or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. See also § 30.14.

(d) *Social Security Act debts.* (1) Unless specifically authorized by statute, regulations or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts arising from payments to beneficiaries under Titles II, XVI and XVIII of Social Security Act. The charging of interest is appropriate on debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party, in which case the charging of interest would be appropriate.

(2) The Secretary will charge administrative costs or late payment penalties on debts arising under the Social Security Act where authorized by statute, regulations, or written agreement.

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(e) *Other debts not covered by 31 U.S.C. 3717.* The Secretary will charge administrative costs or late payment penalties on debts arising under a contract executed prior to, and in effect on October 25, 1982, or debts owed by State or local governments where authorized by statute, regulation, or written agreement.

(f) *Allocation of payments.* Partial or installment payments will be applied first to outstanding administrative cost charges and late payment penalties, second to accrued interest and third to outstanding principal.

(g) *Inactive claims.* Interest, but not administrative cost charges or late payment penalties, will continue to accrue when collection of a debt is suspended under § 30.33(a).

(h) *Waivers.* The Secretary may waive collecting all or part of interest, administrative costs or late payment penalties, if—

(1) The debt or the charges resulted from the agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtors; or

(2) Collection in any manner authorized under this regulation would defeat the overall objectives of a Departmental program.

### § 30.14 Interest and charges pending waiver or review.

(a) *Rule.* A debtor may either pay the debt, or be liable for interest on the uncollected debt, while a waiver determination, a bona fide dispute or a formal or informal review of the debt is pending. If a final determination is to the effect that any amount was properly a debt to HHS and the debtor chose to retain the amount in dispute, the Secretary shall collect or offset from any future payments to the debtor, an amount equal to the amount of the debt plus interest (as calculated under § 30.13(a)) on such debt amount starting from the date the debtor was first made aware of the debt and ending when such debt is repaid. The debtor will also be assessed administrative cost charges and late payment penalties on the unpaid debt for this period if the reviewing or hearing officer determines in writing that the request

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for a waiver, a hearing or other form of review was spurious.

(b) *Exception.* Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver or review under a statute which prohibits collection of the debt during this period, unless the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

### § 30.15 Administrative offset.

(a) *Rule.* The Secretary will collect debts owed to the Department by administrative offset if—

(1) The debt is liquidated or certain in amount;

(2) Offset is not expressly or implicitly prohibited by statute or regulation;

(3) Offset is cost-effective or has significant deterrent value;

(4) Offset does not substantially impair or defeat program objectives; and

(5) Overall, offset is best suited to further and protect the Government's interest.

The Secretary may consider financial impact of the proposed offset on the debtor in determining the method and amount of the offset.

(b) *Definitions.* (1) "Administrative Offset" means satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. Amounts available for offset include, for example, benefit payments to a program beneficiary overpaid under the same or a different program, amounts due a defaulting or overpaid contractor or grantee under the same or a different agreement, salaries of Federal employees, Federal income tax refunds and judgments held by the debtor against the United States. (Offset against judgments will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

(2) "Hearing" means either a review of the record or an oral hearing. A review of the record means a review of the documentary evidence by a designated hearing officer. An oral hearing means an informal conference before a designated hearing officer.

(3) "Hearing officer" is an individual appointed by the Secretary to review