

§ 30.16

the Secretary will resume collection by offset. If either item is missing, the creditor agency must comply with paragraph (s)(1).

(t) *Non-waiver of debtor rights by payment.* Unless a statute or contract provides otherwise, a debtor does not waive any rights under law or contract by paying all or part of a debt by offset or cash payment.

(Approved by the Office of Management and Budget under control number 0990-0148)

§ 30.16 Use of credit reporting agencies.

(a) *Overdue debts.* (1) The Secretary will report overdue debts over \$100 owed by individuals and all debts over \$100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies. Except as provided in paragraph (a)(3) of this section, beneficiary debts which arise under the Social Security Act may be reported under this section.

(2) Debts owed by individuals, except debts arising under the Social Security Act, will be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Secretary must first give the individual, but not the corporate debtor at least 60 days' written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address and Social Security number, and the nature, amount, status and history of the debt.

(3) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit

45 CFR Subtitle A (10-1-06 Edition)

reporting agencies subject to the conditions stated in paragraph (a)(2) of this section, except that such disclosure would be as a routine use under 5 U.S.C. 552a(b)(3), rather than a disclosure under 552a(b)(12).

(b) *Credit reports and locator services.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants and potential contractors and grantees; to obtain credit reports when collecting or disposing of debts to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, Social Security number and the purpose for which the information will be used.

(c) Disclosures pertaining to individuals may be made to credit reporting agencies generally from the primary systems of records containing information about the debt or the loan, contract or grant application.

(d) Addresses obtained from the Internal Revenue Service may be disclosed to credit reporting agencies only to obtain credit reports (see § 30.21).

§ 30.17 Contracting for collection services.

(a) *Rule.* Except as provided in paragraph (b) of this section, the Secretary may contract for collection services to recover outstanding debts and may pay the contractor's fee from the amounts collected, from funds specifically available for that purpose, or from a revolving fund. The amount of the fee must be consistent with prevailing commercial practice. The Secretary may contract for collection services only if reasonable in-house collection efforts and remedies were, or are likely to be, unsuccessful or not feasible; and the total amount of anticipated recoveries exceeds the total cost of the contract and incidental expenses. The Secretary must retain the authority to resolve disputes, compromise debts, terminate collection action (or recommend such action to the Department of Justice) and refer debts to the Department of Justice for litigation. Contracts for collection services must conform to the standards set forth in the Federal

and Departmental Acquisitions Regulations at 48 CFR, Chapters 1 and 3. The Secretary may disclose to the contractor the information about debtors necessary to accomplish the purpose of the contract. The contractor must provide any data from its files relating to the account to the Secretary upon request or upon return of the account. The contractor will be subject to the Privacy Act of 1974, as amended, as specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations regarding debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor will be strictly accountable for all amounts collected.

(b) *Social Security Act debts.* (1) A contractor's fee for collecting debts arising under the Social Security Act may be paid from any funds available for that purpose, but not from the amounts collected unless those amounts belong to a revolving fund.

(2) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be referred to private collection agencies for collection.

§ 30.18 Liquidation of collateral.

If the Secretary holds a security instrument with a power of sale or has physical possession of collateral, the Secretary will liquidate the security or collateral when it is cost-effective to do so and apply the proceeds to an overdue debt. The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

§ 30.19 Installment payments.

The Secretary may enter into a written agreement with a debtor for payment of a debt in regular installments if payment in one lump sum, either by cash or offset, will cause the debtor extreme financial hardship. The debtor must submit sufficient information to determine his or her ability to pay. A request by a debtor for installment payment will delay initiation of offset

under § 30.15 only if the request is in writing, is accompanied by a statement with supporting documents indicating how the proposed offset would cause extreme financial hardship and, unless an extension is granted for good cause, is received by the Secretary no later than 15 days (unless otherwise provided by statute or regulation) from the date that notice of the proposed offset was mailed to the debtor. The Secretary will consider factors such as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confession-judgment note or give collateral, past dealings with the debtor and documentation indicating that the offset will cause the debtor extreme financial hardship and that the debtor will be financially capable of adhering to the terms of the agreement. The size and frequency of the payments will reasonably relate to the size of the debt and the debtor's present and future ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less, and include a security or confess judgment provision. The full balance, including accrued interest, charges and penalties, will be immediately due and payable if the debtor defaults on any installment made pursuant to a repayment agreement. Interest under installment agreements will be payable at the applicable rate as provided in § 30.13. When a debtor owes several debts and does not designate how an installment payment should be applied as among the various debts, the payment will be applied in accordance with § 30.15(f).

(Approved by the Office of Management and Budget under control number 0990-0148)

§ 30.20 Taxpayer information.

(a) The Secretary shall enter into reimbursable agreements with the Internal Revenue Service in accordance with IRS Revenue Procedure 83-29, 26 CFR 601.702, to obtain the current mailing addresses of debtors and to find out whether applicants under included Federal loan programs have overdue tax accounts.

(b) "Included Federal loan program" means any program under which the