

## Department of Health and Human Services

## § 30.31

or a statement from the debtor executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses.

### § 30.25 Litigative probabilities.

The Secretary may compromise a debt if the Government's ability to prove its case in court for the full amount claimed is doubtful either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the issues and the prospects for full or partial recovery of a judgment, paying due regard to the availability of evidence and witnesses, and related pragmatic considerations.

### § 30.26 Cost of collecting claim.

The Secretary may compromise a debt if the cost or deterrence value of collection do 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, taking into account the time which it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small debts, but not normally in the settlement of large debts.

### § 30.27 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if not prohibited by law and consistent with the agency's enforcement policy.

### § 30.28 Joint and several liability.

When two or more debtors are jointly and severally liable, a compromise with one debtor will not release the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount which will be required from other debtors jointly and severally liable on the debt.

### § 30.29 Further review of compromise offers.

A debtor's firm written offer of compromise for a substantial amount may be referred to the General Accounting Office or to the Department of Justice when the acceptability of the offer is in doubt. (See 30.36).

### § 30.30 Restriction.

The Secretary may not accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a debt.

## Subpart D—Termination or Suspension of Collection Action

### § 30.31 Termination rule.

(a) The Secretary may terminate collection activity and write off a debt, including accrued interest, charges and penalties if the outstanding principal does not exceed \$20,000 and:

(1) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's ability to pay (see § 30.25(b)) and the exemptions available to the debtor under State and Federal law;

(2) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;

(3) The cost of further collection action is likely to exceed the recoverable amount;

(4) The basis for the claim has proved to be unsupportable; or

(5) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable.

(b) As required by section 61(a)(2) of the Internal Revenue Code, income arising from the discharge in whole or in part of a debt is to be included in the debtor's gross income for the year in which the debt is discharged. The Secretary will report to the Internal Revenue Service, using Form 1099G, any amount over \$600 which becomes uncollectible because the applicable statute of limitations expires or because the Government agrees with the

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debtor to forgive or compromise a debt. An amount which is in dispute, which is discharged under Title 11 of the Bankruptcy Act or which arises out of an overpayment which was already taxed, will not be reported. See IRS Instructions for Form 1096 and Revenue Procedure 83-48 for further instructions.

#### § 30.32 Exceptions.

(a) The Secretary may suspend, rather than terminate collection of a debt that arises out of its activities if the outstanding principal does not exceed \$20,000 and the Government cannot collect or enforce collection of any significant sum from the debtor (*e.g.*, the debtor cannot be located or is financially unable to pay), but the prospects of future collection are promising enough to justify periodic review of the debt, and there is no statute of limitations problem. Interest will accrue under § 30.13(a).

(b) Where a significant enforcement policy is involved, the Secretary will, instead of terminating or suspending collection, refer debts to the Department of Justice for litigation.

### Subpart E—Referrals to the Department of Justice or GAO

#### § 30.33 Litigation.

(a) Debts over \$600 that cannot be collected or otherwise disposed of by the Secretary or its agents will be referred to the appropriate United States Attorney (if the amount does not exceed \$100,000) or the Civil Division of the Department of Justice (if the amount exceeds \$100,000) for litigation. Each referral will include all pertinent information, as required by the Claims Collection Litigation Report, including:

(1) The most current address of the debtor or the name and address of the agent for a corporation upon whom service may be made;

(2) Reasonably current credit data in the form of a credit report or a financial statement showing reasonable prospects of enforcing collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the

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judicial remedies available to the Government; and

(3) A summary of prior collection efforts. Credit data may be omitted if a surety bond, insurance, or the sale of collateral will satisfy the claim in full; or the debtor is in bankruptcy or receivership, or is a unit of State or local government.

(b) Debts of \$600 or less, exclusive of interest and charges, may be referred for litigation if a significant enforcement policy is involved or the debtor is clearly able to pay and the Government can effectively enforce payment.

#### § 30.34 Claims over \$20,000.

The Secretary may compromise or suspend or terminate collection of debts where the outstanding principal exceeds \$20,000 only with the approval of, or referral to, the appropriate United States Attorney (if the debt does not exceed \$100,000) or the Department of Justice (if the debt exceeds \$100,000).

#### § 30.35 GAO exceptions.

The Secretary will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

### PART 31—TAX REFUND OFFSET

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AUTHORITY: 31 U.S.C. 3720A, 31 CFR 285.2, E.O. 12866, E.O. 13258.

SOURCE: 68 FR 70445, Dec. 18, 2003, unless otherwise noted.

#### § 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under the tax refund offset provision of the Deficit Reduction Act of 1984, as amended