

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.

**§ 89.23 Interest, late payment penalties, and collection charges.**

(a) DOT shall charge interest on an outstanding debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and 4 CFR 102.13(c), unless DOT determines that a higher rate is necessary to protect the interests of the United States. DOT shall charge a late payment penalty at a rate of six percent a year on any por-

tion of a debt that is more than 90 days past due. DOT shall also assess administrative charges to cover additional cost incurred in processing and handling the debt beyond the payment due date. The imposition of interest, collection charges, and late payment penalty charges shall be made in accordance with 31 U.S.C. 3717, 4 CFR 102.13 (see § 89.3(c) regarding payment of such charges by Federal, state and local government agencies).

(b) Interest on debt shall begin to accrue on the date on which the debtor is mailed or delivered notice of the debt and the interest requirements or, in the case of advance billings, on the calendar day following the specified due date of the debt, provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest assessed shall be the rate in effect on the date from which interest begins to accrue, and will remain fixed for the duration of the indebtedness. The rate of interest assessed will generally be the Treasury Current Value of Funds Rate.

(c) The Department shall waive interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) Collection charges on debt shall be computed to cover the cost of processing and handling the delinquent debt. It shall be either the actual cost to process the particular delinquent debt to which it is applied, or operating elements may set the amount of such monthly charge by cost analysis establishing the average of actual additional costs incurred by the operating element in processing similar debts. Collection charges may also include the expense of obtaining credit reports and of using a professional debt collection contractor.

(e) DOT may waive interest, collection charges, or late payment penalty charges if it finds that:

(1) The debtor would be eligible for compromise under standards set forth in 4 CFR 103.2 with regard to the amount of the debt;

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(2) Collection of interest, administrative charges, or penalties will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

### § 89.25 Collection by administrative offset.

(a) Whenever feasible, after a debtor fails to pay a claim, request a review of a claim, or make an arrangement for payment following a demand made in accordance with § 89.21, DOT shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor pursuant to 31 U.S.C. 3716 and 4 CFR 102.3. Salary offset against present or former employees of the United States is not governed by this part (see 49 CFR part 92).

(b) The Department shall notify the debtor in writing in conformance with 31 U.S.C. 3716 and the FCCS of its intent to collect the debt by offset, unless the debtor pays the debt in full, including all interest, administrative charges, and penalties, or executes an agreement to pay the debt by installment at terms acceptable to DOT.

(c) In making collection by administrative offset under 31 U.S.C. 3716, DOT must do so in accordance with the requirements set forth in § 89.21(b)(1-6). (See also procedures for recovery of debts to the United States by salary offset, 49 CFR part 92.)

### § 89.27 Referral for litigation.

Claims that are not settled or for which collection action is not compromised, suspended or terminated under 4 CFR parts 103 and 104 or collected by collection agencies shall be referred to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR part 105.

### § 89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.

(a) Data on all delinquent commercial and consumer debts may be reported to commercial credit bureaus and consumer reporting agencies (see

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31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be by separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed is the debtor's name, address, social security number or taxpayer identification number, and any other information to establish the identity and location of the individual, the amount of the claim, status and history of the claim, and the program under which the claim arose.

### § 89.31 Use of professional debt collection agencies.

Debts over 90 days delinquent (see § 89.21(b)(4)) may be turned over to professional debt collection agencies except for those debts owed by State and local governments, other Federal agencies, current employees, and other debts prohibited by statute from being turned over to commercial collection agencies.

### § 89.33 [Reserved]

## Subpart C—Referral of Debts to IRS for Tax Refund Offset

SOURCE: 54 FR 28681, July 7, 1989, unless otherwise noted.

### § 89.37 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is:

(1) A debt which:

(i) Is owed to the United States;

(ii) Is at least \$25.00;

(iii) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;