

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—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.

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- 31.10 Time limitation for notifying the IRS to request offset of tax refunds due.
- 31.11 Correspondence with the Department.

AUTHORITY: 31 U.S.C. 3711, 3716, 3718; Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A); 26 CFR 301.6402-6T; and 45 CFR Part 30.

SOURCE: 53 FR 25593, July 8, 1988, unless otherwise noted.

§31.1 Scope.

(a) The standards set forth in §§31.1 through 31.11 are the Department's procedures for requesting the Internal Revenue Service (IRS) to offset tax refunds due taxpayers who have a past due debt obligation to the Department. These procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), as implemented by regulation at 26 CFR 301.6402-6T, and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

(b) The Secretary will use the IRS tax refund offset to collect claims which are liquidated or certain in amount, past due and legally enforceable, and which are eligible for tax refund offset under regulations issued by the Secretary of the Treasury.

(c) Except as provided in paragraph (d) of this section, the Secretary will

not report debts to the IRS except for the purpose of using the offset procedures described in §§31.1 through 31.11. Debts of less than \$25.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of the lapse of the statute of limitations but otherwise valid, a debt amounting to over \$600 will be reported to the IRS as a discharged debt on Form 1099G. (Form 1099G is an information return which government agencies file with the IRS to report discharged debt, and the discharged amount is considered as income to the taxpayer.) [See §31.9; 45 CFR 30.31(b).]

§31.2 Notice of requirements before offset.

A request for reduction of an IRS tax refund will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 60 calendar days written notice. The Department's Notice of Intent to Collect by IRS Tax Refund Offset (Notice of Intent) will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 60 calendar days from the date of the Department's Notice of Intent, the Secretary intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to obtain review, within the Department, of the Secretary's initial determination that the debt is past due and legally enforceable (*See* §31.3); and

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested (*See* §31.5).

§31.3 Review within the Department of a determination that an amount is past due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable. To exercise this right, the debtor shall send a letter notifying the applicable delegatee of the HHS Departmental Claims Officer specified in §31.11 that the debtor intends to present evidence to a designated hearing officer. The letter must be received by such designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in an automatic referral of the debt to the IRS without further action. Evidence submitted by a debtor who has requested prior review of a claim under 45 CFR part 30 will not be reconsidered unless such evidence raises a new defense not considered in connection with such prior review.

(c) *Review of the record.* After a timely submission of evidence by the debtor, the claims officer will submit such evidence to a designated hearing officer, who will review all material related to the debt which is in possession of the Department. The hearing officer shall make a determination based upon a review of the written record, except that the hearing officer may order an oral hearing if the officer finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

§31.4 Determination of the hearing officer.

(a) Following the hearing or the review of the record, the hearing officer shall issue a written decision which in-

cludes the supporting rationale for the decision. The decision of the hearing officer concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) Copies of the hearing officer's decision will be distributed to the designated claims officer, the Department's Office of the Assistant Secretary for Management and Budget, the debtor, and the debtor's attorney or other representative, if any.

(c) If the hearing officer's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS after the hearing officer's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of the Assistant Secretary for Management and Budget. No referral will be made to the IRS if review of the debt by the hearing officer reverses the initial decision that the debt is past due and legally enforceable.

§31.5 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the designated claims officer stating the debtor's intention. The letter must be received by the designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the designated claims officer will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt. At his or her discretion, the designated claims officer may also mail copies of the debt-related records to the debtor.

§31.6 Stay of offset.

If the debtor timely notifies the Secretary that the debtor is exercising a right described in §31.3(a) and timely submits evidence pursuant to §31.3(b), any notice to the IRS will be stayed

until the issuance of a written decision by the hearing officer which determines that a debt or part of a debt is past due and legally enforceable.

§31.7 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that the debtor is exercising a right described in §31.3, the Secretary will notify the IRS of the debt 60 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the IRS as refund of Federal taxes paid. Normally, recovered funds will be applied first to any special charges provided for in HHS regulations or contracts, then to interest, and finally, to the principal owed by the debtor.

§31.8 Application of offset funds: Multiple debts.

The Secretary will use the procedures set out in §31.7 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in order in which the debts accrued.

§31.9 Application of offset funds: Tax refund insufficient to cover amount of debt.

If a tax refund is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS on the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a discharged debt in accordance with §31.1(d) and 45 CFR 30.31(b).

§31.10 Time limitation for notifying the IRS to request offset of tax refunds due.

(a) The Secretary may not initiate offset of tax refunds due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known

by the officials of the Department who were responsible for discovering and collecting such debts.

(b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (See, for example, 28 U.S.C. 2415.)

§31.11 Correspondence with the Department.

(a) All correspondence from the debtor to the Secretary concerning the right to review as described in §31.3 shall be addressed to the appropriate office of the Department at the following locations:

Office of the Secretary: Office of Financial Operations, Room 705D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

Public Health Service: PHS Claims Office, Room 18-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration: SSA Claims Office, P.O. Box 17042, Baltimore, Maryland 21235

Health Care Financing Administration: HCFA Claims Office, Division of Accounting, P.O. Box 17255, Baltimore, Maryland 21203

Family Support Administration: FSA Claims Office, Switzer Building, Room 2222, 330 C Street SW., Washington, DC 20201

Region I: Office of the General Counsel, John F. Kennedy Federal Building, Room 2047, Boston, Massachusetts 02203

Region II: Office of the General Counsel, Jacob K. Javits Federal Building, Room 3908, New York, New York 10278

Region III: Office of the General Counsel, 3535 Market Street, Room 9100, P.O. Box 13716, Philadelphia, Pennsylvania 19101

Region IV: Office of the General Counsel, 101 Marietta Tower, Room 221, Atlanta, Georgia 30323

Region V: Office of the General Counsel, 18th Floor, 300 South Wacker Drive, Chicago, Illinois 60606

Region VI: Office of the General Counsel, 1200 Main Tower, Room 1330, Dallas, Texas 75202

Region VII: Office of the General Counsel, 601 East 12th Street, Room 535, Kansas City, Missouri 64106

Region VIII: Office of the General Counsel, 1961 Stout Street, Room 1106, Denver, Colorado 80294

Region IX: Office of the General Counsel, 50 United Nations Plaza, Room 420, San Francisco, California 94102

Region X: Office of the General Counsel, 2901 3rd Avenue, Room 580, Seattle, Washington, 98121.

(b) All other correspondence shall be addressed to the appropriate office as

described in paragraph (a) of this section. All requests for review of departmental records must be marked: *Attention: Records Inspection Request*.

PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

Subpart A—General

Sec.

35.1 Scope of regulations.

Subpart B—Procedures

35.2 Administrative claim; when presented; place of filing.

35.3 Administrative claim; who may file.

35.4 Administrative claims; evidence and information to be submitted.

35.5 Investigation, examination, and determination of claims.

35.6 Final denial of claim.

35.7 Payment of approved claims.

35.8 Release.

35.9 Penalties.

35.10 Limitation on Department's authority.

AUTHORITY: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

SOURCE: 32 FR 14101, Oct. 11, 1967, unless otherwise noted.

Subpart A—General

§ 35.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671–2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Health and Human Services while acting within the scope of his office or employment.

Subpart B—Procedures

§ 35.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Health and Human Services receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written no-

tification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Department Claims Officer or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed, with the office, local, regional, or headquarters, of the constituent organization having jurisdiction over the employee involved in the accident or incident, or with the Department of Health and Human Services Claims Officer, Washington, DC 20201.

[32 FR 14101, Oct. 11, 1967, as amended at 35 FR 4517, Mar. 13, 1970]

§ 35.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.