

## Federal Claims Collection Standards

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Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States. However, these remedies and procedures may still be authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt "arose under" those laws.

### § 102.20 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

## PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

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AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8902, Mar. 9, 1984, unless otherwise noted.

### § 103.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of claims pursuant to 31 U.S.C. 3711. The head of an agency may exercise such compromise authority with respect to claims for money or property arising out of the activities of that agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed \$20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to

claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation. Agency heads, including the Comptroller General, may designate officials within their respective agencies to exercise the authorities referred to in this section.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds \$20,000, the authority to accept the compromise rests solely with the Department of Justice. The agency should evaluate the offer, using the factors set forth in this part. If the agency then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR 105.2(b). Claims for which the gross amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. Justice Department approval is not required if the agency wishes to reject the compromise offer.

### § 103.2 Inability to pay.

(a) A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of: (1) The debtor's inability to pay the full amount within a reasonable time, or (2) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings.

(b) In determining the debtor's inability to pay, the following factors, among others, may be considered:

- (1) Age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;

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(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized by enforced collection proceedings.

(c) The agency should give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 102.11 of this chapter, in every case in which this is possible.

(e) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses. Forms such as Department of Justice Form OBD-500 or OBD-500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as seems required.

#### § 103.3 Litigative probabilities.

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the

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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 legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

#### § 103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim does 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, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

#### § 103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if

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the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

### § 103.6 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

### § 103.7 Compromise for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

### § 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

### § 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of

the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

## PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 Scope and application.

104.2 Suspension of collection activity.

104.3 Termination of collection activity.

104.4 Transfer of claims.

AUTHORITY: 31 U.S.C. 3711(a)(3).

SOURCE: 49 FR 8903, Mar. 9, 1984, unless otherwise noted.

### § 104.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed \$20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. The head of an agency (or designee) may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of that agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds \$20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency thinks suspension or termination may be appropriate, it should evaluate the matter, using the factors set forth in this part. If the agency then concludes that suspension or termination is appropriate, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR 105.2(b). The referral should specify the reasons for the agency's recommendation. If the agency decides not to suspend or terminate collection action on the claim, Justice Department approval is not required. If an