

Pt. 17

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH-1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal con-

24 CFR Subtitle A (4-1-05 Edition)

tracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

[42 FR 49810, Sept. 28, 1977, as amended at 59 FR 9407, Feb. 28, 1994]

PART 17—ADMINISTRATIVE CLAIMS

Subpart A—Claims Against Government Under Federal Tort Claims Act

GENERAL PROVISIONS

Sec.

17.1 Scope; definitions.

PROCEDURES

17.2 Administrative claim; when presented; appropriate HUD office.

17.3 Administrative claim; who may file.

17.4 Administrative claim; evidence and information to be submitted.

17.5 Investigations.

17.6 Claims investigation.

17.7 Authority to adjust, determine, compromise, and settle claims.

17.8 Limitations on authority.

17.9 Referral to Department of Justice.

17.11 Final denial of claim.

17.12 Action on approved claim.

Subpart B—Claims Under the Military Personnel and Civilian Employees Claims Act of 1964

17.40 Scope and purpose.

17.41 Claimants.

17.42 Time limitations.

17.43 Allowable claims.

17.44 Restrictions on certain claims.

17.45 Unallowable claims.

17.46 Claims involving carriers or insurers.

17.47 Settlement of claims.

17.48 Computation of amount of award.

Office of the Secretary, HUD

Pt. 17

- 17.49 Attorney's fees.
- 17.50 Claims procedures.

Subpart C—Procedures for the Collection of Claims by the Government

GENERAL PROVISIONS

- 17.60 Scope and definitions.
- 17.61 Incorporation of joint standards by reference.
- 17.62 Subdivision and joining of claims.
- 17.63 Authority of offices to attempt collection of claims.
- 17.64 Referral of claims to the Assistant Secretary for Administration.
- 17.65 Authority of offices to compromise claims or suspend or terminate collection action.
- 17.66 Department claims officer.
- 17.67 Claims files.
- 17.68 Monthly report of collection action.
- 17.69 Accounting control.
- 17.70 Record retention.
- 17.71 Suspension or revocation of eligibility.
- 17.72 Methods of collection and imposition of late charges.
- 17.73 Standards for compromise of claims.
- 17.74 Standards for suspension or termination of collection action.
- 17.75 Referral to GAO or Justice Department.
- 17.76 Disclosure to a consumer reporting agency.
- 17.77 Contracts for collection services.

ADMINISTRATIVE OFFSET PROVISIONS

- 17.100 Scope.
- 17.101 Coordinating administrative offset with another Federal agency.
- 17.102 Notice requirements before offset.
- 17.103 Exceptions to notice requirements.
- 17.104 Review within the Department of a determination of indebtedness.
- 17.105 Review of departmental records related to the debt.
- 17.106 Written agreement to repay debt as alternative to administrative offset.
- 17.107 Stay of offset.
- 17.108 Types of review.
- 17.109 Review procedures.
- 17.110 Determination of indebtedness and appeal from determination.
- 17.111 Procedures for administrative offset: single debt.
- 17.112 Procedures for administrative offset: multiple debts.
- 17.113 Procedures for administrative offset: interagency cooperation.
- 17.114 Procedures for administrative offset: time limitation.
- 17.115 Procedures for administrative offset: offset against amounts payable from Civil Service Retirement and Disability Fund.

- 17.116 Procedures for administrative offset: offset of debtor's judgment against the United States.
- 17.117 Procedures for administrative offset: imposition of interest.
- 17.118 Miscellaneous provisions: correspondence with the Department.

SALARY OFFSET PROVISIONS

- 17.125 Scope.
- 17.126 Coordinating offset with another Federal agency.
- 17.127 Determination of indebtedness.
- 17.128 Notice requirements before offset.
- 17.129 Request for a hearing.
- 17.130 Result if employee fails to meet deadlines.
- 17.131 Written decision following a hearing.
- 17.132 Review of departmental records related to the debt.
- 17.133 Written agreement to repay debt as alternative to salary offset.
- 17.134 Procedures for salary offset: when deductions may begin.
- 17.135 Procedures for salary offset: types of collection.
- 17.136 Procedures for salary offset: methods of collection.
- 17.137 Procedures for salary offset: imposition of interest.
- 17.138 Non-waiver of rights.
- 17.139 Refunds.
- 17.140 Miscellaneous provisions: correspondence with the Department.

IRS TAX REFUND AND FEDERAL PAYMENT OFFSET PROVISIONS AND ADMINISTRATIVE WAGE GARNISHMENT

- 17.150 Scope.
- 17.151 Notice requirements before offset.
- 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.
- 17.153 Determination of the Administrative Judge.
- 17.154 Postponements, withdrawals and extensions of time.
- 17.155 Review of departmental records related to the debt.
- 17.156 Stay of offset.
- 17.157 Application of offset funds: Single debt.
- 17.158 Application of offset funds: Multiple debts.
- 17.159 Application of offset funds: Federal payment is insufficient to cover amount of debt.
- 17.160 Time limitation for notifying the Department of the Treasury to request offset of Federal payments due.
- 17.161 Correspondence with the Department.

ADMINISTRATIVE WAGE GARNISHMENT

- 17.170 Administrative wage garnishment.

§ 17.1

AUTHORITY: 28 U.S.C. 2672; 31 U.S.C. 3711, 3716-18, 3721, and 5 U.S.C. 5514; 42 U.S.C. 3535(d).

Subpart A—Claims Against Government Under Federal Tort Claims Act

AUTHORITY: 5 U.S.C. 5514; 28 U.S.C. 2672; 31 U.S.C. 3711, 3716-3718, 3721; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24427, Dec. 22, 1971, unless otherwise noted.

GENERAL PROVISIONS

§ 17.1 Scope; definitions.

(a) This subpart applies to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department while acting within the scope of his office or employment.

(b) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 FR 16616; 28 CFR part 14).

(c) The terms *Department* and *Organizational unit* are defined in 24 CFR part 5.

[36 FR 24427, Dec. 22, 1971, as amended at 61 FR 5204, Feb. 9, 1996]

PROCEDURES

§ 17.2 Administrative claim; when presented; appropriate HUD office.

(a) For purposes of this subpart, a claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, an executed *Claim for Damages or Injury*, Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury 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, is

24 CFR Subtitle A (4-1-05 Edition)

deemed to be presented to the Department as of the date that the claim is received by the Department. If a claim is mistakenly addressed to or filed with the Department, the Department shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) A claimant shall mail or deliver his claim to the office of employment of the Department employee or employees whose negligent or wrongful act or omission is alleged to have caused the loss or injury complained of. Where such office of employment is the Department Central Office in Washington, or is not reasonably known and not reasonably ascertainable, claimant shall file his claim with the Assistant Secretary for Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. In all other cases, claimant shall address his claim to the head of the appropriate office, the address of which will generally be found listed in the local telephone directory.

§ 17.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, 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.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 17.4 Administrative claim; evidence and information to be submitted.

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Department any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of his claim;

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses;

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment;

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost;

(5) If a claim is made for loss of income and the claimant is self-em-

ployed, documentary evidence showing the amount of earnings actually lost;

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation;

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death;

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death;

(5) Decedent's general physical and mental condition before death;

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses;

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death;

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership;

(2) A detailed statement of the amount claimed with respect to each item of property;

§ 17.5

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs;

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical;

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 17.5 Investigations.

The Department may investigate, or may request any other Federal agency to investigate, a claim filed under this subpart.

§ 17.6 Claims investigation.

(a) When a claim has been filed with the Department, the head of the organizational unit concerned or his designee shall designate one employee in that unit who shall act as, and who shall be referred to herein as, the Claims Investigating Officer for that particular claim. When a claim is received by the head of an organizational unit to which this subpart applies, it shall be forwarded with or without comment to the designated Claims Investigating Officer, who shall:

(1) Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property;

(2) Ascertain the extent of loss or damage to the claimant's property;

(3) Assemble the necessary forms with required data contained therein;

(4) Prepare a brief statement setting forth the facts relative to the claim, a statement whether the claim satisfies the requirements of this subpart, and a recommendation as to the amount to be paid in settlement of the claim;

(5) Submit such forms, statements, and all necessary supporting papers to the head of the organizational unit having jurisdiction over the employee involved, who will be responsible for assuring that all necessary data has been obtained for the file. The head of the organizational unit will transmit the entire file to the General Counsel.

24 CFR Subtitle A (4-1-05 Edition)

§ 17.7 Authority to adjust, determine, compromise, and settle claims.

The General Counsel, the Deputy General Counsel, and such employees of the Office of the General Counsel as may be designated by the General Counsel, are authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, and the regulations contained in 28 CFR part 14 and in this subpart.

§ 17.8 Limitations on authority.

(a) An award, compromise, or settlement of a claim under section 2672 of Title 28, United States Code, and this subpart in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when, in the opinion of the General Counsel or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party, and the Department is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when the Department is informed or is otherwise aware that the United States or an officer, employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

Office of the Secretary, HUD

§ 17.41

§ 17.9 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 17.8, the referral or request shall be transmitted to the Department of Justice by the General Counsel of the Department or his designee.

§ 17.11 Final denial of claim.

Final denial of an administrative claim shall be in writing, and notification of denial shall be sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 17.12 Action on approved claim.

(a) Payment of a claim approved under this subpart is contingent on claimant's execution of: (1) A *Claim for Damage or Injury*, Standard Form 95; (2) a claims settlement agreement; and (3) a *Voucher for Payment*, Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative of an award, compromise, or settlement made under section 2672 or 2677 of Title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Subpart B—Claims Under the Military Personnel and Civilian Employees Claims Act of 1964

AUTHORITY: Sec. 3, 78 Stat. 767 (31 U.S.C. 3721).

SOURCE: 36 FR 24427, Dec. 22, 1971, unless otherwise noted.

§ 17.40 Scope and purpose.

(a) This subpart applies to all claims filed by or on behalf of employees of the Department of Housing and Urban Development for loss of or damage to personal property which occurs incident to their service with HUD under the Military Personnel and Civilian Employees' Claims Act of 1964. A claim must be substantiated and the possession of the property determined to be reasonable, useful, or proper. The maximum amount that can be paid under any claim under the Act is \$25,000 and property may be replaced in kind at the option of the Government. Nothing in this subpart shall be construed to bar claims payable under statutory authority.

(b) HUD is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from HUD. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for his loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of his claim under this subpart.

[36 FR 24427, Dec. 22, 1971, as amended at 48 FR 6536, Feb. 14, 1983]

§ 17.41 Claimants.

(a) A claim pursuant to this subpart may only be made by:

- (1) An employee of HUD.
- (2) A former employee of HUD whose claim arises out of an incident occurring before his separation from HUD.
- (3) Survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence:
 - (i) Spouse.

§ 17.42

- (ii) Children.
- (iii) Father or mother, or both.
- (iv) Brothers or sisters, or both.

(4) The authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 17.42 Time limitations.

A claim under this part may be allowed only if:

(a) Except as provided in paragraph (b) of this section, it is filed in writing within 2 years after accrual. For purposes of this part, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

(b) It cannot be filed within the time limits of paragraph (a) of this section, because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, and if it is filed not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier.

§ 17.43 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, the members of his family, or his private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not

24 CFR Subtitle A (4-1-05 Edition)

the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with HUD may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by §§ 17.44 and 17.45:

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office, working area, or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Manufactured homes.* Claims may be allowed for damage to, or loss of, manufactured homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to manufactured homes, other than that caused by collision, and damage to contents of manufactured homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the manufactured home and that it was

not overloaded. Claims for damage to, or loss of, tires mounted on manufactured homes will not be allowed, except in cases of collision, theft, or vandalism.

(4) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(5) *Property used for benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority.

(6) *Clothing and accessories.* Claims may be allowed for damage to, or loss of, clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures.

[36 FR 24427, Dec. 22, 1971, as amended at 50 FR 9268, Mar. 7, 1985]

§ 17.44 Restrictions on certain claims.

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency.* Claims may be allowed for loss of money or currency only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by paragraph (a) of § 17.45). In instances of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount which is determined to have been reasonable for the claimant to have had in his possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to any agency of the Government other than HUD.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repair only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and other motor vehicles.* Claims may only be allowed for damage to, or loss of, automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between quarters and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and assigned place of duty specifically authorized by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 17.46.

§ 17.45 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed, or transported in violation of law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or

§ 17.46

security measures have been taken by claimant.

(f) *Minimum amount.* Loss or damage amounting to less than \$10.

§ 17.46 Claims involving carriers or insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within 9 months of the date that delivery was made, or within 9 months of the date that delivery should ordinarily have been made.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or

24 CFR Subtitle A (4-1-05 Edition)

diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of his claim is made by the carrier or insurer.

(1) Upon submitting his claim, he will certify in his claim that he has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on his claim, he will immediately notify them to address all correspondence in regard to his claim to him, in care of the General Counsel of HUD.

(3) The claimant shall advise the General Counsel of any action taken by the carrier or insurer on his claim and upon request shall furnish all correspondence documents, and other evidence pertinent to the matter.

(e) The claimant will assign to the United States to the extent of any payment on his claim accepted by him, all his right, title and interest in any claim he may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of his claim by the United States, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his claim under this subpart is settled, the amount or recovery shall be applied to his claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this part.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the \$6,500 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds \$6,500, the claimant will be allowed only \$6,500.

§ 17.47 Settlement of claims.

(a) The General Counsel, HUD, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such re-delegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on his claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 17.46 has not been settled before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to HUD to the extent HUD has paid such to claimant in settlement.

§ 17.48 Computation of amount of award.

(a) The amount allowed for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange); and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond eco-

nomical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in kind whenever appropriate.

§ 17.49 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

§ 17.50 Claims procedures.

(a) Claims by, or on behalf of, employees of field offices shall be filed in writing with the appropriate Regional Counsel. Claims by, or on behalf of, employees of Department Headquarters shall be filed in writing with the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

(b) Each written claim shall contain, as a minimum:

(1) Name, address, place of employment of claimant.

(2) Place and date of loss or damage.

(3) A brief statement of the facts and circumstances surrounding loss or damage.

(4) Cost, date, and place of acquisition of each piece of property lost or damaged.

(5) Two itemized repair estimates, or value estimates, whichever is applicable.

(6) Copies of police reports, if applicable.

(7) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved.

§ 17.60

(8) With respect to claims involving property being used for the benefit of the Government, a statement by the employee's supervisor evidencing that the claimant was required to provide such property or that his providing it was in the interest of the Government.

(9) Other evidence as may be required by the General Counsel.

[36 FR 24427, Dec. 22, 1971, as amended at 48 FR 6536, Feb. 14, 1983]

Subpart C—Procedures for the Collection of Claims by the Government

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716-3720E; and 42 U.S.C. 3535(d).

SOURCE: 36 FR 24427, Dec. 22, 1971, unless otherwise noted. Redesignated at 49 FR 32349, Aug. 14, 1984.

GENERAL PROVISIONS

§ 17.60 Scope and definitions.

(a) *Scope.* This subpart sets forth the regulations of the Secretary of Housing and Urban Development implementing the Federal Claims Collection Act of 1966, as amended by the Federal Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*) (the Act), in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR parts 101 through 105. The Act:

(1) Requires the Secretary or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the Department; and

(2) Authorizes the Secretary or his designee to compromise claims that have not been referred to another executive or legislative agency for further collection action where the claim does not exceed \$100,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery.

(b) *Definitions.* As used in this subpart:

24 CFR Subtitle A (4-1-05 Edition)

Administrative offset means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government

Agency means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively;

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

Claim means the same as *Debt*.

Consumer Reporting Agency means:

(1) Any person, that for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer (individual) credit information or other information on consumers for the purpose of providing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (15 U.S.C. 1681a(f)); or

(2) Any person who, for monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of (i) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in paragraph (1) of this definition), or (ii) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies.

Debt means an amount owed to the United States and past due, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from assigned mortgages or deeds of trust, direct loans, advances, repurchase demands, fees, leases, rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Debtor means the same as *person*.

Department means the Department of Housing and Urban Development.

Department Claims Officer: (see § 17.66).

Determination means the point at which the Secretary decides that the debt is valid.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after deductions required by law. Deductions from pay include:

(1) Amounts owed by the individual to the United States;

(2) Amounts withheld for Federal employment taxes;

(3) Amounts properly withheld for Federal, State, or local income tax purposes, if the withholding of the amount is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependent to which he or she were entitled. The withholding of additional amounts under 26 U.S.C. 3402(i) may be permitted only when the individual presents evidence of tax obligation which supports the additional withholding;

(4) Amounts deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(5) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Amounts voluntarily contributed toward additional civil service annuity benefits are considered to be supplementary;

(6) Amounts deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life In-

urance, are considered to be supplementary;

(7) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(8) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home; and

(9) Fines and forfeitures ordered by a court-martial or by a commanding officer.

Employee means a current employee of a Federal agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Office means the organization of each Assistant Secretary, the Government National Mortgage Association (GNMA), the Solar Energy and Energy Conservation Bank and each Field Office.

Pay means basic pay, special pay, income pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

Person means any natural person or persons, profit or nonprofit corporations, partnership, association, trust, estate, government or government subdivision or other entity which is capable of owing a debt to the Government. For purposes of the interest provisions, person does not include an agency of the United States Government, a State government, or a unit of general local government.

Salary offset means a deduction from the pay of an employee without his or her consent to satisfy a debt. Salary offset is one type of administrative offset which may be used by the Department in the collection of claims.

Secretary means the Secretary of the Department of Housing and Urban Development or his or her designee.

United States includes an *agency* of the United States.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee of an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 8346(b), or any other law.

[36 FR 24427, Dec. 22, 1971. Redesignated and amended at 49 FR 32349, Aug. 14, 1984; 59 FR 34579, July 6, 1994]

§ 17.61

§ 17.61 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of the Department shall be performed in accordance with the applicable standards prescribed in 4 CFR parts 101 through 105, which are incorporated by reference and supplemented in this subpart.

§ 17.62 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding \$100,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than \$100,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed \$100,000 exclusive of interest.

[59 FR 34579, July 6, 1994]

§ 17.63 Authority of offices to attempt collection of claims.

The head of each office shall designate a claims collection officer, who shall attempt to collect in full all claims of the Department for money or property arising out of the activities of such office. Each claims collection officer shall establish and currently maintain a file with regard to each claim for which collection activities are undertaken.

[40 FR 28599, July 7, 1975. Redesignated at 49 FR 32349, Aug. 14, 1984]

§ 17.64 Referral of claims to the Assistant Secretary for Administration.

(a) *Authority of the Assistant Secretary for Administration.* The Assistant Secretary for Administration shall exercise the powers and perform the duties of the Secretary to compromise, or to suspend or terminate collection action on all Department claims not exceeding \$100,000 exclusive of interest, except

24 CFR Subtitle A (4-1-05 Edition)

as provided in § 17.65 and paragraph (b) of this section. When initial attempts at collection by the office having responsibility for such claims have not been fully successful, the claim file shall be forwarded to the Assistant Secretary for Administration for further administrative collection procedures. Claims shall be referred to the Assistant Secretary for Administration well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

(b) *Exclusions.* There shall be no compromised or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims shall be promptly referred to the Justice Department or GAO, as appropriate.

[36 FR 24427, Dec. 22, 1971. Redesignated at 49 FR 32349, Aug. 14, 1984 (interim), as amended at 59 FR 34580, July 6, 1994]

§ 17.65 Authority of offices to compromise claims or suspend or terminate collection action.

(a) *Small claims.* The Assistant Secretary for Administration periodically shall establish and disseminate to claims collection officers a maximum dollar amount up to which claims collection officers are authorized to compromise a claim or suspend or terminate collection action on a claim.

(b) *Claims arising under certain programs.* (1) The office primarily responsible for the following programs of the Department is authorized, in those cases where initial collection attempts are not wholly successful, to compromise or to suspend or terminate collection action on claims not exceeding \$100,000 with respect to:

(i) A claim under title I of the National Housing Act;

(ii) A claim on a rehabilitation loan account under section 312 of the Housing Act of 1964;

Office of the Secretary, HUD

§ 17.71

(iii) A claim against tenants or former tenants of properties acquired by, or under the custody of, the Secretary or held by him as mortgagee in possession; or

(iv) A claim arising out of the operational (nonadministrative) activities of the Government National Mortgage Association (GNMA).

(2) However, no office shall undertake to compromise or terminate any collection action excluded under § 17.64(b).

[36 FR 24427, Dec. 22, 1971. Redesignated at 49 FR 32349, Aug. 14, 1984, and amended at 52 FR 35414, Sept. 21, 1987; 59 FR 34580, July 6, 1994]

§ 17.66 Department claims officer.

The Assistant Secretary for Administration shall designate a subordinate official as Department Claims Officer, who shall be responsible for the establishment and maintenance of procedures within the Department relating to the collection of claims and the coordination of all collection activities in all Department offices.

[40 FR 28599, July 7, 1975. Redesignated at 49 FR 32349, Aug. 14, 1984]

§ 17.67 Claims files.

Each claims collection officer is responsible for obtaining current credit data about each person against whom a claim is pending in his office. The file shall be kept reasonably up to date by the Department Claims Officer for claims referred to the Assistant Secretary for Administration for collection. Such credit data may take the form of: (a) A commercial credit report, (b) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (c) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (d) an audited balance sheet of a corporate debtor. The file should also contain a checklist or brief summary of actions taken to collect or comprise a claim.

§ 17.68 Monthly report of collection action.

The Department Claims Officer shall make a monthly report to the Assistant Secretary for Administration and

all offices that have referred claims for collection. The report should contain the following information as a minimum:

(a) All outstanding claims referred to the Assistant Secretary for Administration for administrative collection, including the name and address of the debtor, the amount of the claim, the date the claim accrued, the basis of the claim, the office referring the claim, and the current progress of collection activities.

(b) All claims compromised or on which collection has been suspended or terminated or referred to GAO or Justice for further collection action during the month. The collection action taken and the basis for the action should be indicated.

(c) All claims referred to the Department of Justice under § 17.64(a).

(d) Claims returned to this Department by the Justice Department for further collection action because Justice's handling was not warranted.

§ 17.69 Accounting control.

Each office and the Department Claims Officer shall process all claims collections through the appropriate accounting office and report the collection, compromise, suspension and termination of all claims to the appropriate accounting office for recording.

§ 17.70 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate office or the Assistant Secretary for Administration not less than 1 year after the applicable statute of limitations has run.

§ 17.71 Suspension or revocation of eligibility.

(a) Where a contractor, grantee, or other participant in programs sponsored by the Department fails to pay his debts to the Department within a reasonable time after demand, the fact shall be reported by the Assistant Secretary for Administration to the Inspector General, who shall place such defaulting participant's name on the Department's list of debarred, suspended and ineligible contractors and

§ 17.72

grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the Assistant Secretary for Administration who shall so advise the Treasury Department. The Treasury Department will notify this Department when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

§ 17.72 Methods of collection and imposition of late charges.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate.

(b) *Methods of collection: Administrative and salary offset.* The Department may use administrative offset and salary offset procedures as alternative methods for the collection of money owed the Department from those set out in this section. For specific procedures on administrative offset see §§ 17.100 through 17.118. For specific procedures on salary offset see §§ 17.125 through 17.140.

(c) *Method of collection: Liquidation of collateral.* Where the Department holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument, such procedures will be followed if the debtor fails to pay his or her debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value, or unless special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* Where prejudgment interest is not mandated by statute, contract or regulation, the minimum rate of interest to be charged on delinquent debts is the Tax and Loan Account Rate for the U.S. Treasury (also known as the Current Value of Funds rate) as

24 CFR Subtitle A (4-1-05 Edition)

prescribed and published semiannually by the Secretary of the Treasury in the FEDERAL REGISTER, in accordance with 31 U.S.C. 3717. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claim unless the statute under which the claim arises authorizes the collection of such interest.

(f) *Omission not a defense.* Failure of HUD to comply with any standard prescribed in 4 CFR parts 101 through 105 or in this subpart shall not be available as a defense to any debtor.

[36 FR 24427, Dec. 22, 1971. Redesignated and amended at 49 FR 32349, 32350, Aug. 14, 1984; 59 FR 34580, July 6, 1994]

§ 17.73 Standards for compromise of claims.

(a) *Compromise offer.* An offer to compromise may be accepted: (1) If there is real doubt concerning the Department's ability to prove its case in court for the full amount claimed; (2) if the cost of collecting the claim does not justify the enforced collection of the full amount; (3) if in connection with statutory penalties of forfeitures established as an aid to enforcement and to compel compliance, the Department's enforcement policy will be adequately served by acceptance of the sum to be agreed upon, or (4) for other reasons deemed valid by the Assistant Secretary for Administration (or other designee) and made a part of the claim record.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Department unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

§ 17.74 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the Department's claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action and (1) the applicable statute of limitations has been tolled or started anew or (2) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Department file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

§ 17.75 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR parts 101 to 105 will be referred to the General Accounting Office in accordance with 31 U.S.C. 71 or to the Department of Justice if this Department has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation even though termination of collection activity might otherwise be considered.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action, and in any event, well within the statute of limitations for bringing suit against the debtor.

§ 17.76 Disclosure to a consumer reporting agency.

(a) *Definition.* For purposes of this section, individual means a natural person.

(b) *Conditions for disclosure.* The Secretary may disclose to a Consumer Reporting Agency information from a system of records to the effect that an individual is responsible for a debt. Before doing so, the Secretary will ensure that:

(1) The notice for the system of records required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) indicates that the information in the system may be disclosed to a Consumer Reporting Agency;

(2) There has been Departmental review of the debt and a determination that the debt is valid and overdue;

(3) There has been written notice sent to the individual informing the individual:

(i) That payment of the debt is overdue;

(ii) That the Department intends to disclose to a Consumer Reporting Agency, within not less than 60 days after sending the notice, that the individual is responsible for the debt;

(iii) Of the specific information intended to be disclosed to the Consumer Reporting Agency; and

(iv) Of the rights of the individual to a full explanation of the debt, to dispute any information in the records of the Department concerning the debt, as determined by the Secretary, and to administrative appeal or review with respect to the debt; and

(4) The individual has neither repaid or agreed to repay the debt under a written repayment plan signed by the individual and agreed to by the Secretary nor has filed for review of the claim under paragraph (c) of this section.

(c) *Limitations on disclosure.* The Secretary may not disclose information to a Consumer Reporting Agency unless the Department has:

§ 17.77

(1) Obtained satisfactory assurances from each Consumer Reporting Agency that the agency is complying with the Fair Credit Reporting Act (15 U.S.C. 1681) and any other Federal laws governing the provision of consumer credit information;

(2) Provided, upon request by the individual alleged to be responsible for the claim, the opportunity to review the claim, including an opportunity for reconsideration of the initial decision on the claim; and

(3) Taken reasonable action to locate an individual for whom the Secretary does not have a current address to send a notice under paragraph (b)(3) of this section.

(d) *Additional responsibilities of the Department.* In providing information to a Consumer Reporting Agency, the Department will only disclose:

(1) Information necessary to establish the identity of the individual, including name, address and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

In all cases, the Department will notify each Consumer Reporting Agency to which the original disclosure was made of any substantial change in the condition or amount of the claim. This includes promptly correcting or verifying information about the claim requested by the Consumer Reporting Agency.

[49 FR 32350, Aug. 14, 1984]

§ 17.77 Contracts for collection services.

The Secretary may enter into a contract or contracts for collection services to recover indebtedness owed the Department. Any such contract will include the following provisions:

(a) The Secretary retains the authority to resolve a dispute, compromise a claim, end collection action or refer a matter to the Attorney General to bring civil action;

(b) The person contracted with by the Secretary is subject to the Privacy Act of 1974 to the extent provided for in 5 U.S.C. 552a(m), the section on government contractors;

(c) The person contracted with by the Secretary is subject to State and Fed-

24 CFR Subtitle A (4-1-05 Edition)

eral laws governing debt collection practices, such as the Debt Collection Practices Act, 15 U.S.C. 1692; and

(d) The person contracted with agrees to provide to the Secretary, if asked to return the file to the Department so that the Secretary may refer the account to the Department of Justice for litigation, any data contained in the files relating to actions previously taken to collect the debt, the current address of the debtor, as well as the current credit data of the debtor or any current other information requested and available.

[49 FR 32350, Aug. 14, 1984]

ADMINISTRATIVE OFFSET PROVISIONS

SOURCE: Sections 17.100 through 17.118, 49 FR 32351, appear at Aug. 14, 1984, unless otherwise noted.

§ 17.100 Scope.

(a) The standards set forth in §§ 17.100 through 17.118 are the Department's procedures for the collection of money owed to the government by means of administrative offset. These procedures apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority. These procedures will not be used when a statute provides its own collection procedure, for procedures for grant reduction as a remedial action in grant programs (including the CDBG program), when explicitly prohibited by a statute, or when the United States has a judgment against the debtor. Unless otherwise provided for by statute, these procedures do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602), the Social Security Act (42 U.S.C. 301-1397f), or the tariff laws of the United States.

(b) The Secretary will use administrative offset to collect claims which are certain in amount in every instance in which collection is determined to be feasible and not prohibited by law. The Secretary will determine

Office of the Secretary, HUD

§ 17.104

feasibility on a case-by-case basis, exercising sound discretion. In determining feasibility the Secretary will consider:

- (1) The debtor's financial condition;
- (2) Whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated; and
- (3) Whether offset best serves to further and protect all of the interests of the United States.

§ 17.101 Coordinating administrative offset with another Federal agency.

(a) *When HUD is owed the debt.* When the Department is owed a debt, but another Federal agency is responsible for making the payment to the debtor against which administrative offset is sought, the other agency shall not initiate the requested administrative offset until the Department provides the agency with a written certification that the debtor owes the Department a debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may administratively offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the person has been given the procedural rights required by 31 U.S.C. 3716 and 4 CFR part 102.

§ 17.102 Notice requirements before offset.

Except as provided in § 17.103, deductions will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with a minimum of 30 calendar days written notice. This Notice of Intent to Collect by Administrative Offset (Notice of Intent) will state:

- (a) The nature and amount of the debt:
- (b) That the Secretary intends to collect the debt by administrative offset until the debt and all accumulated in-

terest and other charges are paid in full;

(c) That the debtor has a right to obtain review within the Department of the Secretary's initial determination of indebtedness (see § 17.104);

(d) That the debtor has a right to inspect and copy Department 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 § 17.105); and

(e) That the debtor may enter into a written agreement with the Secretary to repay the debt, so long as the terms of the repayment agreement proposed by the debtor are agreeable to the Secretary (see § 17.106).

§ 17.103 Exceptions to notice requirements.

(a) In cases where the notice requirements specified in § 17.102 already have been provided to the debtor in connection with the same debt under some other proceeding, the Secretary is not required to duplicate those requirements before effecting administrative offset.

(b) The Secretary may effect administrative offset against a payment to be made to a debtor before completion of the procedures required by § 17.102 if (1) failure to make the offset would substantially prejudice the Government's ability to collect the debt, and (2) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be followed promptly by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Secretary will be refunded promptly.

§ 17.104 Review within the Department of a determination of indebtedness.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to request Departmental review of the determination of indebtedness. To exercise this right, the debtor must send a letter requesting review to the Secretary. The letter must explain why

§ 17.105

the debtor seeks review and must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

(b) *Secretary's response.* In response to a timely request for review of the initial determination of indebtedness, the Secretary will notify the debtor whether review will be by review of the record or by hearing. The notice to the debtor will include the procedures used for reviewing the record or will include information on the date, location and procedures to be used if review is by a hearing.

§ 17.105 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 Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

(b) *Secretary's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Secretary will notify the debtor of the location and time when the debtor may inspect or copy Department records related to the debt.

§ 17.106 Written agreement to repay debt as alternative to administrative offset.

(a) *Notification by debtor.* The debtor may, in response to a Notice of Intent, propose a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a proposed written agreement to repay the debt. This proposed written agreement must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

(b) *Secretary's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Secretary will notify the debtor whether the debtor's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination the Secretary

24 CFR Subtitle A (4-1-05 Edition)

will balance the Department's interest in collecting the debt against hardship to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Secretary will accept a repayment agreement instead of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 17.107 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.104 or § 17.106, the offset will be stayed until the Secretary either makes a determination concerning the debtor's proposal to repay the debt or issues a written decision following review of the record or, where appropriate, a hearing. However, interest continues to run during any stay.

§ 17.108 Types of review.

(a) *Hearing.* The Secretary will provide the debtor with a reasonable opportunity for hearing if:

(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 debtor requests reconsideration of the debt and the Secretary determines that the question of the indebtedness cannot be resolved by review of the documentary evidence.

(b) *Review of the record.* Unless the Secretary determines that a hearing is required (see paragraph (a) of this section), the Secretary will provide for a review of the record (a review of the documentary evidence).

§ 17.109 Review procedures.

(a) *Hearings.* (1) The appropriate Deputy Assistant Secretary (DAS) or designee conducts the hearing. The DAS or designee will take steps necessary to ensure that the hearing is conducted in a fair and expeditious manner. If necessary, the DAS or designee may administer oaths of affirmations.

(2) The DAS or designee does not use the formal rules of evidence with regard to admissibility of evidence or the

use of evidence once admitted. However, parties may object to clearly irrelevant material.

(3) The DAS or designee records all significant matters discussed at the hearing. There is no "official" record or transcript provided for these hearings.

(4) A debtor may represent himself or herself or may be represented by an attorney or other person. The Secretary is represented by the General Counsel or his or her designee.

(5) The Secretary proceeds first by presenting evidence on the relevant issues. The debtor then presents his or her evidence regarding these issues. The Secretary then may offer evidence to rebut or clarify the evidence introduced by the debtor.

(b) *Review of the record.* The appropriate DAS or designee will review all material related to the debt which is in the possession of the Department. The DAS or designee makes a determination based upon a review of this written record, which may include a request for reconsideration of the determination of indebtedness, or such other relevant material submitted by the debtor.

§ 17.110 Determination of indebtedness and appeal from determination.

(a) Following the hearing or the review of the record, the DAS or designee will issue a written decision which includes the supporting rationale for the decision. The decision of the DAS or designee is the final agency action with regard to the particular administrative offset.

(b) Copies of the DAS decision will be distributed to the debtor and the debtor's attorney or other representative, if applicable.

[36 FR 24427, Dec. 22, 1971. Redesignated at 49 FR 32349, Aug. 14, 1984 (interim), as amended at 59 FR 34580, July 6, 1994]

§ 17.111 Procedures for administrative offset: single debt.

(a) Offset will commence 31 days after the debtor receives the Notice of Intent, unless the debtor has requested a hearing (see §17.104) or has entered into a repayment agreement (see §17.106).

(b) When there is review of the debt within the Department, offset will begin after the DAS determination has been issued under §17.110 and a copy of the determination is received by the Department's Office of Finance and Accounting.

§ 17.112 Procedures for administrative offset: multiple debts.

The Secretary will use the procedures identified in §17.111 for the offset of multiple debts. However, when collecting multiple debts the Secretary will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 17.113 Procedures for administrative offset: interagency cooperation.

The Department will make use of all possible methods of cooperating with other Federal agencies in effecting collections by offset.

§ 17.114 Procedures for administrative offset: time limitation.

(a) The Secretary may not initiate administrative offset to collect a debt 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.)

§ 17.115 Procedures for administrative offset: offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Secretary may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in one or more payments to collect debts owed to the Secretary by the debtor. The Secretary

§ 17.116

submits the request to the appropriate officials of the Office of Personnel Management (OPM) in accordance with OPM regulations and procedures.

(b) To request administrative offset under paragraph (a) of this section, the Secretary will provide a written certification that:

(1) The debtor owes the Secretary a debt, including the amount of the debt;

(2) The Secretary has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Secretary has complied with the Department's regulations contained in these regulations.

(c) Once the decision is made to request administrative offset under paragraph (a) of this section, the Secretary will make the request as soon as practical after completion of the applicable procedures necessary for the Office of Personnel Management to identify the debtor's account and to add a notation in the debtor's file in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. (This notation will satisfy any requirement that offset be initiated before the applicable statute of limitations expires.)

(d) If, at the time the debtor makes a claim for payments from the Fund, at least one year has elapsed since the offset was originally made, the debtor may offer a satisfactory repayment plan instead of offset upon establishing that changed financial circumstances would render the offset unjust.

(e) If the Department collects part or all of the debt by other means before deductions are made or completed under paragraph (a) of this section, the Secretary will act promptly to modify or terminate the Department's request for offset under paragraph (a) of this section.

§ 17.116 Procedures for administrative offset: offset of debtor's judgment against the United States.

Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728.

24 CFR Subtitle A (4-1-05 Edition)

§ 17.117 Procedures for administrative offset: imposition of interest.

Interest will be charged in accordance with § 17.72.

§ 17.118 Miscellaneous provisions: correspondence with the Department.

(a) All correspondence from the debtor to the Secretary shall be addressed to the Department Claims Officer, Office of Finance and Accounting, Department of HUD, Washington, DC 20410.

(b) The Department Claims Officer will deliver any correspondence to the appropriate Deputy Assistant Secretary within four working days.

SALARY OFFSET PROVISIONS

SOURCE: Sections 17.125 through 17.140, appear at 49 FR 32353, Aug. 14, 1984, unless otherwise noted.

§ 17.125 Scope.

(a) The provisions set forth in §§ 17.125 through 17.140 are the Department's procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed the government.

(b) These regulations apply to collections by the Secretary from:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602); the Social Security Act (42 U.S.C. 301-1397f); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere in this subpart (see 24 CFR 17.60 through 17.77).

§ 17.126 Coordinating offset with another Federal agency.

(a) *When HUD is owed the debt.* When the Department is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Department provides the agency with a written certification that the debtor owes the Department a debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 17.127 Determination of indebtedness.

In determining that an employee is indebted, the Secretary will review the debt to make sure that it is valid and past due.

§ 17.128 Notice requirements before offset.

Except as provided in § 17.125(d), deductions will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, unless such payments are excused in accordance with § 17.72;

(e) The employee's right to inspect and copy Department records relating to the debt;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing, conducted by an administrative law judge of the Department or a hearing official of another agency, on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings; (See § 17.129).

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

§ 17.129

(l) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(m) The method and time period for requesting a hearing.

§ 17.129 Request for a hearing.

(a) Except as provided in paragraph (d) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 20 calendar days from the date of the Department's notice described in § 17.128 if an employee wants a hearing concerning—

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) The petition must be signed by the employee and should admit or deny the existence of or the amount of the debt, or any part of the debt, briefly setting forth any basis for a denial. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it. The petition should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position.

(c) Upon receipt of the petition, the Department will send the employee a copy of the Salary Offset Hearing Procedures Manual of the Department of Housing and Urban Development.

(d) If the employee files a petition for hearing later than the 20 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 17.130 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with

24 CFR Subtitle A (4-1-05 Edition)

the Secretary's offset schedule, if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 17.129; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 17.131 Written decision following a hearing.

Written decisions provided after a request for a hearing will include:

(a) A statement of the facts presented to support the nature and origin of the alleged debt;

(b) The hearing officer's analysis, findings and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(c) The amount and validity of the alleged debt; and

(d) The repayment schedule, if applicable.

§ 17.132 Review of departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Department records related to the debt.

§ 17.133 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Secretary within 20 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee

whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Secretary will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 17.134 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Secretary before the expiration of the period provided for in § 17.129, then deductions will begin after the hearing officer has provided the employee with a hearing, and the final written decision is in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see §§ 17.100 through 17.118).

§ 17.135 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 17.136 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative

arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Secretary.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 17.137 Procedures for salary offset: imposition of interest.

Interest will be charged in accordance with § 17.72.

§ 17.138 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 17.139 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 17.140

§ 17.140 Miscellaneous provisions: correspondence with the Department.

The employee shall file an original and two copies of a request for a hearing with the Clerk, Office of the Chief Administrative Law Judge, Room 2158, Department of HUD, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m. All other correspondence shall be submitted to the Department Claims Officer, Department of Housing and Urban Development, Washington, DC 20410. Documents may be filed by personal delivery or mail. All documents shall be printed, typewritten, or otherwise processed in clear, legible form and on letter-size paper.

IRS TAX REFUND AND FEDERAL PAYMENT OFFSET PROVISIONS AND ADMINISTRATIVE WAGE GARNISHMENT

SOURCE: Sections 17.150 through 17.161 appear at 51 FR 39750, Oct. 31, 1986, unless otherwise noted.

§ 17.150 Scope.

(a) The standards set forth in §§17.150 through 17.161 are the Department's procedures for requesting the Department of the Treasury to offset Federal payments due debtors who have a past-due debt obligation to the Department. These procedures apply to the collection of debts under common law, 31 U.S.C. 3716 or other statutory authority.

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

(c) The Secretary will report debts to the Department of the Treasury for the purpose of using the offset procedures described in §§17.150 through 17.161. Debts of less than \$100.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of lapse of statute of limitations but otherwise valid, the debt will be reported to the IRS as a cancelled debt on Form 1099C. (Form 1099C is an information return which Government

24 CFR Subtitle A (4-1-05 Edition)

agencies file with the IRS and the Department of the Treasury to report forgiven debt, and the forgiven amount is considered income to the taxpayer.) (See §17.159.)

[67 FR 47435, July 18, 2002]

§ 17.151 Notice requirements before offset.

A request for deduction from a Federal payment will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 65 calendar days written notice. This Notice of Intent will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 65 days from the date of the Notice, the Secretary intends to collect the debt by requesting the Department of Treasury to reduce any amounts payable to the debtor 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 §17.152);

(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 §17.155.)

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.152 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. The debtor should send a copy of the Notice of Intent with a letter notifying the HUD Board of Contract Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence. (See §17.161(a) for

address of the Board.) Failure to give this advance notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in paragraph (b) of this section. If the HUD Board of Contract Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after his request for review is received and docketed by the Board.

(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 requested by paragraph (a) of this section, but in any event the evidence must be submitted to the Board of Contract Appeals within 65 calendar days from the date of the Department's Notice of Intent. Failure to submit evidence within 65 calendar days will result in a dismissal of the request for review by the HUD Board of Contract Appeals.

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the HUD Board of Contract Appeals will review the evidence submitted by the Department which shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1)). The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may order an oral hearing if he or she 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.

(d) *Previous decision by Board of Contract Appeals.* The debtor is not entitled to a review of the Department's intent to offset it, in a previous year the HUD Board of Contract Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence

that the debt is presently not legally enforceable.

§ 17.153 Determination of the Administrative Judge.

(a) Following the hearing or the review of the record, the Administrative Judge shall issue a written decision which includes the supporting rationale for the decision. The decision of the Administrative Judge 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 Administrative Judge's decision will be distributed to the General Counsel of the Department, the Department's Office of Finance and Accounting, the debtor, and the debtor's attorney or other representative, if any.

(c) If the Administrative Judge's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Chief Financial Officer. No referral will be made to the IRS or the Department of the Treasury if review of the debt by the Administrative Judge reverses the initial decision that the debt is past due and legally enforceable.

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.154 Postponements, withdrawals and extensions of time.

(a) *Postponements and withdrawals.* The Secretary may, for good cause, postpone or withdraw referral of the debt to the Department of Treasury. (For example, a delay in the mail between the debtor and the Secretary could normally warrant a postponement; a mathematical error or computer malfunction could be the reason for a withdrawal.)

(b) *Extensions of time.* At the discretion of the Administrative Judge, time

§ 17.155

limitations required in these procedures may be extended in appropriate circumstances for good cause shown.

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.155 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 Title I Representative stating his or her intention. The letter must be received by the Title I Representative within 25 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 Title I Representative will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt.

§ 17.156 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.152(a) and timely submits evidence in accordance with § 17.152(b), any notice to the IRS or the Department of the Treasury will be stayed until the issuance of a written decision by the Administrative Judge which determines that a debt or part of a debt is past-due and legally enforceable.

[67 FR 47435, July 18, 2002]

§ 17.157 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that he or she is exercising a right described in § 17.152, the Secretary will notify the Department of the Treasury of the debt no earlier than 65 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 Department of the Treasury as a Federal payment. Normally, recovered funds will be applied first to costs of collection, then to any special charges provided for in HUD regulations or contracts, then to interest and

24 CFR Subtitle A (4-1-05 Edition)

finally, to the principal owed by the debtor.

[67 FR 47435, July 18, 2002]

§ 17.158 Application of offset funds: Multiple debts.

The Secretary will use the procedures set out in § 17.157 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in the order in which the debts accrued.

§ 17.159 Application of offset funds: Federal payment is insufficient to cover amount of debt.

If an offset of a Federal payment is insufficient to satisfy a debt, the Secretary will continue the certification to the Department of the Treasury 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 cancelled debt in accordance with § 17.150(d).

[67 FR 47435, July 18, 2002]

§ 17.160 Time limitation for notifying the Department of the Treasury to request offset of Federal payments due.

(a) The Secretary may not initiate offset of Federal payments 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.)

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47436, July 18, 2002]

§ 17.161 Correspondence with the Department.

(a) All correspondence from the debtor to the Board concerning the right to review as described in § 17.152 shall be

Office of the Secretary, HUD

§ 18.1

addressed to the HUD Board of Contract Appeals, Room 2131, 451 Seventh Street SW., Washington, DC 20410-0500.

(b) The request for review of Departmental records should be addressed to the Title I Representative whose address appears in the Notice of Intent of Offset. All requests for review of departmental records must be marked: Attention: Records Inspection Request.

(c) All other correspondence shall be addressed to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

[51 FR 39750, Oct. 31, 1986, as amended at 59 FR 59647, Nov. 18, 1994; 67 FR 47436, July 18, 2002]

ADMINISTRATIVE WAGE GARNISHMENT

§ 17.170 Administrative wage garnishment.

(a) *General.* The Secretary may collect a debt by using administrative wage garnishment. Regulations in 31 CFR 285.11 governs collection through administrative wage garnishment. To the extent situations arise that are not covered by 31 CFR 285.11, those situations shall be governed by part 26, subpart A of this title.

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by an Administrative Judge of the HUD Board of Contract Appeals.

[67 FR 47436, July 18, 2002]

PART 18—INDEMNIFICATION OF HUD EMPLOYEES

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 3535(d).

SOURCE: 62 FR 6096, Feb. 10, 1997, unless otherwise noted.

§ 18.1 Policy.

(a) The Department of Housing and Urban Development may indemnify, in whole or in part, a Department employee (which for the purpose of this part includes a former Department employee) for any verdict, judgment or other monetary award which is rendered against any such employee, pro-

vided the Secretary or his or her designee determines that:

(1) The conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with the Department; and

(2) Such indemnification is in the interest of the United States.

(b) The Department of Housing and Urban Development may settle or compromise a personal damage claim against a Department employee by the payment of available funds, at any time, provided the Secretary or his or her designee determines that:

(1) The alleged conduct giving rise to the personal damage claim was taken within the scope of employment; and

(2) That such settlement or compromise is in the interest of the United States.

(c) Absent exceptional circumstances, as determined by the Secretary or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee of the Department becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly notify the head of his or her operating component and the Associate General Counsel for Litigation and Fair Housing Enforcement, if the supervisor is located at headquarters, or Field Assistant General Counsel—who shall promptly notify the Associate General Counsel for Litigation and Fair Housing Enforcement—if the supervisor is located in the field. As used in this section, the term “principal operating component” means an office in the Department headed by an Assistant Secretary, the General Counsel, the Inspector General, or an equivalent departmental officer who reports directly to the Secretary. Questions regarding representation of the employee will be