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for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(d) The DOT will require borrowers to pay servicing fees for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (*e.g.*, a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of servicing the credit instrument as determined by the Secretary. Such fees will be set at a level to enable the DOT to recover all or a portion of the costs to the Federal Government of TIFIA credit instruments.

[65 FR 44940, July 19, 2000]

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit assistance under this part shall submit an annual project performance report and audited financial statements to the DOT within no more than 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

[65 FR 44940, July 19, 2000]

§ 80.21 Use of administrative offset.

The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a TIFIA credit instrument. The DOT may, however, use an administrative offset in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

[65 FR 44940, July 19, 2000]

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

Subpart A—General

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AUTHORITY: Pub. L. 89–508; Pub. L. 89–365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701–3720A; Pub. L. 98–167; Pub. L. 98–369; Pub. L. 99–578; Pub. L. 101–552, 31 U.S.C. 3711(a)(2).

SOURCE: 53 FR 51238, Dec. 21, 1988, unless otherwise noted.

Subpart A—General

§ 89.1 Purpose.

This part implements the Federal Claims Collection Act of 1966, 31 U.S.C. 3701–3720 A, as amended primarily by the Debt Collection Act of 1982 (Pub. L.

97–365, 96 Stat. 1749) and the Debt Collection Amendments of 1986 (Pub. L. 99–578, 100 Stat. 3305). It supplements the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). Pursuant to the Federal Claims Collection Act, as amended, and the FCCS, this part sets forth procedures by which the Department of Transportation (DOT) and its operating elements (see 49 CFR 1.3) through designated officials:

(a) Collect claims owed to the United States arising from activities under its jurisdiction;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and

(d) Refer unpaid claims for litigation.

§ 89.3 Applicability.

(a) The part applies to collection of all claims due the United States under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collection Amendments of 1986 (Pub. L. 99–578), arising from activities under the jurisdiction of DOT including amounts due the United States from fees, overpayments, fines, civil penalties, loans, damages, interest, and other sources.

(b) This part does not apply to collection, settlement or compromise of debts owed the United States pursuant to authority other than Title 31, Chapter 37, Subchapter II: for example, application of this part to the enforcement of contracts under 46 U.S.C. 1117, delegated to the DOT Maritime Administration, is not required.

(c) Section 89.23 (interest, late payment penalties, and collection charges) and § 89.25 (collection by administrative offset) of this part do not apply to debts which other United States government agencies or state governments or units of general local government owe the Department (see 31 U.S.C. 3701(c)); however, other statutory or common law may provide legal authority. Neither does the proposed rule apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514.

(d) Claims arising out of contracts that contain specific provisions relating to claims are governed by those specific provisions to the extent that those provisions comply with existing law and with 4 CFR chapter II.

(e) As used in this part, the terms debt and claims are interchangeable and have the meaning defined in 4 CFR 101.2(a). A debtor's liability arising out of a particular incident or adjudication exclusive of interest, administrative costs, and late payment penalties, is a single claim.

(f) Except as provided in paragraphs (b), (c) and (d) of this section the provisions of this part shall apply to the collection of all debts and claims owed to any DOT operating element. A claim arising from the assessment of civil penalty or fine is not subject to the procedures of this subpart until the claim has been reduced to a liquidated debt by a signed settlement agreement, a court order or judgment, or a final administrative determination.

§ 89.5 Delegations of authority.

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding $100,000 (excluding interest) and to suspend and terminate action to collect such claims are delegated to:

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The heads of other DOT operating elements with respect to claims arising out of the activities of, or referred to, their organizations.

[53 FR 51238, Dec. 21, 1988, as amended at 58 FR 6898, Feb. 3, 1993]

§ 89.7 Exceptions to delegated authority.

The authority delegated under § 89.5 does not apply to any claim:

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based on tax statutes; or

(c) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

§ 89.9 Redelegation.

Each officer to whom authority is delegated under § 89.5 may redelegate and authorize successive redelegations of the authority within the organization under his or her jurisdiction.

§ 89.11 Standards for exercise of delegated authority.

The authority delegated under § 89.5 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR chapter II, as those standards may be amended.

§ 89.13 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.15 Regulations, reports, and supporting documentation.

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

Subpart B—Collection of Claims

§ 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date

(see §89.23 for details regarding interest, collection charges, and late payment penalty charges);

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see §89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 4 CFR parts 101 through 105, pursuant to 31 U.S.C. 3701–3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701–3720A.

(d) DOT may collect by administrative offset, (see §89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR part 7, the debtor may inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the copying and inspection of the records shall be borne by the debtor. (Payment of cost is governed by 49 CFR part 7, subpart I.) The debtor shall give reasonable notice in advance to the agency of the date on which it intends to inspect and copy the records involved;

(f)(1) Except for debts established by settlement agreement, court order or judgment, or final administrative decision, the debtor may request review of the validity or amount of a claim. To do so, the debtor shall make a request in writing for review of the claim prior to it becoming delinquent. (*See* 4 CFR 101.2 for definition of when a debt is considered delinquent.) The debtor's written response shall state the basis for the dispute, and provide all factual information, documents, citation to authority, argument and any other matters to be considered. If only part of the claim is disputed, the undisputed portion shall be paid by the delinquency date stated in the initial demand. During the period that the claim is being reviewed, the amount of the debt is owed, but the accrual of interest and accrual of time to delinquency may be suspended on the disputed portion of the debt.

(2) Review of claims shall be based upon the written record unless an oral hearing is required by 4 CFR 102.3(c). Upon completion of review, within 30 days whenever feasible, the Department shall advise the debtor whether the debt has been found to be valid in any amount, or that collection will be terminated. If the claim is found to be valid in any amount, the accrual of interest and time to delinquency shall commence 15 days after mailing of the notification of the review results. The notification of the review may also include notice of a specific collection action to be undertaken if payment is not received.

(g) The debtor may offer to make a written agreement to pay the amount of the claim. The acceptance of such an agreement is discretionary with DOT. If the debtor requests an installment payment arrangement because a lump sum payment would create a financial hardship, DOT may agree to a written installment payment schedule with the debtor (see 4 CFR 102.11(a)). The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement and includes a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest shall be provided in the note (see §89.23). The debtor shall be provided

with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation, which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Evidence of these facts shall be maintained in DOT's file on the debtor in accordance with the practice of the DOT operating element.

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

(a) DOT shall charge interest on an outstanding debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and 4 CFR 102.13(c), unless DOT determines that a higher rate is necessary to protect the interests of the United States. DOT shall charge a late payment penalty at a rate of six percent a year on any portion of a debt that is more than 90 days past due. DOT shall also assess administrative charges to cover additional cost incurred in processing and handling the debt beyond the payment due date. The imposition of interest, collection charges, and late payment penalty charges shall be made in accordance with 31 U.S.C. 3717, 4 CFR 102.13 (see § 89.3(c) regarding payment of such charges by Federal, state and local government agencies).

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

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

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

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

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

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

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

§ 89.25 Collection by administrative offset.

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

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

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

§ 89.27 Referral for litigation.

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

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

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

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

§ 89.31 Use of professional debt collection agencies.

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

§ 89.33 [Reserved]

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

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

§ 89.37 Applicability and scope.

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

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

(1) A debt which:

(i) Is owed to the United States;

(ii) Is at least $25.00;

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

(iv) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(v) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(vi) Has been disclosed by the Department to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00; and

(2) A debt for which the Department has:

(i) Notified or has made reasonable attempt to notify the taxpayer that the debt is past-due and, that the debt, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax;

(ii) Given the debtor at least 60 days from the date of notification to present information that all or part of the debt is not past-due or legally enforceable, has considered information presented by such debtor, and has determined

that an amount of debt is past-due and legally enforceable;

§ 89.39 Administrative charges.

In accordance with 4 CFR 102.13, all administrative charges incurred in connection with the referral of the debt to the IRS shall be added to the debt and thus increase the amount of the offset.

§ 89.41 Notice requirement before offset.

A request for offset from an IRS tax refund will be made only after the Department has made a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Department's notice of intention to collect by IRS tax refund offset (Notice of Intent) includes:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the Department's Notice of Intent, the Department will refer the debt to the IRS for offset against any amount due the debtor as a tax refund;

(c) That the debtor has a right to present information that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and telephone number for any questions.

§ 89.43 Review within the Department.

(a) *Notification by debtor*. A debtor who receives a Notice of Intent may present, for 60 days from the date of the Notice of Intent, information that all or part of the debt is not past-due or legally enforceable. (However, this does not extend the regulatory period for submitting written statements or for requesting an administrative hearing on the merits of an alleged violation, nor does it extend the period to appeal an assessed civil penalty.) To comply with this procedure, the debtor must:

(1) Send a written request for a review of the information to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60 day period.

(b) *Submission of information*. The debtor may submit information showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the information within the remainder of the 60 day period will be interpreted as there is no additional information for consideration.

(c) *Review of the information*. The Department considers all available information related to the issue of whether the debt is past-due and the issue of whether the debt is legally enforceable. After a decision has been reached, the Department notifies the debtor whether the Department has sustained amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 89.45 Department determination.

(a) Following review of the information, the Department notifies the debtor with a written decision that includes the supporting rationale.

(b) If the Department either sustains or amends its determination, it shall notify the debtor that the debt is being referred to the IRS for offset against the debtor's Federal income tax refund. If the Department determines that there is no legally enforceable debt or that full payment has been made, the case will be closed.

§ 89.47 Stay of offset.

If the debtor timely notifies the Department that he or she is complying with the procedures in § 89.43(a) of this subpart and timely submits additional information in accordance with § 89.43(b) of this subpart, the debt will not be referred to the IRS while the matter is under review by the Department. Referral will not be made until the issuance of a written decision, in accordance with § 89.45 of this subpart, which sustains or amends the Department's original determination.