

§ 11.11

waive interest, penalties and administrative costs is delegated to the Chief Financial Officer. The DHS Chief Financial Officer shall issue written guidance on maintaining records of waivers.

(c) *Accrual during suspension of debt collection.* Interest and related charges will not accrue during the period a hearing official does not render a timely decision.

§ 11.11 Compromise.

DHS may compromise a debt in accordance with the provisions of 31 CFR part 902. The Chief Financial Officer is authorized to compromise debts owed to DHS. No debt over \$10,000 may be compromised without the concurrence of the Office of the General Counsel.

§ 11.12 Suspending or terminating collection activity.

DHS will suspend or terminate collection activity, or discharge indebtedness, in accordance with 31 CFR part 903. The Chief Financial Officer is delegated authority to suspend or terminate collection activity, or to discharge indebtedness regarding debts owed to DHS, but for any such action involving a debt over \$10,000, the Chief Financial Officer must obtain the concurrence of the Office of the General Counsel. The Chief Financial Officer is authorized to act on behalf of the Secretary in selling a debt, and in determining whether or not it is in the best interests of the United States to do so.

§ 11.13 Referrals to the Department of Justice.

Referrals of debts to the Department of Justice for collection will be by the General Counsel.

§ 11.14 Receipt of offset requests by other Federal agencies.

Other Federal agencies send non-centralized offset requests to DHS at: U.S. Department of Homeland Security, Attn: Chief Financial Officer, Mail Stop 0200, Washington, DC 20528-0200. Those agencies must comply with 31 CFR 901.3 when forwarding the requests to DHS. DHS does not review the merits of the creditor agency's determination with regard to the existence or the amount of the debt. When two or more

6 CFR Ch. I (1-1-13 Edition)

agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, DHS may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously. For the purposes of this section, debts owed to DHS generally take precedence over debts owed to other agencies, but DHS may pay a debt to another agency prior to collecting for DHS. DHS determines the order of debt collection based upon the best interests of the United States.

§ 11.15 Applying the debt against DHS payments.

(a) *Notice to the Debtor.* DHS sends a written notice to the debtor indicating a certified debt claim was received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the estimated date the offset will begin (if more than one payment), and the amount of the deduction(s). For employees, DHS generally begins deductions from pay at the next officially established pay interval. Deductions continue until DHS knows the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. If a DHS employee retires or resigns, or if his or her employment ends before collection of the debt is complete, DHS continues to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by DHS. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m). If the employee is separated from DHS before the debt is paid in full, DHS will certify to the creditor agency the total amount of its collection. If DHS is aware the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, DHS provides written notice to the agency making such retirement payments that the debtor owes a debt (including the amount) and

Office of the Secretary, DHS

§ 13.1

that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in section 11.4.

(b) *Notice to the debtor.* DHS provides to the debtor a copy of any notices sent to the creditor agency under this subpart.

(c) *Transfer of employee debtor to another Federal agency.* If an employee debtor transfers to another Federal agency before the debt is paid in full, DHS notifies the creditor agency and provides it a certification of the total amount of its collection on the debt. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

Sec.

- 13.1 Basis, purpose, scope and effect.
- 13.2 Definitions.
- 13.3 Basis for civil penalties and assessments.
- 13.4 Investigation.
- 13.5 Review by the Reviewing Official.
- 13.6 Prerequisites for issuing a Complaint.
- 13.7 Complaint.
- 13.8 Service of Complaint.
- 13.9 Answer.
- 13.10 Default upon failure to answer.
- 13.11 Referral of Complaint and answer to the ALJ.
- 13.12 Notice of hearing.
- 13.13 Parties to the hearing.
- 13.14 Separation of functions.
- 13.15 *Ex parte* contacts.
- 13.16 Disqualification of Reviewing Official or ALJ.
- 13.17 Rights of parties.
- 13.18 Authority of the ALJ.
- 13.19 Prehearing conferences.
- 13.20 Disclosure of Documents.
- 13.21 Discovery.
- 13.22 Exchange of witness lists, Statements, and exhibits.
- 13.23 Subpoenas for attendance at hearing.
- 13.24 Protective order.
- 13.25 Fees.
- 13.26 Filing, form and service of papers.
- 13.27 Computation of time.
- 13.28 Motions.
- 13.29 Sanctions.
- 13.30 The hearing and burden of proof.

- 13.31 Determining the amount of penalties and assessments.
- 13.32 Location of hearing.
- 13.33 Witnesses.
- 13.34 Evidence.
- 13.35 The record.
- 13.36 Post-hearing briefs.
- 13.37 Initial Decision.
- 13.38 Reconsideration of Initial Decision.
- 13.39 Appeal to Authority Head.
- 13.40 Stays ordered by the Department of Justice.
- 13.41 Stay pending appeal.
- 13.42 Judicial review.
- 13.43 Collection of civil penalties and assessments.
- 13.44 Right to administrative offset.
- 13.45 Deposit in Treasury of United States.
- 13.46 Compromise or settlement.
- 13.47 Limitations.

AUTHORITY: Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C., Ch. 1, sections 101 et seq.); 5 U.S.C. 301; 31 U.S.C. 3801-3812.

SOURCE: 70 FR 59211, Oct. 12, 2005, unless otherwise noted.

§ 13.1 Basis, purpose, scope and effect.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812. section 3809 of title 31, United States Code, requires each authority to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against Persons who Make, submit, or present, or cause to be Made, submitted, or presented, false, fictitious, or fraudulent Claims or written Statements to the Authority or to certain others; and

(2) Specifies the hearing and appeal rights of Persons subject to allegations of liability for such penalties and assessments.

(c) *Scope.* This part applies to all components of the Department of Homeland Security.

(d) *Effect.* (1) This part applies to program fraud cases initiated by any component of the Department of Homeland Security on or after October 12, 2005.

(2) Program fraud cases initiated by any component of the Department of Homeland Security before October 12, 2005, but not completed before October 12, 2005, will continue to completion under the rules and procedures in effect before this part.