



AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1506

RIN 3005-AA00

Collection of Claims

AGENCY: U.S. African Development Foundation.

ACTION: Final rule.

SUMMARY: The U.S. African Development Foundation (USADF) is revising its regulations on collection of claims in accordance with the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (Justice) and the Department of the Treasury (Treasury) in the revised Federal Claims Collection Standards (FCCS). The FCCS prescribes the standards that Federal agencies must use in the administrative collection, offset, compromise, and suspension or termination of collection activity for civil claims of money, funds, or property as defined by law.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: June B. Brown, 202-233-8882.

SUPPLEMENTARY INFORMATION

I. Background

In accordance with the requirements of the DCIA and the implementing regulations promulgated by Justice and Treasury at 31 CFR parts 900-904, USADF is revising its regulations

to establish procedures for the administrative collection, offset, compromise, suspension and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), and the process by which USADF can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable. The regulations do not apply to claims between federal agencies. The rules affect USADF's debtors. The regulations clarify and prescribe the steps USADF must take before initiating debt collection to ensure that individuals' rights are protected. These steps include notifying the debtor of the debt and the consequences of failing to resolve the debt.

II. Section-by-Section Analysis

Subpart A announces the purpose and scope of the regulations, defines terms used in Part 1506, and addresses whether USADF can impose sanctions or remedies other than those prescribed in Part 1506, whether USADF will subdivide a claim exceeding \$100,000, and how claims involving fraud are processed.

Subpart B describes the steps involved in a collection action, including the information USADF includes in a written demand for payment, a debtor's request for review of a claim, the determination of interest, penalty and administrative costs, and the reporting and consequences of delinquent debts.

Subpart C provides for salary offset collection procedures, notice and hearing requirements prior to offset, and USADF's use of offset for claims of another Federal agency.

Subpart D addresses the compromise of debts through reduction or negotiation of the claim amount, joint and several liability on a claim, and releasing the debtor after full payment of a compromised amount.

Subpart E prescribes the circumstances and criteria for USADF to suspend or terminate a collection action.

Subpart F describes the circumstances for USADF to discharge a delinquent debt and reporting a discharge of debt to the Internal Revenue Service.

Subpart G addresses when USADF refers claims to the Department of Justice for litigation.

Subpart H addresses when USADF is required to transfer debts to the Financial Management Service of the Department of the Treasury.

III. Matters of Regulatory Procedure

Executive Order 12866

The proposed regulations have been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The USADF President, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed the proposed regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities. The regulations pertain to the administrative collection of individual debts owed to USADF and do not affect acquisition, inter-agency or foreign claims.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 22 CFR Part 1506

Claims collection.

Approved: December 20, 2016

June B. Brown,

Associate General Counsel, U.S. African Development Foundation

For the reasons set forth in the preamble, USADF is revising 22 CFR part 1506 to read as follows:

PART 1506 – COLLECTION OF CLAIMS

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Sec.

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- 1506.42 Under what circumstances will USADF discharge a delinquent debt?
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- 1506.45 When is it mandatory for USADF to transfer debts to BFS?
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Authority: Title V of the International Security and Development Cooperation Act of 1980, 22 U.S.C. 290h; 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR 900-904; 5 CFR 550, subpart K; 31 U.S.C. 3720A.

Subpart A – General Provisions

§ 1506.1 What is the purpose of this part?

This part prescribes the standards and procedures to be used by the United States African Development Foundation (USADF) in the collection and disposal of non-tax debts owed to USADF and the United States. It covers USADF's collection, compromise, suspension, termination, and referral of claims to the Department of Justice.

§ 1506.2 What types of claims do these standards and procedures cover?

These standards and procedures are applicable to all claims and debts for which a statute, regulation or contract does not prescribe different standards or procedures.

§ 1506.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. Except as otherwise provided by law, USADF will conduct administrative actions to collect claims (including offset, compromise, suspension termination, disclosure, and referral) in accordance with the FCCS.

§ 1506.4 What definitions apply to the regulations in this part?

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

Administrative wage garnishment means the process by which federal agencies require a private sector employer to withhold up to 15% of an employee's disposable pay to satisfy a delinquent debt owed to the Federal government. A court order is not required.

Agency means the United States African Development Foundation (USADF).

CFO means the Chief Financial Officer of USADF or the USADF official designated to act as the CFO.

Claim or debt means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency.

Compromise means the creditor agency's acceptance of an amount less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

Creditor agency means the Federal agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Debtor means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

Delinquent claim or debt means any claim or debt that has not been paid by the date specified in the agency's Bill for Collection or demand letter for payment or which has not been satisfied in accordance with a repayment agreement.

Discharge means the release of a debtor from personal liability for the debt. Further collection action is prohibited.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of the employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to: Social Security withholdings; Federal, State, and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

Employee means a current employee of the Federal Government including a current member of the Armed Forces or a Reserve of the Armed Forces.

Employee salary offset means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

Person means an individual, firm, partnership, corporation, association, organization, State or local government, or any other type of entity other than a Federal agency, foreign government, or public international organization.

Suspension means the temporary cessation of an active debt collection pending the occurrence of an anticipated event.

Termination means the cessation of all active debt collection action for the foreseeable future.

Waiver means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

Withholding order means any order for withholding or garnishment of pay issued by USADF or a judicial or administrative body. For the purposes of this Part, wage garnishment order and garnishment order have the same meaning as withholding order.

§ 1506.5 Does the application of remedies prescribed in this part preclude USADF from imposing other sanctions or remedies?

(a) The remedies and sanctions available to USADF under this part for collecting debts are not intended to be exhaustive. USADF may impose, where authorized, other appropriate formal and informal sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt.

(b) Nothing in this part is intended to deter USADF from demanding the return of specific property or the payment of its value.

(c) This part does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other USADF procedures, e.g., resolution of audit findings under grants or contracts, informal grant appeals, formal grant appeals, or review under a procurement contract.

§ 1506.6 Will USADF subdivide a claim in excess of \$100,000?

USADF will not subdivide a claim to avoid the \$100,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 1506.7 How does USADF process claims involving fraud?

(a) The CFO will refer claims involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim to the United States Agency for International Development (USAID) Office of Inspector General (OIG), which has statutory jurisdiction over USADF. The OIG has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to USADF for further action.

(b) The CFO will not administratively compromise, terminate, suspend or otherwise dispose of debts involving fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim without the approval of DOJ.

§ 1506.8 Will an omission by the Agency in complying with this part serve as a debtor's defense against payment?

Failure by USADF to comply with any provision of this Part is not available to a debtor as a defense against payment of a debt.

Subpart B – Collection

§ 1506.9 What does a collection action entail?

(a) The Agency will undertake prompt action to collect all debts owed to the United States arising out of USADF activities and to reduce debt delinquencies. A collection action may include sending a written notice in the form of a Bill for Collection or demand letter to the debtor's last known address. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), a written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including the immediate referral to DOJ for litigation or collection by salary offset. The CFO may contact the debtor by

telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (e.g., to apply for a waiver of indebtedness or to request an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The CFO will maintain an administrative file for each claim. The administrative file will document the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and the final disposition of the debt.

Information on an individual debtor may be disclosed only for purposes consistent with this Part, the Privacy Act of 1974, and other applicable law.

§ 1506.10 What information is included in a written demand for payment?

(a) The Bill for Collection or demand letter shall inform the debtor of:

(1) The amount, nature and basis of the debt;

(2) The right of the debtor to inspect and copy records related to the debt;

(3) The right of the debtor to discuss and propose a repayment agreement;

(4) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The applicable standards for imposition of interest charges and penalty charges and administrative costs that may be assessed against a delinquent debt;

(6) The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs), which may be not more than 30 days from the date that the demand letter is mailed or hand-delivered;

(7) The name, address, and telephone number of a person or office within USADF available to discuss the debt;

(8) The intention of USADF to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset from Federal payments otherwise due to the debtor, including income tax refunds, salary, certain benefit payments, retirement, vendor payments, travel reimbursement and advances, and other Federal payments;

(ii) Referral to a private collection agency;

(iii) Report to credit bureaus;

(iv) administrative wage garnishment;

(v) Referral to the Department of Justice for litigation action if the debt cannot be collected administratively;

(vi) Transfer of any debt delinquent for more than 180 days to the Department of Treasury for collection; and

(vii) Other actions authorized by the FCCS and applicable law.

(9) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(10) The instructions for making electronic payment; and

(11) Requirement that the debtor advise USADF of any bankruptcy proceeding.

(b) USADF may omit from the written demand for payment one or more of the provisions contained in paragraphs (a)(8) through (11) of this section if USADF determines that any provision is not legally required given the collection remedies to be applied to a particular debt, or which have already been provided by prior notice, applicable agreement, or contract.

(c) USADF will respond promptly to communications from the debtor. Responses will generally be made within 30 days of the receipt of the communication from the debtor.

§ 1506.11 May I request a review of the existence or amount of a claim?

(a) USADF shall provide the debtor with a reasonable opportunity for an internal review of the existence or amount of the debt. For offset of current Federal salary under 5 U.S.C. 5514, a debtor may also request a hearing. (See subpart C of this part).

(b) A request for a review must be submitted in writing to the appropriate contact office by the payment due date indicated in the Bill for Collection or demand letter. The request must state the basis for the debtor's dispute of the claim and include any relevant documentation in support.

(1) USADF will provide for an internal review of the debt by an appropriate official. The review may include examination of documents, internal discussions with relevant officials and discussions with the debtor, at USADF's discretion.

(2) An oral hearing is not required when USADF determines that the matter can be decided on the documentary record. When an oral hearing is not required, USADF shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

(3) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although USADF will carefully document all significant matters discussed at the hearing.

§ 1506.12 What happens if my debt becomes past due?

USADF will transfer to the Department of Treasury's Bureau of Fiscal Services (BFS) any past due, legally enforceable non-tax debt that has been delinquent for 120 days or more for administrative offset, and delinquent for 180 days or more for other collections. BFS may take appropriate action to collect the debt in accordance with applicable law and regulation. USADF may transfer any past due, legally enforceable debt that has been delinquent for fewer than 120 days to BFS for collection in accordance with applicable law and regulation.

§ 1506.13 How are interest, penalty, and administrative costs determined?

(a) Interest. USADF will assess interest on all delinquent debts, unless prohibited by statute, regulation, or contract.

(1) Interest begins to accrue on all debts from the payment due date established in the initial notice to the debtor, or as otherwise provided by law. USADF shall charge an annual rate of interest that is equal to the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 unless a different rate is necessary to protect the rights of the United States. USADF will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(3) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalty charges that had been waived under the defaulted agreement may be reinstated and added to the debt principal under any new agreement and interest may be charged on the entire amount of the debt.

(b) Administrative costs of collecting overdue debts. The costs of USADF's administrative processing of overdue debts, including charges assessed by the Department of Treasury in cross-servicing the debts based on either actual or average cost incurred, will be charged on all debts. These costs include both direct and indirect costs.

(c) Penalties. Penalty charges will be assessed at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(d) Allocation of payments. A partial payment by a debtor will be applied first towards outstanding administrative costs, penalty assessments, accrued interest and then towards the outstanding debt principal.

(e) Waivers. (1) USADF will waive the collection of interest and administrative charges on any portion of the debt that is paid within 30 days after the date on which late payment

charges begin to accrue. This 30 day period may be extended on a case-by-case basis where the Agency determines that such action is in the best interest of the Government.

(2) USADF may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where it determines that:

(i) Waiver is justified under the criteria of subpart D; or

(ii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(3) A decision to waive interest, penalty charges or administrative costs may be made at any time.

§ 1506.14 Does interest accrue during the period pending waiver or review?

During the period pending waiver or review, USADF may suspend accrual of interest, penalty charges, and administrative costs on any disputed portion of the debt if it is determined that suspension is in the Agency's best interest or would serve equity and good conscience. Interest, penalty, and administrative costs will not be assessed where a statute or regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 1506.15 Does USADF contract with other agencies for collection services?

(a) USADF has entered into a cross-servicing agreement with the Bureau of Fiscal Services (BFS) of the Department of Treasury. BFS will take appropriate action to collect and/or compromise transferred debts in accordance with applicable statutory and regulatory requirements. BFS may take any of the following collection actions on behalf of USADF:

(1) Send demand letters on U.S. Treasury letterhead and telephone debtors;

(2) Refer accounts to credit bureaus;

(3) Purchase credit reports to assist in the collection effort;

(4) Refer accounts for offset, including tax refund, Federal employee salary, administrative wage garnishment, and general administrative offset under the Treasury Offset Program;

(5) Refer accounts to private collection agencies;

(6) Refer accounts to the Department of Justice for litigation;

(7) Report written off or discharged debt to the Internal Revenue Service (IRS) on the appropriate Form 1099;

(8) Take any additional steps necessary to enforce recovery; and

(9) Terminate collection action, as appropriate.

(b) BFS will maintain records on debt transferred to it, assure that accounts are updated as necessary, and modify its delinquent debt and debtor records with information obtained from its skip tracking and asset-location services as appropriate. In the event that a referred debtor disputes the validity of a debt or any terms and conditions related to any debt not reduced by judgment, BFS may return the disputed debt to USADF for its determination of debt validity.

§ 1506.16 Does USADF report delinquent debts to consumer reporting agencies?

USADF may report delinquent debts to appropriate credit reporting bureaus and other automated databases through the cross-servicing agreement with BFS. Any such disclosure will be done in accordance with 31 U.S.C. 3711(e) and the Federal Claims Collection Standards, 31 CFR 901.4, and in compliance with the Bankruptcy Code and Privacy Act 5 U.S.C. 552a.

§ 1506.17 For what purposes may USADF use my mailing address?

When attempting to locate a debtor in order to collect or compromise a debt, USADF may obtain the debtor's mailing address from the Internal Revenue Service. Addresses obtained from the Internal Revenue Service will be used by USADF, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

§ 1506.18 Will USADF suspend or revoke my financial assistance or other privileges if I fail to pay my debt?

Unless waived by the Head of the Agency, USADF will not extend financial assistance in the form of a grant, loan, or loan guarantee to any person delinquent on a non-tax debt owed to a Federal agency. The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated. USADF may also suspend or revoke other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Agency may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with USADF or engaging in programs USADF sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable debarment procedures will be used.

§ 1506.19 May I pay my debt in installments?

(a) Whenever feasible, USADF shall collect the total amount of a debt (including interest, penalty, and administrative cost) in one lump sum. If the debtor is financially unable to pay the debt in one lump sum, USADF may accept payment in regular installments. USADF will obtain financial statements from debtors who represent that they are unable to pay on one lump sum and independently verify such representations whenever possible. In addition, USADF will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of a default.

(b) The size and frequency of the installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. To the extent possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) In appropriate cases, the Agency will obtain security for deferred payments. However, USADF may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security.

Subpart C – Administrative Offset

§ 1506.20 When and how will USADF collect past due debt through administrative offset?

(a) Payments otherwise due the debtor from the United States shall be offset from the debt in accordance with 31 CFR 901.3. These may be funds under the control of USADF or other Federal agencies. Collection may be through centralized offset by the Bureau of Fiscal Service (BFS) of the Department of the Treasury.

(b) Such payments include but are not limited to vendor payments, salary, retirement, lump sum payments due upon Federal employment separation, travel reimbursements, tax refunds, loans or other assistance. Offset of Federal salary payments will be in accordance with 5 U.S.C. 5514.

(c) Before administrative offset is instituted by another Federal agency or the BFS, USADF shall certify in writing to that entity that the debt is past due and legally enforceable and that USADF has complied with all applicable due process and other requirements as described in this part and other Federal law and regulations.

§ 1506.21 I am a USADF employee; when will the Agency offset my salary to satisfy a debt against me?

Any amount advanced to an employee for allowable travel expenses but not used for such purposes is recoverable from the employee, in accordance with 5 U.S.C. 5705, by salary offset without regard to the due process provisions in §1506.22. This section does not apply to debts where collection by salary offset is explicitly prohibited by another statute. Collection of debt by salary offset will be in accordance with 5 U.S.C. 5514.

§ 1506.22 Am I entitled to notice and hearing prior to salary offset?

(a) *Due process requirements – Notice, hearing, written response and decision.* (1)

Prior to initiating collection action through salary offset, the Agency will provide all

employees that owe a debt to the Government an opportunity to repay in full the amount owed, unless such opportunity will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided otherwise, each employee from whom the Agency proposes to collect a debt by salary offset will receive a written notice 30 days prior to any deductions from pay. The notification will include the Agency's determination that a debt is owed, the amount of the debt, the Agency's intention to collect the debt by means of deductions from the employee's pay account, and the employee's right to request a hearing on the claim.

(3) An employee facing collection of debt by salary offset is entitled to request a hearing on the claim. The request must be filed in writing and signed by the employee. It must be received by the Agency within 15 days of the employee's receipt of the notification of proposed deduction. Late request for a hearing may be accepted if the employee can show that the delay in filing the request was due to circumstances beyond the employee's control.

(4) The Agency will make hearing arrangements that are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following:

(i) A determination of the Agency concerning the existence and amount of the debt;
and

(ii) A repayment schedule.

(b) *Exceptions to the due process requirements – pay and allowances.* The procedural requirements of paragraph (a) of this section are not applicable to overpayments of salary or allowances in the following situations:

(1) Adjustments of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deduction from payment, if the amount to be recovered accumulated over four pay periods or less;

(2) Routine intra-agency adjustments in pay or allowances that are made to correct overpayments of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayments accrued over four pay periods or less; and

(3) Any adjustment to collect a debt amounting to \$50 or less.

(c) *Form of hearing, written response and final decision.* (1) The hearing official will make a decision based upon a review of the claim and any additional material submitted by the debtor. Where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through a review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. An oral hearing will consist of an informal conference before a hearing official in which the employee and the Agency may present evidence, witnesses and arguments. The employee may be represented by an individual of his/her choosing. The Agency shall maintain a summary record of all oral hearings provided under the procedures of this section.

(2) Written decisions rendered pursuant to a hearing will include the hearing official's analysis, findings and conclusions. The decision will be final and binding on the parties.

(d) *Request for waiver.* In certain circumstances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests a waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request.

(e) *Non-waiver of right by payment.* An employee's payment of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

§ 1506.23 Will the debt be collected in a lump sum or by installment deductions from my pay account?

A debt will be collected in a lump sum or by installment deductions at established pay intervals from an employee's current pay account. If the employee is financially unable to pay a debt in a lump sum or the amount of debt exceeds 15 percent of disposable pay, collection will be made in installments, unless the employee and the Agency agree to alternative arrangements for payment. Alternative payment schedules must be in writing, signed by both the employee and the CFO and will be documented in the Agency's files.

§ 1506.24 Are there any limitations on the amount of salary deduction?

Installment deduction will be made over the period of active duty or employment. The size and frequency of the installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, an amount deducted for any period may 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 payments should be in amounts sufficient to liquidate the debt within a period of three years or less. Installment payments of less than \$50 will be accepted only in the most unusual circumstances.

§ 1506.25 When will deduction from my pay account begin?

(a) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's Bill for Collection or demand letter notice of intention to collect from the employee's current pay, unless the debt has been repaid in full or the employee has filed a timely request for hearing.

(b) If an employee files a timely request for hearing, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed to the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

§ 1506.26 What happens if my employment with USADF ends prior to repaying the full amount of my debt?

If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g. final salary payment, lump-sum leave, etc.).

§ 1506.27 How are interest, penalty, and administrative costs assessed?

USADF will assess interest, penalties and administrative costs on debts collected under the procedures in this section. Interest, penalty and administrative costs will continue to accrue during the period that the debtor is seeking formal or informal review of the debt or requesting a waiver. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

- (a) Interest will be assessed on all debts not collected by the payment due date specified in the Bill for Collection or demand letter. USADF will waive the interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue.
- (b) Administrative costs will be assessed if the debt is referred to Treasury for cross-servicing.
- (c) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 90 days from the due date in the Bill for Collection or demand letter.

§ 1506.28 Will I receive a refund if the claim against me is found to be without merit?

USADF will promptly refund to the employee any amounts paid or deducted pursuant to this section that are subsequently waived or found not owing to the United States Government. Refunds do not bear interest unless specifically authorized by law.

§ 1506.29 Is there a time limit for initiating collection by salary offset?

USADF will not initiate salary offset to collect a debt more than 1 year after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debt.

§ 1506.30 Can USADF use salary offset means to collect a claim against me if USADF is not the creditor agency?

(a) USADF will use salary offset means of collecting debt against one of its employees that is indebted to another agency if requested to do so by that agency. The requesting agency must certify that the USADF employee owes a debt and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, Subpart K, have been met. The creditor agency must also advise USADF of the amount of debt, and the number and amount of the installments to be collected.

(b) Request for salary offset must be submitted to the CFO of USADF.

(c) Processing of the claim by USADF—

(1) *Incomplete claims.* A creditor agency will be required to supply USADF with all the required information prior to any salary offset from the employee's current pay account.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. USADF will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. USADF will not assess a handling or any other related charge to cover the cost of its processing the claim.

(d) Employees separating from USADF before a debt to another agency is collected—

(1) *Employees separating from Government service.* If an employee begins separation action before USADF collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from USADF;

(ii) If the total amount of the debt cannot be recovered, USADF will certify to the creditor agency and the employee the total amount of USADF's collection; and

(iii) If USADF is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it will provide such information to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an USADF employee transfers to another Federal agency before USADF collects the total amount due the creditor agency, USADF will certify the total amount of the collection made on the debt. It is the responsibility of the creditor agency to ensure that the collection is resumed by the new employing agency.

Subpart D – Compromise of Debts

§ 1506.31 May USADF reduce or negotiate a claim amount?

USADF may compromise claims for money or property where the principal balance of a claim, excluding interest, penalty and administrative costs, does not exceed \$100,000. Where the claim exceeds \$100,000, the authority to accept the compromise rests solely with DOJ. The CFO may reject an offer of compromise in any amount. Where the claim exceeds \$100,000, USADF may refer the claim to DOJ for approval with a recommendation to accept an offer of compromise. The referral will be in the form of a Claims Collection Litigation Report (CCLR) and will outline the basis for USADF's recommendation.

§ 1506.32 If I am jointly and severally liable on a claim, will USADF delay collection action against me until the other debtors pay their proportional share?

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of

a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 1506.33 Under what circumstances will USADF compromise a claim?

(a) USADF may compromise a claim pursuant to this section if the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by collection proceedings. In evaluating the acceptability of a compromise offer, the CFO may consider, among other factors, the following:

- (1) Age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;
- (4) The possibility that assets have been concealed or improperly transferred by the debtor;
- (5) The availability of assets or income which may be realized by enforced collection proceedings; or
- (6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(b) USADF may compromise a claim, or recommend acceptance of a compromise offer to DOJ, if:

- (1) There is significant doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts; or
- (2) The cost of collection does not justify the enforced collection of the full amount of the debt.

The amount accepted in compromise in such cases will reflect the costs of collection, the probability of prevailing on the legal issues involved, and the likely amount of court costs and attorney's fees in litigation.

(c) To assess the merits of a compromise offer, USADF generally will require a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses.

(d) Statutory penalties, forfeitures or debt established as an aid to enforcement and compel compliance may be compromised where the CFO determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 1506.34 Can I pay a compromised claim in installments?

The debtor may not pay a compromised claim in installments unless the CFO determines that payment in installments is necessary to effect collection.

§ 1506.35 Will USADF execute a release after full payment of a compromised amount?

Upon receipt of a payment in full or a compromised amount of a claim, USADF will prepare and execute a release.

Subpart E – Suspension or Termination of Collection Action

§ 1506.36 Under what circumstances may USADF suspend collection actions?

USADF may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$100,000. Unless otherwise provided by DOJ regulations, USADF must refer all requests for suspension of debt exceeding \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. If prior to referral to DOJ, USADF determines that a debt is plainly erroneous or clearly without legal merit, the Agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. USADF may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an estimated time

period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 1506.37 What are the criteria for suspension?

(a) USADF may suspend collection action on a debt when:

- (1) The debtor cannot be located;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, USADF may suspend

collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by offset; or
- (3) The debtor agrees to pay interest on the debt and suspension is likely to enhance

the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) USADF will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits the Agency from collecting the debt during that time.

USADF will ordinarily suspend collection action during the pendency of its consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) USADF may suspend collection activities on debts of \$100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement and where it determines that:

- (1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

- (2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or
- (3) Collection of the debt will cause undue hardship to the debtor.
- (e) USADF will decline to suspend collection where it determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 1506.38 Under what circumstances may USADF terminate collection actions?

USADF may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$100,000. If the debt exceeds \$100,000, USADF must obtain the approval from DOJ to terminate further collection actions. Unless otherwise provided for by DOJ regulations, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 1506.39 What are the criteria for termination?

A debt may be terminated where USADF determines that:

- (a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;
- (b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;
- (c) The cost of further collection action is likely to exceed the amount recoverable;
- (d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
- (e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or
- (f) The debt against the debtor has been discharged in bankruptcy.

§ 1506.40 What actions by the Agency are permitted after termination of collection activity?

Termination ceases active collection of a debt. However, termination does not preclude the Agency from retaining a record of the account for purposes of:

- (a) Selling the debt if the CFO determines that such sale is in the best interests of USADF;
- (b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;
- (c) Offsetting against future income or assets not available at the time of termination of collection activity; or
- (d) Screening future applicants for prior indebtedness.

§ 1506.41 Can the Agency collect against a debt that has been discharged in bankruptcy?

USADF will generally terminate collection activity on a debt that has been discharged in bankruptcy regardless of the amount. However, USADF may continue collection activity subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice from the General Counsel's office if s/he believes that any claims or offsets may have survived the discharge of a debtor.

Subpart F – Discharge of Indebtedness and Reporting Requirements

§ 1506.42 Under what circumstances will USADF discharge a delinquent debt?

Before discharging a delinquent debt, USADF will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record securing the debt. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When a debt is

discharged in full or in part, further collection action is prohibited and USADF must terminate all debt collection activities.

§ 1506.43 Will USADF report a discharge of debt to the IRS?

Upon discharge of a debt, USADF will report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. USADF may request the Bureau of Fiscal Services of the Department of Treasury to file such a discharge report to the IRS on the agency's behalf.

Subpart G – Referrals to the Department of Justice

§ 1506.44 When will USADF refer claims to the Department of Justice for litigation?

Unless otherwise provided by DOJ regulations or procedures, USADF will refer for litigation debts of more than \$2,500 but less than \$1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over \$1,000,000 shall be referred to the Civil Division at the Department of Justice. Any debt involving fraud, false claim, and misrepresentation will be referred to the Department of Justice.

Subpart H – Mandatory Transfer of Delinquent Debt to the Bureau of Fiscal Services (BFS) of the Department of Treasury

§ 1506.45 When is it mandatory for USADF to transfer debts to BFS?

(a) USADF will transfer legally enforceable debt to BFS 90 days after the Bill for Collection or demand letter is issued. A debt is legally enforceable if there has been a final agency determination that the debt is due and there are no legal bars to collection action. A debt is not legally enforceable for purposes of mandatory transfer to BFS if it is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USADF will transfer any debt covered by this part that is more than 180 days delinquent to BFS for debt collection services. A

debt is 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable.

§ 1506.46 When is USADF not required to transfer a debt to BFS?

USADF is not required to transfer a debt to BFS pursuant to § 1506.37(b) during the period of time that the debt:

- (a) Is in litigation or foreclosure;
- (b) Is scheduled for sale;
- (c) Is at a private collection contractor;
- (d) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center;
- (e) Is being collected by internal offset; or
- (f) Is covered by an exemption granted by Treasury.

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