

§ 901.12

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 901.12 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

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

PART 902—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

902.1 Scope and application.

902.2 Bases for compromise.

902.3 Enforcement policy.

902.4 Joint and several liability.

902.5 Further review of compromise offers.

902.6 Consideration of tax consequences to the Government.

902.7 Mutual releases of the debtor and the Government.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70402, Nov. 22, 2000, unless otherwise noted.

31 CFR Ch. IX (7–1–23 Edition)

§ 902.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. An agency may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, that agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General. Agency heads may designate officials within their respective agencies to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The agency should evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of \$100,000 is acceptable to the agency, the agency shall refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report (CCLR). Agencies may obtain the CCLR from the Department of Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the agency rejects a compromise offer.

§ 902.2 Bases for compromise.

(a) Agencies may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, agencies should consider relevant factors such as 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; and
- (5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) Agencies should verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. Agencies should consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. Agencies also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, agencies should consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) Agencies may compromise a debt if the cost of collecting the debt does not justify the enforced collection of

the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, agencies should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) Agencies generally should not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, agencies should obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, agencies also should obtain security for repayment in the manner set forth in part 901 of this chapter.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, agencies should obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers. Agencies may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 902.3 Enforcement policy.

Pursuant to this part, agencies may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be

§ 902.4

adequately served by the agency's acceptance of the sum to be agreed upon.

§ 902.4 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, agencies should pursue collection activity against all debtors, as appropriate. Agencies should not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) Agencies should ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 902.5 Further review of compromise offers.

If an agency is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. The Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 902.6 Consideration of tax consequences to the Government.

In negotiating a compromise, agencies should consider the tax consequences to the Government. In particular, agencies should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 903.5 of this chapter.

§ 902.7 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by an agency should be implemented by means of a mutual release, in which the debtor is released from further non-tax liability

31 CFR Ch. IX (7-1-23 Edition)

on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

PART 903—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTIVITY

Sec.

903.1 Scope and application.

903.2 Suspension of collection activity.

903.3 Termination of collection activity.

903.4 Exception to termination.

903.5 Discharge of indebtedness; reporting requirements.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70403, Nov. 22, 2000, unless otherwise noted.

§ 903.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice for litigation, agencies may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, that agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency believes that suspension or termination of any