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garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in

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whole or in part, for a period of one (1) year.

[63 FR 25139, May 6, 1998, as amended at 64 FR 22908, Apr. 28, 1999; 66 FR 51868, Oct. 11, 2001]

§ 285.12 Transfer of debts to Treasury for collection.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person. As used in this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986.

Debt collection center means an agency or a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

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

Secretary means the Secretary of the Treasury.

(b) *In general.* Cross-servicing means that FMS or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof.

(c) *Mandatory transfer of debts to FMS.* (1) Except as set forth in paragraph (d) of this section, a creditor agency shall transfer any debt that is more than 180 days delinquent to FMS for debt collection services. For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(2) On behalf of the creditor agency, FMS will take appropriate action to

collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency shall advise FMS, in writing, of any specific statutory or regulatory requirements pertaining to their debt and will agree, in writing, to a collection strategy which includes parameters for entering into compromise and repayments agreements with debtors.

(3)(i) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past-due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due.

(ii) When a final agency determination is made after an administrative appeal or review process, the creditor agency must transfer such debt to FMS, if more than 180 days delinquent, within 30 days after the date of the final decision.

(iii) Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(4) Agencies are not required to transfer to FMS debts which are less than \$25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine.

Agencies may transfer debts less than \$25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency's policies or programs. Agencies may combine individual debts of less than \$25 owed by the same debtor for purposes of meeting the \$25 threshold.

(d) *Exceptions to mandatory transfer.* (1) A creditor agency is not required to transfer a debt to FMS pursuant to paragraph (c)(1) of this section only during such period of time that the debt:

(i) Is in litigation or foreclosure as described in paragraph (d)(2) of this section;

(ii) Is scheduled for sale as described in paragraph (d)(3) of this section;

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor in accordance with paragraph (e) of this section;

(iv) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center in accordance with paragraph (f) of this section;

(v) Is being collected by internal offset as described in paragraph (d)(4) of this section; or

(vi) Is covered by an exemption granted by the Secretary as described in paragraph (d)(5) of this section.

(2)(i) A debt is in litigation if:

(A) The debt has been referred to the Attorney General for litigation by the creditor agency; or

(B) The debt is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by the creditor agency, the debtor, or any other party.

(ii) A debt is in foreclosure if:

(A)(1) Collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction; or

(2) Notice has been issued that collateral securing the debt will be foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding; and

(B) The creditor agency anticipates that proceeds will be available from

the liquidation of the collateral for application to the debt.

(3) A debt is scheduled for sale if:

(i) The debt will be disposed of under an asset sales program within one (1) year after becoming eligible for sale; or

(ii) The debt will be disposed of under an asset sales program and a schedule established by the creditor agency and approved by the Director of the Office of Management and Budget.

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. A debt is being collected by internal offset if the creditor agency is withholding funds payable to the debtor by the creditor agency, or if the creditor agency has issued notice to the debtor of the creditor agency's intent to offset such funds.

(5)(i) Upon the written request of the head of an agency, or as the Secretary may determine on his/her own initiative, the Secretary may exempt any class of debts from the application of the requirement described in paragraph (c)(1) of this section. In determining whether to exempt a class of debts, the Secretary will determine whether exemption is in the best interests of the Government after considering the following factors:

(A) Whether an exemption is the best means to protect the government's financial interest, taking into consideration the number, dollar amount, age and collection rates of the debts for which exemption is requested;

(B) Whether the nature of the program under which the delinquencies have arisen is such that the transfer of such debts would interfere with program goals; and

(C) Whether an exemption would be consistent with the purposes of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (April 26, 1996).

(ii) Requests for exemptions must clearly identify the class of debts for which an exemption is sought and must explain how application of the factors listed above to that class of debts warrants an exemption.

(iii) Requests for exemption must be made by the head of the agency re-

questing the exemption, the Chief Financial Officer of the agency, or the Deputy Chief Financial Officer of the agency. For purposes of this section, the head of an agency does not include the head of a subordinate organization within a department or agency.

(6) In accordance with paragraph (d)(5)(i) of this section, debts being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies are exempt from the requirements in paragraph (c)(1) of this section.

(e) *Schedule of private collection contractors.* FMS will maintain a schedule of private collection contractors eligible for referral of debts from FMS, other debt collection centers, and creditor agencies for collection action. An agency with debt which has not been transferred to FMS or referred to another debt collection center, for example, debt that is less than 180 days delinquent, may refer such debt to a private collection contractor listed on FMS' schedule of private collection contractors provided they do so in accordance with procedures established by FMS. Alternatively, an agency may refer debt that is less than 180 days delinquent to a private collection contractor pursuant to a contract between the creditor agency and the private collection contractor, as authorized by law.

(f) *Debt collection centers.* A creditor agency may transfer debt that has not been transferred to FMS, such as debt less than 180 days delinquent, to a Treasury-designated debt collection center, with the consent of, and in accordance with procedures established by FMS. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency and subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts, in accordance with terms and conditions agreed upon in writing by the creditor agency and

the debt collection center or FMS. Debt collection centers may charge fees for the debt collection services in accordance with the provisions of paragraph (j) of this section.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA, agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS immediately of any change in the

status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(j) *Fees.* FMS and other debt collection centers (as defined in paragraph (a) of this section) may charge fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a creditor agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

[63 FR 16356, Apr. 2, 1998, as amended at 64 FR 22908, Apr. 28, 1999]

§ 285.13 Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States or an agency thereof by a person, including debt administered by a third party as an agent for the Federal Government.

Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Nontax debt means any debt other than a debt under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).