

1375 - DELINQUENT ACCOUNTS

Table of Contents

- .01 Purpose
- .02 Objectives
- .03 Authority
- .04 Responsibility
- .05 Definitions
- .06 Policy

- .1 Collection Principles
 - .11 Schedule of Collection Documents
 - .12 Scope and Application
 - .13 Fraud, Antitrust, and Tax Claims
 - .14 Subdivision of Amount Claimed
 - .15 Debts Arising Out of Freight and Passenger Transportation Services
 - .16 Accounts Arising Out of BLM Activities

- .2 Standards for Administrative Collection
 - .21 Collection by Offset
 - .22 Personal Interview with Debtor
 - .23 Contact with Debtor's Employing Agency
 - .24 Suspension or Revocation of Licenses, Privileges, Etc.
 - .25 Liquidation of Collateral
 - .26 Collection in Installments
 - .27 Exploration of Compromise
 - .28 Interest
 - .29 Other Collection Remedies

- .3 Standards for Compromise of Debts
 - .31 Debts Over \$20,000
 - .32 Debts of \$20,000 or Less
 - .33 Criteria for Compromise

- .4 Standards for Suspension or Termination of Collection Action
 - .41 Suspension of Collection Action
 - .42 Termination of Collection Action

- .5 Processing Uncollectible Debts
 - .51 District Offices
 - .52 State Offices
 - .53 Denver Service Center
 - .54 Washington Office

1375 - DELINQUENT ACCOUNTS

- .6 Administrative Reports
 - .61 Reports to the General Accounting Office
 - .62 Reports to the Department of Justice or United States Attorneys

- .7 Claims Against Debtors Involved in Bankruptcy Proceedings
 - .71 Adjustment of Accounts
 - .72 Debt Limitations
 - .73 Referrals to the Department of Justice
 - .74 Referrals to the General Accounting Office
 - .75 Report Contents
 - .76 Removal of Debts from Accounts Receivable

Illustration

- 1. Demand Letter No. 1
- 2. Demand Letter No. 2
- 3. Demand Letter No. 3
- 4. Location and Action Card
- 5. Delinquent or Uncollectible Account Checklist (Form 1370-24)
- 6. Certification of Basic Case File
- 7. Register of Overpayment of Pay
- 8. Report on Waiver of Claims for Erroneous Payments of Pay
5 U.S.C. 5584 (4 CFR 91-93)

Appendices

- 1. Solicitor's Regulation 8
- 2. Rules and Regulations 4 CFR, Chapter 2

1375 - DELINQUENT ACCOUNTS

.01 Purpose. The purpose of this section is to provide guidelines for the collection, compromise, suspension, or termination of collection action and referral to the General Accounting Office or Department of Justice of debts due the Government.

.02 Objectives. The objectives of the delinquent accounts program are to collect funds due the United States and assure that prompt and appropriate disposition is made of amounts determined to be administratively uncollectible.

.03 Authority. Authority for the actions prescribed is contained in the Federal Claims Collection Act of 1966, Public Law 89-508 (31 U.S.C. 951-953), standards issued by the Attorney General and the Comptroller General (4 CFR, Parts 101-105), and Part 344 of the Departmental Manual.

.04 Responsibility. Assistant Director, Administration, through the Chief, Division of Finance, Service Center Director, State Directors, and District Managers is responsible for:

- A. Taking timely and aggressive action on all delinquent accounts.
- B. Determining the amount and person or persons legally liable for the indebtedness.
- C. Cooperating with other Federal agencies in collecting amounts due the United States.
- D. Recommending compromise settlements.
- E. Determining administrative uncollectibility of debts and suspending or terminating collection action, if authorized.
- F. Determining debts to be referred to the next level of authority within the Bureau or Department for further referral to the General Accounting Office or the Department of Justice, if such debts cannot be compromised, suspended, or terminated.

.05 Definitions.

A. Delinquent Account: An amount which has been billed, or is otherwise owed to the Bureau, but has not been paid by the date due. A delinquent account may include items legally owed the Bureau for rights or services received and items where nonpayment resulted in the forfeiture of rights or interest but not the amount due.

B. Uncollectible Account: An amount billed, or due the Bureau, which has not been collected through administrative processes.

1375 - DELINQUENT ACCOUNTS

C. Bad Debt: An amount legally owed for which progressive efforts at collection by the Bureau, the Field and Regional Solicitors, the Solicitor, the General Accounting Office, and the Department of Justice have been unsuccessful. An amount due may be declared a bad debt by the General Accounting Office, the Department of Justice, or the Bureau.

.06 Policy. Timely and aggressive collection and followup action must be taken on delinquent accounts to collect all debts due the United States for money or property.

1375 - DELINQUENT ACCOUNTS

.1 Collection Principles. The Bureau's collection program must be comprehensive, vigorous, and uniformly applied to insure that timely, forceful, and persistent action is taken to collect delinquent accounts. When a bill describing an amount owed is sent and not paid, verify the amount of the debt and the name of the person, or entity, legally liable. Issue demand letters at 30-day intervals; letters may be sent by the billing office, State Office, Service Center, or Field Solicitor. The following schedule is prescribed considering the point of diminishing returns beyond which further collection effort is not justified (4 GAO 55.3).

.11 Schedule of Collection Documents.

<u>Action</u>	<u>Less Than \$10.00</u>	<u>\$10.00 to \$24.99</u>	<u>\$25.00 And Over</u>	<u>When Issued</u>
Bill (describe debt)	X	X	X	
Demand Letter No. 1*	X	X	X	30 days
Demand Letter No. 2*	<u>/1</u>	X	X	60 days
Demand Letter No. 3*		<u>/1</u>	X	90 days

/1 Discontinue collection action. *See Illustrations 1, 2, and 3.

A. Third Demand Letter. This letter states that legal action will be taken if payment is not received within 15 days, i.e., referral to the Department of Justice, etc. Prompt and diligent action is essential at the end of this 15-day period. Forward the case file to the next level of authority immediately.

B. Documentation. All collection efforts must be documented and a copy of the documentation must be placed in the case file.

.12 Scope and Application. The Federal Claims Collection Act of 1966, 31 U.S.C. 951-953, places the responsibility in the administrative agencies for collection of debts due the United States. This includes the authority to compromise, terminate, or suspend collection action on claims which do not exceed \$20,000 exclusive of interest. Authority delegated to Regional or Field Solicitors and the Bureau is covered in subsequent paragraphs of this section.

.13 Fraud, Antitrust, and Tax Claims. The provisions of this part do not apply to any claim as to which there is an indication of fraud, presentation of a false claim, misrepresentation on the part of a debtor or other party of interest, or any claim based on conduct in violation of antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

1375 - DELINQUENT ACCOUNTS

.14 Subdivision of Amount Claimed. A debtor's liability arising from a particular transaction or contract must be considered as a single claim in determining whether the claim is less than \$20,000, exclusive of interest. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 31 U.S.C. Sec. 952(b).

.15 Debts Arising Out of Freight and Passenger Transportation Services. Debts due the Government which result from transactions covering the issuance and payment of Government bills of lading and transportation requests are generally handled in the same manner as debts under the Federal Claims Collection Act. Exceptions to the general rule are as follows:

A. Exceptions.

1. Every uncollected debt involving an adjustment for unused passenger transportation services must be transmitted to the General Accounting Office (GAO) at the expiration of 3 months from the date demand is first made on the debtor.

2. Every uncollected transportation debt as to which notice is received that a debtor is involved in bankruptcy, insolvency, or reorganization proceedings should be forwarded immediately to GAO.

3. Loss or damage debts relating to international shipments by ocean and air carriers should be handled in accordance with GAO Title 5, Section 5040.21.

4. Uncollected debts in excess of \$20,000 should be forwarded to GAO, unless, because of time limitations, it is necessary to refer such debts directly to the Department of Justice for court action.

5. Except for items 1 and 2, or if a broad principle is involved, transportation debts of less than \$250 need not be reported to GAO, but a series of smaller debts involving the same debtor and aggregating \$250 or more, may be reported. (5 GAO 5040.36)

.16 Accounts Arising Out of BLM Activities.

A. Section 3 Grazing Licenses and Permits. Process delinquent accounts as outlined below:

1. Advance Notices. Fee notices issued in advance are delinquent if not paid by the first day of the authorized grazing period. Advance fee notices are not reported as accounts receivable; when payment is not received by the due date, process as follows:

1375 - DELINQUENT ACCOUNTS

a. Immediate Action.

(1) Issue notice by certified mail allowing 15 days from receipt to make payment in full. The notice must state that: grazing without an appropriate authorization is prohibited; unauthorized grazing use is subject to trespass action; and the billing is cancelled without further notice if payment is not received within the time allowed.

(2) Take trespass action as deemed appropriate to identify and document a violation in accordance with 43 CFR 9239.3-2.

b. Followup Action.

(1) Payment Received Within the Time Allowed. Accept full payment for the amount due, and issue grazing authorization (receipt). An adjusted billing (43 CFR 4115.2-1(k)(2)(ii)) will not be issued, and any amended application will be rejected unless it conforms with 43 CFR 4115.2-1(g). Discontinue trespass action; if payment is received within the time allowed, settlement is not required.

(2) Payment Not Received Within the Time Allowed. Cancel the fee notice without further notice to the user. Nonpayment constitutes failure to accept a license or permit as defined in 43 CFR 4115.2-1(e)(9)(ii). Take trespass action as necessary.

2. Actual Use.

a. Report of Actual Use Not Submitted. The Allotment Management Plan establishes the submission date for actual use reports. (See BLM Manual 4115.21C2b(3).) If reports are not submitted within the time specified, the District Manager issues a show cause notice per 43 CFR 4115.2-1(d). The notice indicates that the AMP/permit will be held for cancellation and future grazing use will not be authorized pending satisfactory settlement. Continuation of AMP flexibility is discretionary with the District Manager depending upon the individual circumstances.

b. Report of Actual Use Submitted - Payment Not Received. Billings for actual use are true accounts receivable at the time of issue. If payment is not received within 30 days, process as delinquent accounts and issue demand letters in accordance with .1. Also, issue a show cause notice in accordance with 43 CFR 4115.2-1(d). Withhold future grazing authorizations until payment is received.

1375 - DELINQUENT ACCOUNTS

C. Oil and Gas Leases - Public Law 555. Rentals on noncompetitive oil and gas leases are payable in advance. Leases under Public Law 555, on which there is no well capable of producing oil or gas in paying quantities, automatically terminate if rental is not received on or before the anniversary date; if the office is closed on the anniversary date, payment is considered timely if received on the next official working day. Public Law 91-245 modified the automatic termination provision of the Mineral Leasing Act in certain instances; however, if rental is not paid by the extended date, the lease is terminated, and no further collection action is necessary.

D. Oil and Gas - Producing Leases. Producing leases, or leases known to contain valuable deposits of oil or gas, may be cancelled only by judicial proceedings in the manner provided in Sections 27 and 31 of the Act. Accounts for these leases are maintained by U.S. Geological Survey. If an account becomes delinquent, USGS follows the procedures in .11; if collection is not obtained, that agency refers the account to the appropriate BLM Office. Accounts referred to BLM are processed by State Offices in the same manner as BLM accounts.

E. Mineral Permits and Leases.

1. Permits to Prospect. Permits to prospect for deposits of coal, potassium (potash), sodium, phosphate, and sulphur automatically terminate if the permittee fails to pay the specific rental when due. A permittee may relinquish the entire permit or any legal subdivision thereof subject to the continued obligation of the permittee and his surety to make payment for all accrued rentals and royalties.

2. Regularly Issued Leases. Regularly issued leases for mining coal, potassium (potash), sodium, phosphate, sulphur, oil shale, and asphalt, can be canceled only by judicial proceedings.

3. Delinquent Royalties. When the royalties on a producing lease become delinquent, the Regional Mining Supervisor of U.S. Geological Survey returns the account to the appropriate BLM Office for processing.

F. Small Tract Leases. Every small tract application, except those for community sites, and every bid for lands subject to sale at public auction must be accompanied by an advance payment. If the lease does not exceed 5 years, the advance payment must equal the rental for the entire lease period. If the lease exceeds 5 years, the advance payment is specified in the classification order. Any lease may be canceled if the lessee fails to comply with any of the terms, covenants, or stipulations of the lease, or fails to abide by the regulations, provided such default continues for 30 days after written notice thereof. If rental is due at the termination or cancellation date, the bill is processed as a delinquent account.

1375 - DELINQUENT ACCOUNTS

G. Timber Sales. A timber sale contractor is liable for costs, damages, or expenses resulting from any breach of contract and for any wrongful or negligent act by himself or his employees, contractors, or subcontractors. If the contract is canceled, or the purchaser defaults under the terms of the contract, the total purchase price becomes due. Advance payments and performance bonds may be applied toward any amounts owed. Delinquent accounts arising from such contracts are processed in accordance with this section.

H. Other. Other permits and leases are processed in accordance with Title 43 of the Code of Federal Regulations. Delinquent accounts arising from permits or leases are processed as required by this section.

1375 - DELINQUENT ACCOUNTS

.2 Standards for Administrative Collection. Pursuant to the requirements of 4 GAO 54.3 and 344 DM 1.3, the Bureau is responsible for taking timely and aggressive action to collect all claims of the United States for money or property arising out of the activities of, or referred to, the Bureau. In addition to demand for payment, the following Standards are prescribed by 4 CFR, Parts 101-105. (See Appendix 2, Part 102 for more detailed information.)

.21 Collection by Offset. Collections by offset shall be undertaken administratively on claims which are certain in amount in every instance in which this is feasible. Appropriate use may be made of other agencies in effecting collections by offset.

.22 Personal Interview with Debtor. Bureau officials may arrange to have personal interviews with a debtor, when this is feasible, considering the amount involved and the proximity of the debtor.

.23 Contact with Debtor's Employing Agency. This procedure may be used when the debtor is a Federal employee or member of the military services or U.S. Coast Guard.

.24 Suspension or Revocation of Licenses, Privileges, Etc. If statutory penalties, forfeitures, etc. are provided as an enforcement aid, consideration may be given to the suspension or revocation of licenses or privileges for failure of a debtor to pay a claim. Sureties who fail to honor their obligations are reported to the Treasury Department.

.25 Liquidation of Collateral. Collection by liquidation of securities or collateral held by the Bureau may be appropriate in certain circumstances. Consideration must be given to the security instrument, requirements for judicial foreclosure, and special requirements of the statute or contract involved.

.26 Collection in Installments. Claims should be collected in one lump sum whenever possible. However, if a debtor is unable to pay in one lump sum, payment may be accepted in regular installments.

.27 Exploration of Compromise. Compromise may be attempted in certain cases for claims of \$20,000 or less, exclusive of interest, when the debtor is unable to pay the claim in full, or when litigative risks or costs dictate such action. (See .3)

.28 Interest. In cases in which prejudgment interest is not mandatory, the collection of such interest may be forgiven as an inducement to voluntary payment. Prejudgment interest should not be demanded unless the collection of interest is authorized by statute.

1375 - DELINQUENT ACCOUNTS

.29 Other Collection Remedies. Other collection methods available to the Bureau may be utilized, if feasible, with due consideration of the amount involved and the cost of utilization.

1375 - DELINQUENT ACCOUNTS

.3 Standards for Compromise of Debts. Pursuant to the provisions of the Federal Claims Collection Act of 1966 (80 Stat. 309) and 344 DM 3, the Solicitor is authorized to compromise claims of the United States which do not exceed \$20,000, exclusive of interest, arising out of the activities of the Bureau prior to the referral of such claims to the General Accounting Office or the Department of Justice. The Solicitor has redelegated this authority to the Associate, Regional, and Field Solicitors. Prior to the compromise of any claim by the Bureau, the Service Center Director, or State Director, must submit such compromise offer, together with his recommendation, to the Regional or Field Solicitor.

.31 Debts Over \$20,000. Debts over \$20,000 on which collection action has been unsuccessful may not be compromised by the Bureau or the Department. Case files on such debts should be referred to the Field or Regional Solicitor to be reviewed for legal sufficiency and to obtain recommendations. As soon as the file for a debt over \$20,000 is returned from the Solicitor's Office, it should be forwarded immediately to the Director (520) for referral (through the Solicitor's Office) to the Department of Justice or General Accounting Office.

.32 Debts Of \$20,000 or Less. With the concurrence of the Field or Regional Solicitor, State Directors or the Service Center Director may compromise debts of \$20,000 or less (amount of original debt - not compromise offer) subject to the following limitations:

A. Monetary Limitations on Damages.

1. Single-damage cases - \$20,000 or less
2. Double-damage cases - \$10,000 or less
3. Treble-damage cases - \$ 6,666.67 or less

B. Acceptance of Compromise Offer is Questionable. If a debtor has submitted a firm written offer of compromise which is substantial in amount and the State Director (or Service Center Director) is not certain whether he should recommend acceptance, they may request a recommendation from the Director (520). If the Director (520) and/or the Solicitor are not certain as to acceptance, the Solicitor may refer the offer, with supporting data, to the General Accounting Office or the Department of Justice.

C. Offer Not Acceptable. Neither a percentage of a debtor's profit, nor stock in a debtor corporation is acceptable in compromise of a claim.

1375 - DELINQUENT ACCOUNTS

.33 Criteria for Compromise. Generally, a claim may be compromised for one or more of the reasons listed below. (For a more detailed explanation of the reasons listed, see Appendix 2, Part 103.)

A. Inability to Pay. This may be used when the Government cannot collect the full amount either because of: the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full, and the Government's inability to enforce collection in full within a reasonable time.

B. Litigative Probabilities. A claim may be compromised if there is real doubt concerning the Government's ability to prove its case in court, either because of the legal issues involved or a bona fide dispute as to the facts.

C. Cost of Collection. A debt may be compromised when the cost of collecting the claim does not justify the enforced collection of the full amount.

D. Enforcement Policy. This reason may be used when the Bureau's enforcement policy, in terms of deterrence and securing compliance, will be adequately served by accepting the compromise offer.

E. Joint and Several Liability. When two or more debtors are jointly and severally liable, care must be taken to assure that compromise with one debtor does not release the claim against the others. Also, the amount of a compromise with one must not be considered a precedent, or as morally binding, in determining the amount which will be required from the other debtors.

1375 - DELINQUENT ACCOUNTS

4 Standards for Suspension or Termination of Collection Action. The Assistant Director, Administration, is delegated the authority to suspend or terminate collection action on claims which do not exceed \$20,000 exclusive of interest with the concurrence of the Field or Regional Solicitor and without referral of such claims to the General Accounting Office or to the Department of Justice for litigation. (The authority is redelegated to State Directors and the Service Center Director for items of \$2,500 or less.)

.41 Suspension of Collection Action.— Collection action may be suspended temporarily on a claim when the debtor cannot be located, owns no substantial equity in realty, and is unable to make payments or effect a compromise at the time but their future prospects justify retention for future review. Suspension should not defer liquidation of security for a debt, and every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations to permit timely filing of a suit when such action is warranted. If a missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of their missing status.

.42 Termination of Collection Action.— Collection action may be terminated and the case file closed only under the standards prescribed below:

A. Inability to Collect Any Substantial Amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law.

B. Inability to Locate Debtor. Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, or the prospects of collecting by off-set, notwithstanding the bar of the statute of limitations, is too remote to justify retention of the claim.

C. Cost Will Exceed Recovery. Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable.

D. Claim Legally Without Merit. Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

1375 - DELINQUENT ACCOUNTS

E. Claim Cannot be Substantiated by Evidence. Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced, the necessary witnesses are unavailable, and efforts to induce voluntary payment are unavailing.

1375 - DELINQUENT ACCOUNTS

.5 Processing Uncollectible Debts. Delinquent accounts and claims by the Government usually originate in a District Office or the Denver Service Center. A determination that the debt is administratively uncollectible should be possible within 6 months after the establishment of the debt, except debts arising out of freight and passenger transportation services (see .15). Responsible officials in offices originating (or receiving) delinquent accounts should take the following actions to collect all amounts owed the Government:

.51 District Offices. The District Manager determines the amount of the indebtedness and the person or persons legally liable; they also make written demands upon the debtor in accordance with the standards prescribed in this part. The official originating the account must document all actions and establish a case file. Upon determining that further collection effort at the District would not be productive, the District Manager is responsible for summarizing the case, preparing recommendations and Delinquent or Uncollectible Account Checklist, Form 1370-24 (Illustration 5), and forwarding the file to the State Office.

.52 State Offices. State Directors (and the Director, Denver Service Center) may determine that debts are administratively uncollectible and that all reasonable efforts to collect, including the possibility of set-off against funds due the debtor by BLM, have been made. When collection efforts at the State Office are unsuccessful, the authorized officer proceeds as follows:

A. Debts Over \$20,000. The State Director is responsible for forwarding the case (with supporting documents) to the Regional or Field Solicitor to assure that the case is legally sufficient. When the case is returned, three copies of the file are prepared, as explained below, and forwarded immediately to the Director (520) through the Denver Service Center.

1. When an account is referred to the Washington Office, three legible, complete sets (photostatic or machine copies) of all documents are prepared with the pages serially numbered. One set, duly certified, is prepared according to instructions on Illustration 6. The basic case file (original), which is retained by the State Office, consists of the following:

- a. Form 1370-24, Delinquent or Uncollectible Account Checklist.
- b. Receipt of certified mail notices.

1375 - DELINQUENT ACCOUNTS

- c. Copies of original billing.
 - d. Copies of each demand letter.
 - e. Any other documentation of evidence relative to the specific case (see 4 CFR 102.11, Appendix 2).
 - f. A copy of the transmittal letter sent to the Field or Regional Solicitor which requested a review for legal sufficiency.
- B. Debts Not in Excess of \$20,000. State Director forwards case file and supporting documents to Field or Regional Solicitor with recommendations.
- 1. Compromise. Field or Regional Solicitors are authorized to compromise claims of the United States which do not exceed \$20,000 exclusive of interest. State Directors and the Director, Denver Service Center, are delegated similar authority, provided there is concurrence by the Field or Regional Solicitor, and subject to the limitations explained in .32.
 - 2. Suspension or Termination. Pursuant to the authority contained in Title 4, Chapter 2 of the CFR, State Directors and the Service Center Director (with the concurrence of Field or Regional Solicitors) are authorized to suspend or terminate collection action on claims not in excess of \$2,500.
 - a. Claims over \$2,500, but not in excess of \$20,000, must be forwarded to the Director (520) for approval and write-off. Final action must be approved by the Assistant Director, Administration, with the concurrence of the appropriate technical staff and the Solicitor. The State Director forwards three copies of the case file (see .52A1), together with all recommendations of Bureau officials and the Field or Regional Solicitor, to the Director (520) through the Director, Denver Service Center.
 - b. Claims under \$2,500 may be written off by the State Director or Service Center Director when such action is approved by the Regional or Field Solicitor. Uncollectible amounts not in excess of \$400, which meet the standards in .4, may be written off without referral to the Field or Regional Solicitor (344 DM 4).
 - c. If the State or Service Center Director and Field or Regional Solicitor cannot agree on disposition of an uncollectible debt, copies of the case file, with recommendations, are submitted to the Director (520) in order to resolve the issue with the Solicitor's Office.

1375 - DELINQUENT ACCOUNTS

3. Referral For Collection or Litigation. Claims not in excess of \$20,000 on which collection action is not successful and on which the amount cannot be compromised, suspended, or terminated must be referred to the Department of Justice or General Accounting Office.

a. Referrals to the Department of Justice.

(1) Referrals to the Department of Justice are governed by Solicitor's Regulation No. 8, dated April 29, 1965. This regulation provides that when the amount involved in certain types of debt cases does not exceed \$5,000, the cases may be referred by field offices of the Office of the Solicitor to the appropriate U.S. Attorney, Department of Justice for recovery. Trespass debts in excess of \$5,000 may also be referred, if actual damages are \$5,000 or less, and: (a) State statutes permit recovery of multiple damages, or (b) the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass. (For additional types of cases under \$5,000 covered by this regulation, see Appendix 1.)

(2) State Directors will follow recommendations of the Field or Regional Solicitor relative to transferring uncollectible debts which do not exceed \$5,000 to the appropriate U.S. Attorney, Department of Justice for recovery. Cases involving amounts of \$5,000 and over must be submitted through Director, Denver Service Center, to the Director (520) and referred to the Office of the Solicitor for transmittal to the Department of Justice.

(3) Settlement of cases by the Department of Justice is considered final, and such cases are not reported to GAO. Cases referred to the Department of Justice are transferred by journal voucher from accounts receivable to account No. 177, Claims with the Department of Justice, until the Department of Justice advises that the cases are closed.

(4) Amounts collected by the Department of Justice are generally transmitted through the appropriate U.S. Attorney to the BLM office from which the account generated. Amounts received by the Director (520) from the Department of Justice, are transmitted to the field office concerned.

(5) Interest is computed on all debt claims from the date of default to the date of referral to the Department of Justice. If a case is submitted through a field solicitor's office to a United States Attorney, interest is computed by DSC. The interest on all cases forwarded to the Director is computed by the Division of Finance. Suits to collect money are in personam actions which must be filed in the judicial district within which the defendant resides and is subject to service. This being true, the Government's claim for interest on a debt must be computed at the rate prevailing in the State where the suit is brought.

1375 - DELINQUENT ACCOUNTS

b. Referrals to General Accounting Office.

(1) All debts due the United States which cannot be collected, compromised, terminated, or suspended pursuant to authority contained in Title 4, Chapter 2 of the Code of Federal Regulations are reported to the Claims Division, General Accounting Office. This rule is subject to the exceptions listed in 4 GAO 56.3 and briefly outlined below:

(a) Debts of Less Than \$100. Debts are not reported when total amount is less than \$100; debts are reported when a series of smaller amounts involving the same debtor aggregate \$100 or more.

(b) Debtors Involved in Bankruptcy Proceedings. Follow procedures in .7.

(c) Debtors Discharged in Bankruptcy. Debts are not reported, regardless of amount, when it is known that the debtor has been discharged in bankruptcy and that the amount due the United States was listed in his schedule of debts, provided no question of fraud is involved.

(d) Debts of Corporations. Debts of corporations are not reported, regardless of amount, when all of the following conditions are present:

i. When it is known that the debtor corporation has been dissolved;

ii. When it is known that there are no corporate assets from which collection can be made; and

iii. When the whereabouts of the officers and directors of the corporation are unknown.

(e) Deceased Debtors. Debts are not reported, regardless of amount, when the debtor is deceased and there is positive evidence showing the decedent left no estate.

(f) Debt Matters Closed by Department of Justice. Do not report debts arising out of damage to or loss of Government property due to tortious acts, including the negligent operation of privately owned vehicles and trespass on Government lands, buildings, or projects, or other debts referred to the Department of Justice.

1375 - DELINQUENT ACCOUNTS

(2) State Directors forward uncollectible debts which must be submitted to the GAO through the Director, Denver Service Center, to the Director (520). The Assistant Director, Administration, refers such debts directly to the Claims Division, General Accounting Office (344 DM 5.1).

(3) The Director (520) notifies the Denver Service Center when cases are referred to GAO; the Director, DSC is responsible for the preparation of a journal voucher to remove the amounts from accounts receivable.

(4) Amounts collected by the General Accounting Office involving appropriation or fund accounts are deposited into the Treasury as miscellaneous receipts. Collections made for the account of trust or deposit funds are deposited to the credit of such trust or deposit funds; a copy of the Certificate of Deposit involving the trust or deposit fund is furnished to the Bureau.

C. Debts Under \$2,500. Pursuant to the authority contained in Title 4, Chapter 2 of the CFR, State Directors and the Service Center Director are authorized to suspend or terminate collection action and write off debts under \$2,500 when such action is recommended by the Field or Regional Solicitor. Uncollectible amounts not in excess of \$400, on which collection action can be suspended or terminated under the standards contained in .4, may be written off without referral to the Field or Regional Solicitor (344 DM 4.1). Uncollectible debts which cannot be compromised, terminated, or suspended under 4 CFR, Chapter 2, must be referred to GAO or the Department of Justice as explained in .52B3.

.53 Denver Service Center. Uncollectible accounts forwarded to the Service Center are reviewed for technical and/or administrative acceptability and forwarded with recommendations to the Director (520). If debts originate at DSC, or if additional collection action is warranted, the Service Center Director follows procedures prescribed for State Offices in .52.

.54 Washington Office. Uncollectible accounts forwarded to the Director (520) are reviewed for accuracy and completeness and recorded on a Location and Action Card (Illustration 4) for control. Copies of cases relating to technical programs are routed to the appropriate technical staffs prior to write-off, forwarding to the Solicitor's Office, or referral to GAO. The Assistant Director, Administration, with the concurrence of the Solicitor's Office, is authorized to discontinue collection action on and compromise, suspend, or terminate claims not in excess of \$20,000. Debts which cannot be compromised, terminated, or suspended under 4 CFR, Chapter 2, must be referred to GAO or the Department of Justice in accordance with .52B3.

1375 - DELINQUENT ACCOUNTS

.6 Administrative Reports. All reports to the General Accounting Office, United States Attorneys, and the Department of Justice must conform to requirements set forth in the following sections.

.61 Reports to the General Accounting Office. 4 GAO 56.5 requires that all debts reported to the Claims Division, GAO, for further collection action be reported by individual administrative reports containing the following:

A. Contents.

1. Debtor's full name and last known address.
2. Identification number.
 - a. If individual, use Social Security Number. In the case of former servicement separated or retired prior to assignment of Social Security Number, use service number.
 - b. If a business entity, use employer's identification number.
3. A statement of the sources contacted and the results of the contacts in cases where the administrative office is unable to locate the debtor.
4. A complete statement of the facts and computations which are pertinent under the laws and regulations by which the debt was administratively determined.
5. When the debt is \$250 or more, a list of the applicable laws, regulations, contracts, vouchers, and checks, accompanied by:
 - a. Available credit information.
 - b. Copies of any available correspondence between the debtor and the administrative office.
 - c. Copies of any available correspondence from the debtor admitting liability.
 - d. Copies of documents necessary to establish the Government's position with respect to issues raised by the debtor when he disputes a material fact after detailed explanation.

1375 - DELINQUENT ACCOUNTS

.62 Reports to the Department of Justice or United States Attorneys.
4 GAO 68.2 requires that, to the extent appropriate, cases referred through the offices of the Solicitor or Regional Solicitor to the Department of Justice or United States Attorneys be fully documented.

A. Supporting Documentation.

1. All pertinent and available evidence.
2. The names and locations of the parties in interest.
3. The names and locations of any parties who may have knowledge of the facts.
4. The name and address of the insurance company involved.
5. Evidence of financial ability to pay for the damage, if the party or parties against whom the claim is being adjudicated are not insured.

1375 - DELINQUENT ACCOUNTS

.7 Claims Against Debtors Involved in Bankruptcy Proceedings. When a debtor is involved in bankruptcy proceedings, the debt claim is sent to the Justice Department or the General Accounting Office. (See Appendix 1: Solicitor's Regulation 8, April 29, 1965.)

.71 Adjustment of Accounts. Upon notice of bankruptcy proceedings, take the following actions:

- Apply to the debt amounts due the debtor, which were earned prior to the date the petition in bankruptcy was filed and are available for application.
- Pay amounts earned by the debtor after the filing of the petition for bankruptcy to the receiver, trustee, or assignee, as appropriate.
- Determine if there are assets available for distribution to creditors. If necessary, prepare an inquiry to the Clerk of the Court to determine the amount of assets and liabilities.
- Prepare proof of claim for referral to the Department of Justice or to the General Accounting Office.

.72 Debt Limitations. If the debt is less than \$250, it need not be reported to either the Department of Justice or the General Accounting Office; however, a series of smaller debts involving the same debtor, totaling \$250 or more, should be referred. Also, if the facts and circumstances in the case warrant the filing of a proof of claim (e.g., if petition is filed under Chapters X, XI, or XIII of the Bankruptcy Act), debts of lesser amounts may be referred. (4 GAO 80)

.73 Referrals to the Department of Justice. Debt claims are sent to the Department of Justice through the Office of the Solicitor unless: The debt was previously reported to GAO; there is a doubtful question of law or fact as to the amount of the debt, the liability of the debtor, or entitlement to any amounts payable; or information shows that there will be no assets for distribution to creditors at the present level of Government claims.

.74 Referrals to the General Accounting Office. If the debt was previously reported to GAO, or there is a doubtful question of law or fact, the notice of bankruptcy proceedings and report of the debt are sent to the General Accounting Office.

1375 - DELINQUENT ACCOUNTS

.75 Report Contents. Notices of bankruptcy proceedings and reports of debts referred to the Department of Justice or the General Accounting Office should include:

- The name of the court in which the petition was filed and the case number, if known.
- A complete statement of the account, including the basis of the debt.
- The section or chapter of the Bankruptcy Act under which the petition was filed.
- Contingent proof of claim, if time for filing claim is about to expire and the amount of the claim has not been definitely determined; final proof should be forwarded as soon as possible thereafter.
- If a debt claim is based on a written instrument, the instrument should be filed with the final proof of claim, as required by the Bankruptcy Act.

.76 Removal of Debts from Accounts Receivable. Debts are removed from the accounts as outlined in .52.

1375 - DELINQUENT ACCOUNTS

Demand Letter No. 1



United States Department of the Interior

IN REPLY REFER TO:

1375

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

Date 4/1/XX
(30 days after
date of billing)

CERTIFIED MAIL

Mr. Simon J. Fitzgerald
30225 Court Drive
Salt Lake City, Utah 84105

Dear Mr. Fitzgerald:

Payment has not been received on our invoice number 514
dated 3/1/XX, in the amount of \$ 34.50 covering timber
sale 36-030-714. If you have not received the invoice, or
if you have any questions concerning your liability, please con-
tact this office. Unless we hear from you, we shall expect
payment in full within the next 20 days.

Sincerely yours,

Oliver D. Smith
Oliver D. Smith
(Title)

1375 - DELINQUENT ACCOUNTS

Demand Letter No. 2



United States Department of the Interior

IN REPLY REFER TO:

1375

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

Date 5/1/XX
(30 days after
letter No. 1)

CERTIFIED MAIL

Invoice No. 514
Invoice Amount \$34.50

Mr. Simon J. Fitzgerald
30225 Court Drive
Salt Lake City, Utah 84105

Dear Mr. Fitzgerald:

On 4/1/XX this office sent you a letter by certified mail. We requested that you either pay our invoice, dated 3/1/XX, or advise us if you had any questions regarding your liability. Since we have not heard from you, we assume you acknowledge the liability but have allowed the invoice to become 60 days delinquent. We must insist upon immediate payment.

Unless we hear from you, we will be forced to take legal action to collect this debt due the United States Government.

Sincerely yours,

Oliver D. Smith

Oliver D. Smith
(Title)

1375 - DELINQUENT ACCOUNTS

Demand Letter No. 3



United States Department of the Interior

1375

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

Date 6/1/XX
(30 days after
letter No. 2)

CERTIFIED MAIL

Mr. Simon J. Fitzgerald
30225 Court Drive
Salt Lake City, Utah 84105

Dear Mr. Fitzgerald:

You have not paid our invoice dated 3/1/XX, in the amount of \$34.50, or acknowledged receipt of our two letters dated 4/1/XX, and 5/1/XX. This failure on your part forces us to take legal action to effect collection.

If payment is not received by (15 days after date of this letter), your account will be turned over to the Department of Justice * for prosecution. We regret that this action is necessary, but your failure to respond to our billing and letters leaves us no alternative.

Sincerely yours,

Oliver D. Smith

Oliver D. Smith
(Title)

*This could also be the General Accounting Office. Office preparing the letter will insert the proper agency.

1375 - DELINQUENT ACCOUNTS

Location and Action Card

Name of debtor	John Doe	Serial Number	TM-93 (O&C)
Address	Box 123, Eugene, Oregon 97401	Type of case	Timber Trespass
		Amount of claim	\$5,500.00

<u>Date</u>	<u>Action Taken</u>	<u>Location of File</u>	
2/3/70	Received from Denver Service Center (compromise offer)	Finance	
2/5/70	To Division of Forestry for review and recommendation	Forestry	
2/12/70	Returned by Forestry recommending compromise be accepted	Finance	
2/13/70	To Solicitor's Office	Solicitor's Office	
3/4/70	Copy of letter from Deputy Solicitor transmitting case to Department of Justice	Dept. of Justice	
4/10/70	Copy of Assistant Attorney General's letter accepting compromise offer with case file and check for \$3,500.00	Finance	
4/13/70	Case file and check forwarded to Eugene District Office Memo sent to DSC advising them of disposition of case.	Eugene D. O.	

1375 - DELINQUENT ACCOUNTS

Delinquent or Uncollectible Account Checklist

Form 1370-24 (January 1971)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	State Oregon
DELINQUENT OR UNCOLLECTIBLE ACCOUNT CHECKLIST		Case Serial Number TM-93 (O&G)
Name of Debtor Rosehill Timber Co.		Type of Case* Timber Trespass
Present Address (include zip code) 9287 Lincoln Drive Portland, Oregon 32456		
This list shall be checked to show if the following items are in the case file or delinquent account files		CHECK
1. Original manually signed lease, contract, trespass report, promissory note, or other evidence of indebtedness		X
2. Demand for payment, including file copy of bill, with proper evidence of service of notice		X
3. Evidence of cancellation or termination of lease, permit, or other authorization		X
4. Bond or bonds, and if so, evidence of service on corporate surety or individual sureties		X
5. If debtor deceased and estate being probated, evidence of service of notice to executor or administrator		X
6. Reports of financial solvency of debtor (includes lessee, permittee, assignee, purchaser of timber, or individual sureties)		X
7. Evidence of efforts of BLM to collect, including statements of Bureau officers		X
8. Memorandum of transmittal		X
Remarks		
		Signature of State Director
9. Regional or Field Solicitor's		a. Opinion dated July 15, 19XX X b. Endorsement by State Director, dated 8/1/XX X
10. Accounts receivable file (collection voucher and receipt copies of bill)		X
11. Journal Voucher removing account from D.S.C. ledgers		X
The following actions have been taken		
a. Separate trespass case file opened	X	c. Trespass account opened X
b. Case reported on trespass register	X	d. Appraisal of damages completed X
<input type="checkbox"/> If any remarks are needed, check here and enter on reverse		Signature of Director, Service Center
NOTE		
Items 1 through 7 and item 9 relate to the basic material usually desired to process delinquent accounts. This list is		to be attached to the case file and shall be transmitted with the delinquent account for processing.
* Type of Case—Oil & Gas Lease, etc.		

Certification of Basic Case File

IN REPLY REFER TO:



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

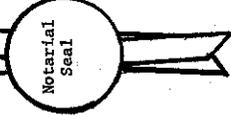
May 20, 19XX

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each attached paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Complete files concerning
uncollectible timber trespass
- Hoyt C. Brown -

IN TESTIMONY WHEREOF, I have heretunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

John Doe
(Signature)



Notarial Seal

This cover sheet is used to bind and certify photostatic or machine copies of documents for transmittal to the Director, General Accounting Office, or Department of Justice. Copies bound and certified as prescribed do not require a certification on each document.

Instructions

1. Prepare cover sheet on BLM letterhead bond.
2. Bind case file and cover sheet with 2 metal eyelets spaced about one inch apart and about 1 1/2 inch from the top and left edge of the page. Use care to insure that all documents are bound so they will not become detached; give particular attention to documents of irregular size.
3. Lace one-quarter inch ribbons through eyelets, knot, and extend free ends down left hand margin; affix free ends of ribbon to the lower left corner of the cover sheet with a two-inch notarial seal. (Gummed, colored paper seal material is available in most office supply stores.)
4. Emboss BLM name on seal with hand machine.
5. Draw line (using black INDIA INK) to account for unused space between description of material enclosed and certification.

1375 - DELINQUENT ACCOUNTS

Report of Waiver of Claims for Erroneous Payment of Pay
5 U.S.C. 5584 (4 CFR 91-93)

DEPARTMENT OF THE INTERIOR
Bureau of Land Management, Denver Service Center
Denver, Colorado 80225
(Bureau or Office)

Report of Waiver of Claims for Erroneous Payment of Pay,
5 U.S.C. 5584 (4 CFR 91-93)

Fiscal Year 19XX

1. <u>Waiver Requests Granted in Full by Your Bureau or Office:</u>	
a. Number.....	8
b. Dollar amount waived.....	<u>\$ 857.00</u>
2. <u>Waiver Requests Denied in Entirety by Your Bureau or Office:</u>	
a. Number.....	2
b. Dollar amount denied.....	<u>\$ 34.00</u>
3. <u>Claims Which Have Been Waived in Part by your Bureau or Office:</u>	
a. Number.....	none
b. Aggregate amount waived.....	<u>\$ none</u>
c. Aggregate amount denied.....	<u>\$ none</u>
4. <u>Number of Requests Transmitted to GAO for Waiver Consideration.....</u>	
	<u>3</u>
5. <u>Amount Refunded as a Result of Your Bureau or Office Waiver Action.....</u>	
	<u>\$ 140.00</u>
6. <u>Amount Refunded as a Result of GAO's Waiver Action.....</u>	
	<u>\$ 130.00</u>

1375 - DELINQUENT ACCOUNTS

Solicitor's Regulation 8

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington, D. C.

APR 29 1965

SOLICITOR'S REGULATION 8

Subject: Reference of matters to United States Attorneys

Sec. 1. Purpose. This regulation delegates authority and prescribes procedures for submitting directly to United States Attorneys certain matters arising in connection with the operations of this Department.

Sec. 2. Authority of United States Attorneys. United States Attorneys have been authorized to act in respect of certain cases under the jurisdiction of the Lands Division or the Civil Division of the Department of Justice. The authority delegated to United States Attorneys is set forth below:

LANDS DIVISION

"Sec. 1. Matters Subject to Direct Reference. United States Attorneys are hereby authorized to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of title or water rights, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, without prior authorization from the Lands Division in the following-described cases:

- "(1) Actions to recover possession of property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on federal property;
- "(2) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$5,000.00. The United States Attorneys may seek recovery of amounts exceeding \$5,000.00:

1375 - DELINQUENT ACCOUNTS

- (A) if the actual damages are \$5,000.00 or less and state statutes permit the recovery of multiple damages, e.g., double or treble, for either a wilful or an innocent trespass;
(B) if the actual damages are \$5,000.00 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;
- "(3) Actions to collect delinquent rentals or damages for use and occupancy of not more than \$5,000.00;
- "(4) Actions to collect costs of forest fire suppression and other damages resulting from such fires if the total claim does not exceed \$5,000.00;
- "(5) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than \$5,000.00;
- "(6) Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States.

"In each such case, the United States Attorneys shall, prior to taking action, assure that a copy of the written request of the authorized field officer has been forwarded to the Lands Division, General Litigation Section, Department of Justice, Washington, D.C.

"Sec. 2. Compromise, Dismissal, or Closing of Direct-Reference Cases.

- "(1) Subject to the limitations imposed by paragraph (3) of this section, United States Attorneys are hereby authorized to accept or reject offers in compromise in direct-reference cases described in Section 1 without the prior approval of the Lands Division if the authorized field officer of the interested agency concurs in writing, except that a United States Attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

1375 - DELINQUENT ACCOUNTS

- "(2) A direct-reference matter described in Section 1 may be closed without action by the United States Attorney or, if filed in court, may be dismissed by him, if the field officer of the interested agency concurs in writing that it is without merit legally or factually. The United States Attorney may close a claim without consulting the field officer of the interested agency if the claim is for money only and if he concludes (A) that the cost of collection under the circumstances would exceed the amount of the claim or (B) that the claim is uncollectable.
- "(3) The United States Attorneys are not authorized, without the prior approval of the Lands Division, to act with respect to the dismissal, compromise, or closing of a case, if (A) claim is not a direct reference described in Section 1; (B) there is a divergency of views between the United States Attorney and the field officer of the referring agency in a case requiring concurrence; (C) subsequent to acceptance of the reference, it becomes apparent that the claim involves a novel point of law, a question of policy, or otherwise constitutes a precedent; (D) for any reason, the compromise of a claim, as a practical matter, will control or adversely affect the disposition of other claims totaling more than the amounts designated in Section 1 as being subject to direct reference. If any of these conditions exist, the matter shall be submitted to the Lands Division for decision."

Compromise of Condemnation Cases

"1. Except as provided in paragraph 2 hereof, United States Attorneys are authorized to accept or reject offers in compromise of claims against the United States for just compensation in condemnation proceedings in any case in which the gross amount of the proposed settlement does not exceed \$10,000:* Provided that --

"(a) The settlement is approved in writing (to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved; and

*Increased to \$20,000 (See Memo from Office of the Solicitor dated October 20, 1972).

1375 - DELINQUENT ACCOUNTS

"(b) The amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks.

"2. This redelegation of authority shall not apply --

"(a) In any case in which, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling an amount in excess of \$10,000;*or

"(b) In any case in which the United States Attorney concerned is of the opinion that because of a question of law or policy presented, or for any other reason, the offer should receive the attention of the Lands Division of the Department; or

"(c) When the case involves the revestment of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. 258f).

"3. The procedural functions necessary for completing disposition of the matter, including the entry of judgment and distribution of the award, shall be performed promptly when a settlement has been made under this redelegation of authority. The United States Attorney concerned shall immediately forward to the Department a report, in the form of a letter or memorandum, bearing his signature or showing his personal approval. The report, an initialed copy of which shall be retained in the file of the United States Attorney, shall show the action taken and shall contain an adequate statement of the reasons therefor. In routine cases, a form, containing the minimum elements of the required report, may be used in lieu of a letter or memorandum. In any case, special care shall be taken to see that the report contains a statement as to what the valuation testimony of the United States would have been if the case had been tried."

* Increased to \$20,000 (See Memo from Office of the Solicitor dated October 20, 1972).

1375 - DELINQUENT ACCOUNTS

CIVIL DIVISION

"Sec. 1. Scope of Authority. The authority delegated by this Memorandum is applicable to civil claims, both by and against the Government, which are under the jurisdiction and authority of the Assistant Attorney General in charge of the Civil Division (hereafter in this Memorandum referred to as the Assistant Attorney General). United States Attorneys are hereby authorized to take all necessary steps, with regard to the claims described in this Memorandum, to protect the interests of the United States, including the institution, conduct, compromise, and termination of appropriate legal proceedings, without prior approval of the Assistant Attorney General or his representative, but subject to the limitations and conditions set forth in this Memorandum, the limitations set forth in special instructions and manuals, and the requirements set forth in the United States Attorneys Manual

* * *

"Sec. 3. Claims Covered. A. Admiralty and Shipping Section Matters -- Claims for civil penalties and forfeitures not exceeding \$5,000.00 exclusive of interest and costs for violation of the laws relating to inspection and documentation of vessels and to obstruction and pollution of navigable waters, interference with or damage to aids to navigation, and all similar matters but not including any claim for injunctive or declaratory relief. (Referred by local offices of the Coast Guard, the Bureau of Customs and the Army Engineers.) (Special instructions for the handling of these claims are contained in (Civil Division) Memo. No. 376.)

"B. Fraud Section Matters -- Civil claims arising from fraud on the Government (other than fraud matters referred to the Antitrust, Lands, and Tax Division), including claims under the False Claims Act, the Surplus Property Act, the Anti-Kickback Act, the Contract Settlement Act, and common law fraud whenever the amount of single damages claimed (exclusive of double damages, forfeitures, interest, and costs) does not exceed \$5,000. (Special instructions for handling these claims are contained in the Civil Frauds Manual.)

"C. General Claims Section Matters -- Claims by and against the Government whenever the amount claimed does not exceed \$5,000, exclusive of interest and costs, as follows:

1375 - DELINQUENT ACCOUNTS

"1. Claims for conversion of Government property other than ships, cargoes, or other maritime property.

* * *

"14. Claims referred upon General Accounting Office certificates of indebtedness or proofs of claim, including Veterans Administration and military overpayments, except those involving carriage of goods by water. (See section 7 of this Regulation.)

* * *

"19. Suits in which the United States has been made a party defendant pursuant to 28 U.S.C. 2410, except liens on vessels or other maritime property.

* * *

"E. Tort Section Matters --

"1. Claims for damage to Government property, other than ships, cargoes, or other maritime property whenever the amount claimed does not exceed \$5,000 exclusive of interest and costs.

"2. Federal Tort Claims Suits --

"a. Suits under the Federal Tort Claims Act, 28 U.S.C. 1346(b), whenever all claims for damages arising out of one incident do not exceed \$5,000. (Special instructions for the handling of these claims are contained in the Federal Tort Manual.)

"b. In all suits under the Federal Tort Claims Act, regardless of amount claimed, the United States Attorney may compromise all claims arising out of one incident for an aggregate amount of \$5,000 or less without prior approval of the Assistant Attorney General unless previously instructed to the contrary.

1375 - DELINQUENT ACCOUNTS

"F. Civil Division Judgments -- Final civil judgments in favor of the United States in cases in which the judgment amount does not exceed \$5,000 exclusive of interest and costs.

"Sec. 4. Exceptions to Special Delegations of Authority. Notwithstanding any of the provisions of this Memorandum, United States Attorneys shall not compromise or close any claim described in this Memorandum in any case in which (1) there is a divergence of views between the United States Attorney and the agency or department originating the claim as to the action to be taken when the views of such agency are required to be obtained (see Section 5 of this Memorandum); or (2) the claim involves a new point of law (or otherwise may constitute a significant precedent); or (3) in the opinion of the United States Attorney, or of the Assistant Attorney General, a question of policy is, or may be, involved. In such cases, a compromise or closing memorandum must be submitted to the Assistant Attorney General for approval.

"Sec. 5. Solicitation of Agency Recommendation for Compromise. The views and recommendations of the referring office of agencies and departments for the compromising and closing of claims involving authority delegated by this Memorandum should be obtained whenever: (1) the agency or department has specifically requested that it be consulted; (2) a question of agency or department policy is or may be involved; (3) a question of enforcement is present, i.e., cases involving civil fines and penalties.

"Sec. 6. Bases for Compromise or Closing of Claims and Judgments. (a) A claim may be compromised or closed by a United States Attorney pursuant to the authority delegated by this Memorandum even though substantial legal or factual problems exist, but only if the amount of the offer fairly reflects the litigative probability and no question of policy or enforcement is present.

"(b) A claim or a judgment may be compromised or closed on the basis of doubtful collectibility, having due regard for the debtor's anticipated future financial status. A claim or a judgment may be closed if the cost of further collection efforts will substantially exceed the amount that can be recovered thereby.

1375 - DELINQUENT ACCOUNTS

"(c) Whenever a claim is closed or compromised by a United States Attorney pursuant to the authority conferred upon him by this Memorandum, he shall execute and place in the file a memorandum which shall contain a description of the claim and a full statement of the reasons for closing it."

Sec. 3. Authority of Departmental Attorneys. (a) In connection with matters referred to in section 2 of this regulation, each Associate Solicitor, Regional Solicitor, and, subject to such limitations as the appropriate Regional Solicitor may impose in writing, each Field Solicitor is authorized to request a United States Attorney to:

- (1) Initiate or defend actions, and
- (2) Accept or reject offers of compromise, dismissal, or closing of actions after consultation with the appropriate official of the bureau concerned.

(b) The authority granted to Associate Solicitors in paragraph (a) of this section does not extend to matters under the Federal Tort Claims Act. With respect to such matters, the Assistant Solicitor, Claims and Contract Appeals may exercise the authority granted in paragraph (a).

Sec. 4. Multiple filings -- Regional Solicitor. (a) Each Regional Solicitor is authorized to review Bureau of Land Management investigations of cases involving collusive multiple filing of offers for oil and gas leases under the simultaneous drawing procedures of the governing regulations (43 CFR 3123.9 and 3123.3), and of false statements of interest made in connection therewith (43 CFR 3100.0-5), and to refer such cases direct to United States Attorneys or the local offices of the Federal Bureau of Investigation, when, in his judgment, such action is warranted.

(b) In each instance of direct referrals under this subsection, a copy of the referral letter together with a full report on the matter shall be sent to the Solicitor, Attention: Associate Solicitor, Division of Public Lands.

(c) The authority granted in subsection (a) may not be redelegated.

1375 - DELINQUENT ACCOUNTS

Sec. 5. Procedures. (a) Lands Division Matters. Contemporaneous with the transmittal of a request to a United States Attorney concerning matters listed in section 2 of this regulation under "Lands Division - Section 1 Matters Subject to Direct Reference", one copy of the communication must be forwarded to the Assistant Attorney General, Lands Division, General Litigation Section, Washington, D.C. 20530.

(b) Civil Division Matters. In connection with matter listed in section 2 of this regulation under "Civil Division", no information should be sent to the Civil Division of the Department of Justice. Requests to United States Attorneys to initiate action in such matters should contain a request for consultation before the case is compromised or closed.

(c) Bureaus. Copies of communications in both Lands and Civil Division matters should be sent to the official of the bureau concerned and, if the matter is handled by a Regional Solicitor or Field Solicitor, a copy of such communications should be sent to this office, to the attention of the appropriate Associate Solicitor or Assistant Solicitor.

Sec. 6. Debt Claims for Sums Certain. Debt claims for sums certain, as for a claim on a note or for liquidated damages where no proof extraneous of the note or contract is needed to ascertain the amount of the debt claim and where no other related element of the claim requires such extraneous proof or independent legal action (as, for example, a debt claim for rentals on a coal lease where the lease must be judicially cancelled and, therefore, the debt claim is joined with the action to cancel) should be transmitted to the appropriate office of the Department for action pursuant to Part 344 of the Departmental Manual. However, debt claims for sums certain made for or on behalf of Indians or Indian tribes where the United States appears as the nominal party in interest and the Indian tribe is actually the ultimate beneficiary of such debt claim may be referred to a United States Attorney.

Sec. 7. Bankruptcy Claims. With respect to the matter quoted in section 2 of this regulation from the delegation of authority of the Department of Justice under the heading Civil Division, concerning claims referred upon General Accounting Office certificates of indebtedness or proofs of claims, a change of procedure went into effect after that delegation of authority was issued. Previously all certificates of

1375 - DELINQUENT ACCOUNTS

indebtedness or proofs of claims were referred to the Department of Justice or United States Attorneys by the General Accounting Office. Under the current procedure in the General Accounting Office Policy and Procedure Manual (4 GAO 7500) the administrative departments and agencies are to refer certain claims of debtors involved in bankruptcy proceedings directly to the Department of Justice or to the United States Attorneys. See 4 GAO 7520.10 and 7530.10. GAO forms 4017 and 4018 (Rev. 5/18/62), with appropriate modification, may be used in connection with such referrals.

This Regulation supersedes Regulation 8 issued under the date of May 16, 1961.

s/Edward Weinberg
Acting Solicitor

Rules and Regulations: 4 CFR, Chapter II

Rules and Regulations

Title 4—ACCOUNTS

Chapter II—Federal Claims Collection Standards (General Accounting Office—Department of Justice)

JOINT REGULATIONS PRESCRIBING STANDARDS FOR ADMINISTRATIVE COLLECTION, COMPROMISE, TERMINATION OF AGENCY COLLECTION ACTION, AND REFERRAL TO GENERAL ACCOUNTING OFFICE, AND TO DEPARTMENT OF JUSTICE FOR LITIGATION, OF CIVIL CLAIMS BY GOVERNMENT FOR MONEY OR PROPERTY

Pursuant to section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, Title 4 of the Code of Federal Regulations is amended to promulgate joint regulations prescribing standards for the administrative collection, compromise, termination of agency collection action, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government for money or property, by adding a new Chapter II as follows:

- art
- 101 Scope of standards.
 - 102 Standards for the administrative collection of claims.
 - 103 Standards for the compromise of claims.
 - 104 Standards for suspending or terminating collection action.
 - 105 Referrals to GAO or for litigation.

PART 101—SCOPE OF STANDARDS

- Sec.
- 101.1 Prescription of standards.
 - 101.2 Omissions not a defense.
 - 101.3 Fraud, antitrust, and tax claims excluded.
 - 101.4 Compromise, waiver, or disposition under other statutes not precluded.
 - 101.5 Conversion claims.
 - 101.6 Subdivision of claims not authorized.
 - 101.7 Required administrative proceedings.
 - 101.8 Referral for litigation.

AUTHORITY: The provisions of this Part 101 issued under sec. 3, Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection action, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed

by the General Accounting Office as a part of its audit of the agency's activities.

§ 101.2 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

§ 101.3 Fraud, antitrust, and tax claims excluded.

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

§ 101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 309, providing for the compromise, termination of collection action, or waiver in whole or in part of such a claim. See, e.g., "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2651, et seq., and applicable regulations, 28 CFR 43.1, et seq. The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 309, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

§ 101.5 Conversion claims.

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 101.6 Subdivision of claims not authorized.

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than \$20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

§ 101.8 Referral for litigation.

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

- Sec.
- 102.1 Aggressive agency collection action.
 - 102.2 Demand for payment.
 - 102.3 Collection by offset.
 - 102.4 Personal interview with debtor.
 - 102.5 Contact with debtor's employing agency.
 - 102.6 Suspension or revocation of license or eligibility.
 - 102.7 Liquidation of collateral.
 - 102.8 Collection in installments.
 - 102.9 Exploration of compromise.
 - 102.10 Interest.
 - 102.11 Documentation of administrative collection action.
 - 102.12 Additional administrative collection action.

AUTHORITY: The provisions of this Part 102 issued under sec. 3, Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 102.1 Aggressive agency collection action.

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of,

or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

§ 102.2 Demand for payment.

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. Three written demands, at 30-day intervals, will normally be made unless a response to the first or second demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor or debtors from the jurisdiction or his or their removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor or debtors.

§ 102.3 Collection by offset.

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

§ 102.4 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

§ 102.5 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, pp. 130, 131 (1965 Supp.) (30 F.R. 6469).

§ 102.6 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation

of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

§ 102.7 Liquidation of collateral.

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 102.8 Collection in installments.

Claims, with interest in accordance with section 102.10 of this chapter, should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than \$10 per month should be accepted in only the most unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

§ 102.9 Exploration of compromise.

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of \$20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

§ 102.10 Interest.

In cases in which prejudgment interest is not mandated by statute, contract or regulation, the agency may forego the collection of prejudgment interest as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule", unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See *Rodgers v. United States*, 332 U.S. 371.

§ 102.11 Documentation of administrative collection action.

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

§ 102.12 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

- 103.1 Scope and application.
- 103.2 Inability to pay.
- 103.3 Litigative probabilities.
- 103.4 Cost of collecting claim.
- 103.5 Enforcement policy.
- 103.6 Joint and several liability.
- 103.7 Settlement for a combination of reasons.
- 103.8 Further review of compromise offers.
- 103.9 Restrictions.

AUTHORITY: The provisions of this Part 103 issued under sec. 3, Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 103.1 Scope and application.

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may exercise such com-

promise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation.

§ 103.2 Inability to pay.

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time, or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate

debtors by resort to balance sheets and such additional data as seems required.

§ 103.3 Litigative probabilities.

A claim may be compromised pursuant to this part if there is a real 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 a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Public Law 89-507, 80 Stat. 308.

§ 103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim 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 having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

§ 103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

§ 103.6 Joint and several liability.

When two or more debtors are jointly and severally liable collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Settlement for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§ 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

- 104.1 Scope and application.
- 104.2 Suspension of collection activity.
- 104.3 Termination of collection activity.
- 104.4 Transfer of claims.

AUTHORITY: The provisions of this Part 104 issued under sec. 3, Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 104.1 Scope and application.

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

§ 104.2 Suspension of collection activity.

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license

records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as Public Law 89-505, 80 Stat. 304, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his missing status. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise thereof at the time but his future prospects justify retention of the claim for periodic review and action and (a) the applicable statute of limitations has been tolled or started running anew or (b) future collection can be effected by offset notwithstanding the statute of limitations.

§ 104.3 Termination of collection activity.

The head of an agency or his designee may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be

terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105—REFERRALS TO GAO OR FOR LITIGATION

Sec.	
105.1	Prompt referral.
105.2	Current address of debtor.
105.3	Credit data.
105.4	Report of prior collection actions.
105.5	Preservation of evidence.
105.6	Minimum amount of referrals to the Department of Justice.
105.7	Referrals to GAO.

AUTHORITY: The provisions of this Part 105 issued under sec. 3, Federal Claims Collection Act of 1966, 80 Stat. 309.

§ 105.1 Prompt referral.

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an exception from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with aggressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

§ 105.2 Current address of debtor.

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be

taken to locate missing parties in a cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

§ 105.3 Credit data.

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy it claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

§ 105.4 Report of prior collection actions.

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

§ 105.5 Preservation of evidence.

Care will be taken to preserve all files, records and exhibits on claims referred to be referred to the General Accounting Office, or to the Department of Justice for litigation.

1375 - Delinquent Accounts

§ 105.6 Minimum amount of referrals to the Department of Justice.

Agencies will not refer claims of less than \$250, exclusive of interest, for litigation unless (a) referral is important to a significant enforcement policy or (b) the debtor has not only the clear ability to pay the claim but the Government can effectively enforce payment having due regard to the exemptions available to the debtor under State or Federal law and the judicial remedies available to the Government.

§ 105.7 Referrals to CAO.

Referrals of claims to the General Accounting Office will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies.

The foregoing joint regulations shall become effective upon the 15th day of January 1967.

Signed at Washington, D.C.

ELMER B. STAATS,
Comptroller General.

OCTOBER 11, 1966.

RAMSEY CLARK,
Acting Attorney General.

OCTOBER 7, 1966.

[F.R. Doc. 66-11266; Filed, Oct. 14, 1966;
8:47 a.m.]

*Increased to \$400 (See Federal Register, Vol. 35, No. 205, dated October 21, 1970)