

CREDIT AND DEBT MANAGEMENT  
OPERATING STANDARDS AND PROCEDURES HANDBOOK

CHAPTER 10 WRITE-OFFS AND CLOSE-OUTS

Section 1.0 General

This chapter establishes procedures to ensure assets are secured when 1) complete or partial payments on uncollectible debts are obtained; 2) all reasonable collection efforts are exhausted prior to write-off; or 3) thorough administrative close-out of the grant, loan, loan guarantee, or financial contract file is conducted. The write-off and close-out process encompasses:

- \$ Liquidation of the assets related to the debt;
- \$ Litigation of debts in default;
- \$ Write-off of uncollectible amounts owed; and
- \$ Administrative closure of files.

An organization unit may follow procedures which differ from those in this chapter only if approval of alternative procedures has been granted, in writing, by the Director for Financial Management. Any request for authority to deviate from these procedures must be accompanied by the proposed alternative in detail. Approved changes will be established as a supplement to this directive by the requesting organization unit.

Section 2.0 Cost-Effectiveness of Collection Procedures

.01 Costs Versus Amounts Collected

The criteria to determine the cost-effectiveness of the collectibility of a debt will, in part, govern the course of action to be taken. Organization units will provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various stages of delinquency will be used to compare the cost-effectiveness of alternative collection procedures. Responsible collection officials, in consultation with the accounting or finance officer, will establish guidelines that:

- a. Identify when further collection efforts are unlikely to result in cost-effective recoveries;
- b. Assist in evaluating offers to compromise, including determination of administrative costs in continuing to pursue collection of a disputed debt; and
- c. Establish minimum amounts below which certain specified collection efforts need not be taken.

.02 Alternative Collection Actions

Estimated cost and recovery data must be used in determining the most cost-effective collection process. Generally, these estimates should be used to determine the appropriate course of action from the following alternatives:

- a. Negotiate a compromise with the borrower or debtor;
- b. Refer the debt to Treasury for cross-servicing;
- c. Litigate the debt owed; or
- d. Write-off and suspend action by placing a debt older than two years in an account entitled Currently Not Collectible.@ (See Treasury's revised write-off policy at Financial Management Services website.)

Section 3.0 Administration of Debts in Default

.01 Loan Guarantees

When a borrower of a guaranteed loan fails to perform in accordance with the terms of the borrower's loan with a bank, an organization unit may honor its guarantee and pay the bank for its share of principal and interest and either: (1) allow the bank to service and liquidate the loan; or (2) assume responsibility for servicing and liquidation. Responsible organization unit officials must ensure that timely action is taken to protect the Government's interest before a debt reaches the default stage, whether or not the organization unit assumes responsibility itself for

servicing the loan and liquidating the collateral involved.

.02 Direct Loans

Organization units shall consider a direct loan to be in default when any obligation or term of an existing payment agreement has not been met. Debts shall be considered to be in default when accounts are more than 180 days delinquent.

(See Chapter 9 of the DOC Credit and Debt Handbook, Section 2 for definition of Adelinquency.@)

To protect the Government's interests, organization units must ensure that all steps have been taken to collect a debt before it reaches the default stage. Organization units should use all appropriate debt collection tools, both before and after default occurs, until such time as it is determined that the debt is uncollectible.

Section 4.0 Workout Group Responsibilities

It is the responsibility of the organization unit workout group(s) to determine what actions are necessary to protect the Government's interests on seriously delinquent debts and to take those actions. In addition, the workout group(s) shall determine, based on the type and amount of the debt, the most cost-effective collection procedures (see Section 2.0 of this chapter). These procedures should include:

a. Contact with the Debtor.

If the accounting, finance, or program officer has been unable to contact the debtor, the workout group(s) should enlist the services of a private sector debt collection agency to locate the current address of the debtor to demand payment and/or determine the problem causing the delinquency. However, immediate action to protect the Government's interest shall also be taken by the workout group(s) upon learning of the occurrence of events such as the following:

1. Failure of the borrower to meet or discharge any term, condition, or obligation to the organization unit, other than the obligation to make required

payments, resulting in imminent jeopardy to the organization unit's investment.

2. Cessation by a borrower (or by any third party deriving any rights, title or interest from a borrower in and to the use of any of the property collateralizing the organization unit loan) of its normal business operation or of a substantial part thereof.
  3. Admission by a borrower of its inability to meet its obligations as they fall due, either to the organization unit or to any other creditor(s).
  4. Sale, transfer, or assignments by borrower of any of its property without the organization unit's written consent, other than in the normal course of borrower's business activities.
  5. Filing by or against the borrower, in any court pursuant to any statute, either of the United States or of any State, of: (1) a petition in bankruptcy or insolvency, reorganization, the appointment of a receiver or trustee of all or a portion of borrower's property; or (2) an assignment by borrower for the benefit of creditors.
  6. The initiation, or threat of initiation, by a creditor of the borrower, of legal or statutory proceedings other than those specified above, against borrower or its property which proceedings may result in imminent jeopardy to the organization unit's investment, or to borrower's ability to continue its normal business activities.
- b. Credit report checks to help determine collectibility of the debt or loan. The workout group(s) should solicit from each known creditor, including those listed on the credit reports, all available information concerning: (1) the current status of each loan which the debtor has with either another Federal agency or private sector lending institution; (2) the identification of the collateral securing same; and (3) what action each creditor has taken or contemplates taking with respect to its loan(s).

- c. Evaluation of the debtor's ability to continue payments on the debt. If feasible, the workout group(s) should attempt to negotiate a rescheduling of payments when it is in the best interest of the Government and where the workout group(s) has determined (through contact with the debtor and review of the credit reports and other financial information) that recovery of all or a substantial portion of the amount owed is reasonably assured. The workout group(s) has the authority to negotiate and to sign repayment agreements which they negotiate. Additional information on collection of debts in installments may be found in the Federal Claims Collection Standards.
- d. Based on information from credit bureau reports, the workout group(s) should hold up any Department and other Federal funding, if possible, to the debtor through administrative offset (see Appendix E of this Handbook). For Departmental funding programs, this action should be coordinated with the Director for Financial Management (OFM). Use of administrative offset will be undertaken when feasible in accordance with the Debt Collection Improvement Act of 1996 (DCIA), and the implementing Federal Claims Collection Standards (4 CFR 102.3).
- e. The workout group(s) shall determine whether to turn over the delinquent account to a collection agency or make an immediate referral to the Department of Justice for litigation on the basis of the financial ability and the degree of willingness of the debtor to repay. Workout group(s) shall use collection agencies any time the account is 61 days past due. These cases may be sent to Treasury for "pass through" referral to the private collection agencies. In all cases, accounts that are six months or more past due shall be turned over to the Department of the Treasury Financial Management Service, Debt Management Services for collection efforts unless: (1) the account has been referred for litigation; (2) the workout group(s) is in the process of liquidating assets associated with the loan; or (3) the workout group(s) anticipates a rescheduling agreement will be made with the debtor within the following 30 days.
- f. For collateralized loans, the workout group(s) will evaluate the existing or possible risks created by the delinquency and consult with an assigned attorney to

determine what legal remedies are available to protect the Government's interest. The workout group(s) will determine whether the collateral is secure against theft, vandalism, and other such hazards, and will arrange for security as appropriate. The workout group(s) will also determine whether current lien/mortgage searches, tax searches and appraisals relating to borrower's property should be obtained, and if so, arrange for same. In cooperation with the attorney, the workout group(s) will determine what available remedies should be recommended for pursuit of collection of the debt. For loans made to municipalities and secured by revenue bonds, most State laws prohibit the mortgaging of public property. The method of ensuring payment is through a court order to secure the revenues of a government facility and, if necessary, the appointment of a receiver to operate the facility and secure the necessary revenues to repay the principal and interest on bonds.

The workout group(s) will prepare a written report setting forth the actions taken and contemplated with regard to the collateralized property. Recommended actions may include:

1. Acceleration of the maturity of the borrower's note with a demand for immediate payment of the full balance of the indebtedness;
2. Payment or a refusal of payment to a lender under the organization unit's guarantee;
3. Development of a repayment plan (i.e., rescheduling of the debt);
4. Purchase of prior or parity liens;
5. Private sale by borrower of its plant and/or equipment to a third party to generate funds to pay the loan;
6. Sale of borrower's note to a bona fide third party;
7. Foreclosure against all or a portion of the collateral securing the loan; and
8. Initiation of actions leading to acquisition of

title to the collateral under governing laws and statutes, to be followed by negotiated sale to a third party, or by public sale at auction or through sealed bids.

g. Calling Guarantees.

Where loans held by the Government have been guaranteed by a third party, and collection from the principal debtor appears unlikely, the Government's rights for calling for payment under the guarantee shall be exercised immediately.

Organization unit workout group(s) should officially declare a seriously delinquent debt in default if all collection efforts are unsuccessful and it is determined that the recipient is unable to pay the debt or a portion thereof.

Organization unit workout group(s) will prepare recommendations regarding compromise, suspension, termination, or litigation, and based on the dollar amount of the indebtedness and the Department's policy, will promptly forward the recommendation and file(s) to the appropriate review authorities (see Section 8.0, below).

For additional information concerning responsibilities and make-up of the organization unit's workout group(s), see Appendix H of this Handbook.

Section 5.0 Legal Counsel Advice and Levels of Authority for Compromise, Suspension or Termination (Write-Off) of Debt

The workout group(s) will consult with bureau legal counsel, in an advisory capacity, to determine whether the documentary evidence collected is sufficient to warrant compromise, termination, or suspension of the debt under the terms of the Federal Claims Collection Standards. Legal counsel will evaluate the evidence and advise the workout group(s).

The workout group(s) will include the bureau legal counsel advice with all requests for authority to compromise, terminate, or suspend collection action on a debt. All recommendations for compromise, suspension, or termination of a claim shall specifically identify the reasons for such actions. Valid reasons for compromise, suspension, or termination of a claim are set forth in the Federal Claims Collection Standards (4 C.F.R., Chapter II), and recapitulated in Sections 6.0 and 7.0 of this chapter. Upon approval by the head of the organization unit, the

workout group(s) will forward all proposed compromises, suspensions, or termination actions of the debt to the Department's General Counsel for disposition.

The organizational units Secretarial Officer, or in the case of the Minority Business Development Agency, the Director, shall have the authority to review and approve any claim up to \$100,000, exclusive of any interest, penalties, and administrative charges. This authority may be re-delegated to other designees. The bureau's legal counsel's written concurrence must accompany any recommendation to the Secretarial Officer. Organization units must obtain the concurrence of the Department's Assistant General Counsel for Finance and Litigation on any proposed compromise, suspension, or termination of a claim over \$25,000.

Except as otherwise provided by law, any action to compromise, suspend, or terminate collection of a debt in the amount of \$100,000 or greater must be submitted for approval to the United States Department of Justice. Prior to such submission to the Department of Justice, the proposed action first shall have received the concurrences of the Department's Assistant General Counsel for Finance and Litigation, the Director for Financial Management, and the Department's Chief Financial Officer. The organizational unit shall provide a Claims Collection Litigation Report, a complete but concise statement of the reasons for requesting authority to take such action, all necessary documentation, and the bureau's legal counsel's written concurrence in such action. The request for authority to take such action shall be submitted to the Department of Justice on behalf of the organizational unit by the Assistant General Counsel for Finance and Litigation.

These delegations of authority are to be complied with unless otherwise authorized by law. In all cases, bureau legal counsel should assure that the proposed actions are consistent with the Federal Claims Collection Standards (4 C.F.R., Chapter II). The Office of the Assistant General Counsel for Finance and Litigation should be consulted on questions regarding the compromise, suspension, or termination of collection of a debt.

As a practical matter, an organization unit does not need to refer a debt for concurrence for termination of collection action if the bureau referred the debt to DOJ for litigation and DOJ determines that litigation is not appropriate and returns the account to the Department. Nor does the organization unit need to refer accounts on which it wants to terminate collection

action because the debt is legally without merit or cannot be substantiated.

In some instances, certain organization units may have independent statutory authority to compromise claims of any amount.

A Claims Collection Litigation Report (CCLR) (see Section 10.06 of this Chapter) shall be used when referring claims to the Department of Justice. (A copy of the CCLR and instructions can be found at Appendix J.)

#### Section 6.0 Compromise of Claims

A claim may be compromised if the organization unit cannot collect the full amount because of the debtor's:

- \$ disagreement over the amount(s) due;
- \$ demonstrated inability to pay the full amount within a reasonable time; or
- \$ refusal to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time, at reasonable cost, by enforced collection proceedings.

##### .01 Inability to Pay

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; and the availability of assets or income which may be realized upon enforced collection proceedings. The workout group(s) will give consideration to the exemption 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 giving due regard for any exemptions that may be available to the

debtor and the time and cost of collection. Compromises payable in installments are discouraged. However, if payment of a compromise by installments is necessary, an agreement for the re-installment of the prior indebtedness less sums already paid and acceleration of the balance due upon default in the payment of any installment should be obtained.

If the organization unit's files do not contain reasonably up-to-date credit and financial information 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 expenses. Department of Justice Form OBD-500, 500B, or 500C may be used for this purpose. Additional data may be obtained from the audited financial statements of corporate debtors. Additional information may also be obtained from a credit reporting bureau, in the form of a commercial or consumer credit report or the bureau's investigative report showing the debtor's assets, liabilities, income, and expenses.

#### .02 Installment Payments

If the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size of such installment payments should have a reasonable relation to the size of the debt and the debtor's ability to pay. Installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than three years. For loans, repayment in installments should normally be no longer than the time period remaining for payment of the debt plus three years, or in accordance with appropriate statutes. Installment payments of less than \$50 per month should be accepted in only the most unusual circumstances. An organization unit holding an unsecured claim for administrative collection should attempt to obtain with assistance from legal counsel 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 also 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 organization unit

may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the organization unit's option. See Federal Claims Collection Standards (4 CFR 102.11) for additional information.

.03 Litigative Probabilities

A claim may be compromised if there is doubt concerning the Government's ability to prove its case in court, either because of the legal issues involved or as a result of a bona fide dispute as to the facts surrounding the claim. In such cases, the amount accepted in compromise, should fairly reflect the probability of prevailing on the legal question(s) involved, as well as 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's claim. In determining the litigation risks and costs involved, 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.

.04 Cost of Collecting Claim

A claim may be compromised 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 litigation costs of collection, giving due consideration for the time which it would take to effect collection. Collection costs 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.

.05 Enforcement Policy

Certain organization units employ economic penalties as enforcement mechanisms to achieve program objectives. These mechanisms may be in the form of statutory fines, penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance. Such debts may be compromised if the organization unit's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by accepting the agreed upon sum. Mere

accidental or technical violations by an individual or commercial entity may be dealt with less severely than willful and/or substantial violations.

.06 Joint and Several Liability

When two or more debtors are jointly and severally liable, collection action should proceed against all debtors. The organization unit should not attempt to allocate the burden of paying such a claim between the debtors but should proceed to liquidate the indebtedness as quickly as possible and in a cost-effective manner. Care should be taken so that a compromise with one debtor does not release the organization unit's claim against the remaining debtor(s). The amount of a compromise with one debtor will 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.

.07 Compromise for Combination of Reasons

A claim may be compromised for one or more reasons authorized in this section.

.08 GAO Review

If an organization unit holds a debtor's firm written offer of compromise for a substantial amount and the organization unit 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 for review and guidance. The referral shall be cleared with the General Counsel of the Department or his/her designee. The General Accounting Office may act upon the offer or return it to the organization unit with instructions or advice (see Parts 103 and 105 of the Federal Claims Collection Standards.)

Section 7.0 Suspension or Termination of Collection Action

Prior to suspending or terminating collection action, an organization unit is required to take all reasonable collection actions and fully document the appropriate information concerning the debtor and the claim. Suspensions and terminations of collection activity must be approved as required in Section 5.0

of this chapter.

.01 Suspension of Collection Activity

- a. Inability to locate debtor. Collection action may be suspended temporarily on a claim when:
  1. The debtor cannot be located after diligent effort; and
  2. There is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. Due consideration must be given to the size and amount of the debt the collection of which may be realized because of the continued collection action. See Federal Claims Collection Standards (4 CFR 104.2) for a list of sources which may provide assistance in locating missing debtors.
- b. Financial condition of the debtor. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:
  1. The Government is not prevented from taking action by the applicable statute of limitations; or
  2. Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the ten year limitation prescribed by the Federal Claims Collection Standards (4 CFR 102.3(b)(3)); or
  3. The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended and this time period is likely to enhance the debtor's ability to pay the principal amount of the debt with any accrued interest at a later date.

.02 Termination of Collection Activity

A workout group(s) may recommend that collection activity be terminated and consider the organization unit's file on the claim closed when:

- a. It becomes clear that the Government cannot collect or enforce the collection of any significant sum from the debtor, after consideration of the following:
  1. Judicial remedies;
  2. The debtor's future financial prospects; and
  3. Exemptions available to the debtor under State and Federal law;
- b. The debtor cannot be located, and either:
  1. There is no security remaining to liquidate; or
  2. The applicable statute of limitations has run out and the prospects of collecting by administrative offset (see 4 CFR 102.3) are too remote to justify retention of the claim;
    1. Cost of further collection action will likely exceed amounts that may be recovered;
    2. It is determined that the claim is plainly erroneous or legally without merit; or
    3. 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 would be unavailing.

.03 Termination of Collection Activity on Audit-Related Debts

Each determination within an organization unit to terminate collection action on audit-related debts, unless made with the Department of Justice concurrence,

shall be fully justified and documented by the appropriate organization unit official and must be approved by the appropriate legal officer with responsibility for the type of debt in the affected organization unit. A complete copy of each such determination (with copies of notices to the debtor, supporting justifications, explanations, clearances, and approvals) shall be forwarded to the Office of Inspector General and to the audit action official within ten working days of any such decision.

#### .04 Transfer of Claim to GAO

If the organization unit has doubt as to whether collection action should be suspended or terminated, it may refer the claim to GAO for advice after clearance by the Department's Office of General Counsel.

### Section 8.0 Uncollectible Administrative Debts

Debts that cannot be collected in full by organization unit collection efforts in accordance with Sections 3.0 and 4.0 of this chapter should be compromised, suspended, or terminated in accordance with Sections 5.0, 6.0, and 7.0 of this chapter, or if such actions cannot be taken, reported to the Department of Justice in accordance with Section 9.0 below for further collection/legal action. As a general rule, since workout group(s) are required to take all reasonable collection actions short of legal action (including attempts to locate the debtor and determination of ability to pay), the determination as to whether or not a debt should be forwarded to the Department of Justice for further collection action should be governed by the potential for collection through the eventual use of legal action.

### Section 9.0 Litigation

This section describes the procedures for referrals of delinquent/defaulted debts to the Department of Justice. Such referrals by organization units will be in accordance with the following:

- Title 31, U.S.C., Section 3711, Collections and Compromise;
- GAO's Policy and Procedures Manual for Guidance of

Federal Agencies, Title 4, Section 70;

- GAO/DOJ Federal Claims Collection Standards, Title 4, Code of Federal Regulations, Part 105, (Referrals to Department of Justice or GAO);
- OMB Circular A-129, "Managing Federal Credit Programs;" and
  - "Managing Government Credit--A Supplement to the Treasury Financial Manual."

.01 Prompt Referral to Justice

Delinquent/defaulted debts shall be promptly referred to the Department of Justice for litigation when:

- a. Aggressive collection action has been taken; and
- b. Consideration has been given to whether or not the claim should be compromised, or collection action should be suspended or terminated, and there is sufficient reason to conclude that full or partial recovery of the debt would be best achieved through litigation.

.02 Referral Procedure to Justice

Claims for which the gross original amount is over \$500,000 must be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is \$500,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found or was last known to reside or conduct business. All referrals to the Department of Justice must be made through the Department's Office of General Counsel. Organization units, through the Office of General Counsel, should clear referrals to the U.S. Attorney Offices with the Commercial Litigation Branch. Referrals should be made as early as possible, generally within six to nine months, but no later than one year from the agency's final determination of the facts and amount of the debt owed.

.03 Minimum Amount of Referrals

Organization units will not refer claims to the Department of Justice of less than \$600, exclusive of interest, penalties, and administrative charges, for litigation unless:

- a. Referral is important to a significant enforcement policy; or
- b. The debtor not only has the clear ability to pay the claim, but the Government can effectively enforce payment.

.04 Preservation of Evidence

Care will be taken by organization unit collection officials to preserve all original files, records, and exhibits relating to claims referred to the Department of Justice. Unless specifically approved by the Department of Justice, original documents should never be forwarded to the U.S. Attorney's Office handling the litigation.

.05 Referrals to GAO

- a. Claims will be referred to the Government Accounting Office (GAO) in certain instances for advice or guidance. Such referrals will occur when there are questions as to the merit and/or legality of a claim or its amount. Preliminary referrals of claims to the GAO will be in accordance with instructions, including monetary limitations, contained in the GAO's Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 9.
- b. Every debt reported to the GAO General Accounting Office for collection in accordance with the Federal Claims Collection Standards, as well as all related correspondence, should contain the taxpayer identification number (TIN) or employer identification number (EIN) of the debtor.

.06 Claims Collection Litigation Report (CCLR)

This report shall be used for all referrals to the Department of Justice of administratively uncollectible claims. A CCLR should be prepared for and accompany any referral to the Department of Justice, whether for administrative action or litigation. (See Appendix J of this Handbook)

The CCLR may also be prepared for the organization unit by a GSA-approved collection agency.

The following information will be included in the report:

a. Documentation of Prior Collection Actions

A brief summary or checklist of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral. If any of the administrative collection actions required in the Federal Claims Collection Standards (4 CFR 102) have been omitted, the reason for omission must be provided. Claims may be returned to the organization unit if insufficient justification for the omission is not provided.

b. Identifying Information on the Debtor

Such information will include the TIN or EIN and the organization unit's file/claim number.

c. Current Address of Debtor

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 all cases. 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 the debtor and a statement of the steps taken to locate the debtor.

4. Credit Data

Claims referred to the Department of Justice for litigation will be accompanied by reasonably current credit data indicating that there is a

reasonable prospect of collecting from the debtor by judicial proceedings, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of one or more of the following:

1. A commercial or consumer credit report;
  2. An investigative report of an organization unit, or private collection agency approved by GSA, showing the debtor's assets, liabilities, income, and expenses;
  3. The individual debtor's own financial statement executed under penalty of perjury reflecting his/her assets, liabilities, income, and expenses; and
  4. An audited balance sheet of a corporate debtor.
- e. 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 the claim in full;
  3. The organization unit wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;
  4. The debtor is in bankruptcy or receivership;
  5. The debtor's liability to the Government is fully covered by insurance, in which case the organization unit will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or
  6. The legal nature of the debtor is such that credit data is normally not available or cannot reasonably be obtained (e.g., a unit

of State or local government).

#### Section 10.0 Write-Off Procedures

- .01 The workout group(s) will set forth in a memorandum the action taken to recover the debt, the collectibility of the debt and the reason(s) the debt should be written-off and submit the memorandum to the appropriate Department official for approval.
- .02 After proper clearances and authorization, required under Section 8.0, organization units shall write-off administratively uncollectible debts from receivable accounts. Accounts shall be written-off when one or more of the following criteria apply:
  - The organization unit is unable to locate the debtor and finds that either there is no security to be liquidated to recover the amount owed, or the Federal statute of limitations has expired for litigation and administrative offset and the statutes of the State in which the debtor resides preclude further collection;
  - The debt cannot be substantiated because an organization unit does not have, or cannot produce, evidence or witnesses to validate the claim (such a debt cannot be referred to the IRS as taxable income and the credit bureau shall be notified to reflect the change in status if previously reported as a delinquent debt);
  - The debt is considered to be legally without merit upon the organization unit's determination that the debt was never owed and was erroneously classified as a debt (the credit bureau shall be notified to reflect the change in the status if previously reported as a delinquent debt);
  - The costs of further collection action will probably exceed the amount which could be recovered; or
  - The organization unit is unable to collect any substantial amount of the debt because: (1) a judgment has been obtained and the application of all collection techniques failed to produce full

collection, (2) a collection agency has been unable to collect the debt and has returned it with sufficient documentation to demonstrate the debt is uncollectible, or (3) the borrower has been declared bankrupt and no further prospects for worthwhile recovery are available.

- .03 The workout group will forward a memorandum to the accounting or finance office, which shall make appropriate adjustments in the organization unit's accounting records, including the allowance for uncollectible loans account.
- .04 The accounting or finance officer will record the write-off and report the amount written-off on the appropriate reports as required.
- .05 Currently Not Collectible

As a result of the DCIA and the revisions being made to the OMB Circular A-129, Treasury has revised its write-off policy to provide for the establishment of a standard to write off delinquent debt older than two years. While a significant portion of delinquent debt would be written off, cost effective collection efforts will continue. Specifically, if an agency determines that continued collection efforts after mandatory write-off is likely to yield higher returns (than the existing write-off and close out process) then this written off debt is not closed out but treated as *currently not collectible* (CNC). While CNC debts are not accounts receivables on financial statements, the CNC process permits and encourages the use of tools of the DCIA allowing delinquent debt to be worked until the end of its statutory collection life cycle.

## Section 11.0 Administrative Close-Outs

### .01 Physical Close-Out

When the loan is completely paid in full or written-off, the project file is prepared for record storage. There are two sources of files, one maintained by the program officials servicing and monitoring the loan and one by the accounting or finance officer.

- a. Each office should establish a checklist of required documents to be maintained.

- b. Each office will establish its own time frame for record retention and disposal procedures in accordance with DAO 205-1, "Records and Other Documents Disposition Management Program" and its legislative authority.

.02 Administrative Actions

- a. Despite write-off, it may be appropriate for organization units to maintain inactive debt files of individual accounts that may be collected subsequently by administrative offset against future benefit claims or used for future credit pre-screening purposes.

Organization units may re-institute collection action on written-off accounts if there is subsequent evidence that a debtor has new ability to repay.

- b. The Internal Revenue Service (IRS) will recognize amounts that have been written-off and closed-out as taxable income to debtors classified as individuals, partnerships, sole proprietorships, and corporations. Organization units must report any debt with a principal amount exceeding \$600. Organization units may report debts for amounts less than \$600. Amounts to be written-off and reported to the IRS shall be recorded with debtor identifying information in an IRS referral log maintained by each organization unit.

By February 28th of the year following the organization unit's determination that no further collection action will be taken on a debt, the organization unit must report to the IRS on IRS Form 1099-C all amounts written-off. By January 31<sup>st</sup> of the same year, the organization unit must have provided the debtor with a copy of IRS Form 1099-C or a written statement of the impending IRS 1099-C report. The organization unit is not obligated to wait until the statute of limitations expires before reporting a debt. In addition to reporting the principal amount owed, the organization unit must also report administrative costs and interest.

The amount discharged in a compromise is reportable if the debt is compromised because: (1) the debtor is unable to pay the debt within a reasonable period of time or refuses to pay the debt in full and the Government is unable to enforce collection in full within a reasonable time; or (2) the cost of collecting the claim does not justify the enforced collection of the full amount.

The amount discharged in a compromise should not be reported if the debt is compromised because there is doubt as to the Government's ability to prove its case in court for the full amount claimed.

Organization units must report all written-off amounts over \$600 discharged in bankruptcy proceedings on a 1099-G. The IRS will make the determination of whether the amount written off is considered income.

See IRS website for information returns and backup withholding.