

Environmental Protection Agency

§ 13.30

§ 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confess-judgment agreement which accelerates payment of the balance due upon default.

§ 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

Subpart E—Suspension of Collection Action

§ 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension. Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established

time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding \$20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of \$20,000 to \$100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator

§ 13.31

may suspend collection activities on debts of \$20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

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

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

Subpart F—Termination of Debts

§ 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$20,000. If the debt exceeds \$20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of \$20,000 but \$100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

§ 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the

40 CFR Ch. I (7-1-00 Edition)

debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

Subpart G—Referrals

§ 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of \$100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

Subpart H—Referral of Debts to IRS for Tax Refund Offset

SOURCE: 59 FR 651, Jan. 5, 1994, unless otherwise noted.