

## DEPARTMENT OF THE TREASURY

## Fiscal Service

## 31 CFR Part 285

RIN 1510-AA71

**Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees**

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

**SUMMARY:** The Debt Collection Improvement Act of 1996 (DCIA) mandated a new eligibility requirement for persons seeking Federal financial assistance, namely that delinquent Federal debtors are ineligible for Federal direct and indirect loan assistance (other than disaster loans). On April 22, 1998, the Financial Management Service issued a notice of proposed rulemaking proposing rules to define when a debt is in delinquent status and when a delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. The notice of proposed rulemaking also proposed rules governing when the Secretary of the Treasury may exempt a class of delinquent debts from affecting a debtor's loan eligibility, and proposed factors for authorized agency officials to consider when deciding whether to waive the DCIA eligibility requirement. This final rule finalizes the proposed rule, with changes, and addresses issues raised in comments received on the notice of proposed rulemaking.

EFFECTIVE DATE: January 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Gerry Isenberg, Financial Program Specialist, at (202) 874-6859; Ellen Neubauer or Randall Lewis, Senior Attorneys, at (202) 874-6680. A copy of this final rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov/debt>.

**SUPPLEMENTARY INFORMATION:****Background**

Section 31001(j)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), codified at 31 U.S.C. 3720B (section 3720B), provides that a person owing a delinquent nontax debt to the Federal Government is ineligible for Federal financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee. The head of an agency that administers a Federal financial

assistance program may waive this provision. The waiver authority may be delegated only to the agency's Chief Financial Officer or Deputy Chief Financial Officer. In addition, the Secretary of the Treasury may exempt any class of debts from affecting a person's eligibility for receiving financial assistance.

The DCIA requires the Secretary of the Treasury to prescribe standards under which agencies will determine whether a person has an outstanding delinquent debt that would trigger the DCIA bar to Federal financial assistance. As the lead agency for the collection of delinquent nontax debt in the Federal Government, the Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations governing this and other provisions of the DCIA. This final rule defines when a debt is in delinquent status and when the delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. This final rule also prescribes standards under which a Treasury exemption may be granted and sets forth factors for an agency to consider when deciding whether an agency waiver is appropriate.

**Summary of Comments**

On April 22, 1998, FMS published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 20006) entitled "Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees." FMS received written comments from three Federal agencies, two financial institutions, and one university.

**Delinquency Standards**

One commenter recommended that determinations of delinquency and resolutions of defaults be made based on existing eligibility criteria under applicable program specific statutes and regulations. Another commenter suggested that individual creditor agencies be allowed to determine when its debts are sufficiently delinquent for purposes of barring a debtor from obtaining additional Federal financial assistance. A third commenter recommended that the rule authorize credit-granting agencies to determine when debt reported as delinquent by a creditor agency is sufficiently delinquent to warrant ineligibility for assistance.

The DCIA created a new eligibility requirement applicable to all Federal financial assistance programs and directed the Secretary of the Treasury to

issue government-wide standards for determining when a debt is delinquent for purposes of barring delinquent debtors from obtaining additional Federal financial assistance. Thus, as required by the DCIA, the final rule retains uniform government-wide guidelines. While government-wide standards apply to this particular eligibility criteria, nothing in this rule precludes an agency from setting its own standards with regard to other eligibility criteria applicable to a specific program. Paragraph 285.13(b)(3) specifically states that nothing in this rule requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation or agency policies and procedures. For instance, if a delinquent debt is resolved in accordance with paragraph 285.13(e), an agency still may deny an application if the applicant fails to meet other requirements imposed under a specific program. Additionally, under the DCIA and in accordance with paragraph 285.13(g) of this rule, agencies also may waive the requirements of this section under appropriate circumstances.

**Application of This Rule to Financial Institutions**

One commenter requested clarification on whether the regulation applies to parties other than Federal agencies, such as financial institutions which issue loans which are federally insured or guaranteed. Another commenter suggested that the rule be clarified with regard to who has the responsibility for determining whether a prospective borrower is delinquent, and whether a delinquent debt has been resolved.

This rule applies to Federal loans, loan insurance and loan guarantees. The responsibilities of financial institutions that issue federally guaranteed or insured loans continue to be governed by program specific statutes, regulations, and agency policies and procedures, as well as individual agreements between agencies and lenders. Federal agencies will have to ensure that such regulations, policies and procedures, and agreements address the eligibility requirements of the DCIA and this regulation.

**Application of the Equal Credit Opportunity Act**

One commenter asked whether protected classes comprise a significant number of delinquent debtors impacted by this rule, and expressed concern that denial of credit under this rule might violate the Equal Credit Opportunity Act.

The Equal Credit Opportunity Act prohibits a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The fact that an applicant owes a delinquent debt to the United States is not a prohibited basis. See 12 CFR 202.2 (Regulation B). Even if the effect of the DCIA and this rule would be to disadvantage protected classes, as a general matter, a lender acting pursuant to a regulation or statute when denying credit would have a non-discriminatory business reason for doing so. Consequently, compliance with the DCIA and this rule does not, in and of itself, constitute a violation of the Equal Credit Opportunity Act.

#### **Application of the Fair Credit Reporting Act**

Another commenter expressed concern that, under the Fair Credit Reporting Act, 15 U.S.C. 1681, lenders would be unable to obtain credit reports relating to the status of loans for which an applicant is a guarantor. While the commenter is correct, for purposes of the bar imposed by the DCIA and this rule, the fact that an applicant is a guarantor on another loan is irrelevant unless the applicant/guarantor becomes responsible for repaying the loan and subsequently becomes delinquent. In the event the applicant/guarantor does become responsible for the loan, any delinquency should appear on the applicant's credit report.

#### **Section 285.13(a) Definitions**

One commenter requested that the definition of *Federal financial assistance* or *financial assistance* be revised to specifically include price support loans with non-recourse provisions issued by the Commodity Credit Corporation of the Department of Agriculture. The definition of "Federal financial assistance" or "financial assistance" includes all loans (other than disaster loans), including non-recourse loans. Therefore, because price support loans are a type of loan already covered by the definition, a specific reference to one type of loan is not necessary.

#### **Section 285.13(b) Purpose and Scope**

One commenter requested that the rule be revised to include guidance regarding whether a person, such as a corporation, would be barred from obtaining Federal financial assistance where the corporation seeking Federal financial assistance is not a delinquent debtor, but a person with a controlling interest in the corporation, such as an officer, director, or shareholder, is a delinquent debtor. In response, FMS has

revised the rule to clarify that a person seeking Federal financial assistance may be ineligible for such financial assistance if that person either controls or is controlled by a person who owes a delinquent nontax debt to the United States. Whether or not a person controls or is controlled by a delinquent debtor and the extent to which such person is ineligible for Federal financial assistance is to be determined in accordance with standards and procedures established by the credit granting agency. See paragraph 285.13(c)(2).

Another commenter asked whether this rule applies to applicants for Federal grants. The DCIA defines Federal financial assistance as any loan (other than a disaster loan), loan insurance or loan guarantee. Thus this rule does not apply to applicants for grants.

#### **Section 285.13(c) General Rule**

FMS received several comments regarding the methods to determine whether an applicant has delinquent Federal debts that bar the applicant from obtaining new Federal financial assistance. Commenters suggested that the list of possible sources of information included in the preamble to the proposed rule be added to the text of the final rule. FMS has incorporated this suggestion. Commenters also suggested that the list be expanded to include FMS' delinquent debtor database. FMS is resolving legal and technical issues involved in making the information contained in FMS' delinquent debtor database available to Federal agencies. Thus, although not currently available, we anticipate that FMS' database will be available in the future as one of many sources of information concerning delinquent debtors. A commenter also suggested that the rule require applications for Federal financial assistance to include a self-certification, under penalty of perjury, by which applicants would be required to list outstanding obligations to the Federal government and whether such obligations were current. FMS agrees that a self-certification could assist in identifying delinquent debtors and recommends that agencies adopt this approach. A mandatory self-certification requirement is not included in this rule because loan application procedures are established by the credit-granting agency.

Two agencies requested clarification regarding the meaning of the term "guarantor" for purposes of this rule. The reference to "guarantor" in § 285.13(c)(1) of the final rule is intended to cover credit applicants who

owe delinquent debt as a result of an obligation to pay under a guaranty. Once the guarantor's obligation to pay is triggered and the obligation is not paid in accordance with the terms and conditions of the guaranty, the defaulted obligation would be an outstanding debt in delinquent status.

The DCIA bar also applies if the entity seeking to guarantee a loan is a delinquent debtor since the entity seeking to guarantee a loan may ultimately become obligated for repayment of the loan. Therefore, a person owing a delinquent debt is ineligible for additional Federal financial assistance whether applying for such assistance as a direct borrower or as a guarantor.

As noted above, one commenter requested that the rule be revised to include guidance under circumstances where an applicant for Federal financial assistance controls or is controlled by a delinquent debtor. A new paragraph has been added to § 285.13(c) clarifying that an agency may, under standards issued by the agency, deny Federal financial assistance to persons who control or are controlled by a delinquent debtor.

#### **Section 285.13(d) Delinquent Status**

Several commenters objected to the proposed standards in § 285.13(d)(1) under which a debt would be in delinquent status if not paid by the payment due date. Commenters pointed out that under the standards contained in the proposed rule, a debt on which a payment was one day late would be considered a debt in delinquent status. Under such a standard agencies would have no practical way to determine if a debt was delinquent nor any way to distinguish between payments which are merely late (or timely payments which are posted late) and those which are seriously delinquent. Additionally, commenters noted that being a day late on a single payment was not a valid indication of credit worthiness.

In response to these comments, § 285.13(d)(1) of the final rule is revised to provide that a debt is delinquent for purposes of barring additional Federal financial assistance when the debt has not been paid within 90 days of the due date. FMS agrees that agencies may have no practical way of knowing about a debt which is less than 90 days past-due. Credit granting agencies will rely on credit reports as a way to determine that an applicant owes a delinquent debt to the United States. Federal agencies must give debtors at least 60 days notice before reporting a debt to a consumer credit bureau. Thus, providing that a debt is not in delinquent status for purposes of this

rule until it is 90 days past-due allows sufficient time for the debt to be reported to a credit bureau.

Additionally, the 90-day period ensures that only those debtors owing debts in delinquent status, and not debtors whose payments are late or untimely posted, will be denied financial assistance as required by the DCIA. Consistent with standard lending practices which classify a loan as non-performing when the loan is 90 days past-due, the final rule classifies a debt as being in a delinquent status when the debt is 90 days past-due. *See, e.g.,* 12 CFR 933.1(u), 26 CFR 1.585-6(d)(iii)(A). The 90-day provision protects against an applicant being denied financial assistance merely because of a late payment or an untimely posting. At the same time the rule furthers the intent of the DCIA to reduce losses by screening potential borrowers.

As noted in the preamble to the proposed rule, nothing in this rule defines the term "delinquent" for any purpose other than the application of section 3720B of the DCIA and this rule. In addition, nothing in this rule precludes a credit-granting agency from denying loans if an applicant owes a delinquent debt which is less than 90 days past-due if otherwise authorized.

#### *Section 285.13(e) Delinquency Resolution*

One commenter suggested that the rule be revised to clarify the difference between portions of debt that have been written-off after a compromise, and debts that have been written-off because they were uncollectible. Under § 285.13(e)(2), a delinquent debt which has been written off is not considered resolved unless the provisions of paragraph (e)(1) apply. Under paragraph (e)(1), a debt is resolved if a compromise amount has been paid in full. Thus, where a debt has been compromised and the debtor pays the full compromised amount, the compromised portion of the debt which has been written-off is not in delinquent status. Clarifying language has been added to paragraph (e)(2) of the final rule.

Another commenter suggested that the rule be revised to include a requirement that a lender determine whether an applicant is in default on a repayment agreement before approving additional Federal financial assistance. The rule does not need to be revised because § 285.13(d)(1) addresses this concern. The definition of delinquent status in § 285.13(d)(1) of the final rule provides that a debt is delinquent if not paid within 90 days of the due date. Due date is defined in that paragraph as the date specified in, among other things, an

applicable agreement, including a post-delinquency repayment agreement. Therefore, the rule does require that Federal financial assistance be denied if a repayment agreement is in a delinquent status.

#### *Section 285.13(f) Exemptions by the Secretary*

One commenter suggested that the language of the proposed rule be revised to clarify whether, under § 285.13(f), exemptions may be requested by both the credit-granting agency and/or the creditor agency. In response to this comment, paragraph 285.13(f) has been revised to clearly state that requests for exemptions may be made only by "creditor" agencies. Because the authority of the Secretary to grant exemptions in 31 U.S.C. 3720B(a) is limited to classes of debt, only the agency which holds the debt, i.e., the creditor agency, may request such exemptions. Section 285.13(g) governs the authority of credit-granting agencies to waive the ineligibility requirement contained in the DCIA on a person by person basis under appropriate circumstances.

#### **Regulatory Analysis**

This final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the DCIA provides that entities owing delinquent debt to the Federal Government are ineligible for Federal direct and indirect loan assistance (other than disaster loans). This final rule provides definitions for purposes of determining whether the DCIA mandate applies. Therefore a regulatory flexibility analysis is not required.

#### **List of Subjects in 31 CFR Part 285**

Administrative practice and procedure, Credit, Debt, Loan programs.

#### **Authority and Issuance**

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

1. The authority citation for part 285 is revised to read as follows:

**Authority:** 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.13 is added to subpart B to read as follows:

#### **§ 285.13 Barring delinquent debtors from obtaining federal loans or loan insurance or guarantees.**

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

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

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

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

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

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

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

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

*Secretary* means the Secretary of the Treasury.

(b) *Purpose and scope.* (1) This section prescribes standards for determining whether an outstanding nontax debt owed to the Federal Government is in delinquent status and whether such delinquency is resolved for the purpose of denying Federal financial assistance to a debtor. In addition, this section prescribes the circumstances under which the Secretary may exempt a class of debts from affecting a debtor's loan eligibility. This section also outlines the factors an agency should consider when determining whether waiver of the general rule in paragraph (c) of this section is appropriate.

(2) Additional guidance concerning debt collection and debt management is provided in "Managing Federal Receivables" and other FMS publications.

(3) Nothing in this section requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation, or agency policies and procedures. For example, if an agency requires borrowers to have a satisfactory credit history, the agency may deny financial

assistance even if a delinquent debt has been resolved.

(4) This section does not confer any new rights or benefits on persons seeking Federal financial assistance.

(5) This section applies to any person owing delinquent nontax debt and to any agency that administers a program that grants Federal financial assistance.

(c) *General rule.* (1) As required by the provisions of 31 U.S.C. 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. This eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. This eligibility requirement applies to all Federal financial assistance even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. A person may be eligible for Federal financial assistance only after the delinquency is resolved in accordance with this section. An agency may waive this eligibility requirement in accordance with paragraph (g) of this section.

(2) An agency from which a person seeks Federal financial assistance may determine, under standards issued by the agency, that a person is ineligible for Federal financial assistance under this section if:

(i) The person is controlled by a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation is controlled by an officer, director, or shareholder who owes a debt); or

(ii) The person controls a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation controls a wholly-owned or partially-owned subsidiary which owes a debt).

(3) A creditor agency may obtain information concerning whether or not a person seeking Federal financial assistance owes a delinquent debt from, among other sources, credit reports, information contained on credit applications, and the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about participating in the CAIVRS program, agencies should contact the Director of Information Resources Management, Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

(d) *Delinquent status.* (1) Except as otherwise provided in paragraph (d)(2)

of this section, a debt is in "delinquent status" for purposes of this section if the debt has not been paid within 90 days of the payment due date. The payment due date is the date specified in the creditor agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency repayment agreement).

(2) For purposes of this section, a debt is not in delinquent status if:

(i) The person seeking Federal financial assistance has been released by the creditor agency from any obligation to pay the debt, or there has been an adjudication or determination that such person does not owe or does not have to pay the debt;

(ii) The debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person seeking Federal financial assistance is current on any court authorized repayment plan; or

(iii) The existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner. Unless otherwise prohibited, an agency may defer making a determination as to whether or not to extend credit until the appeal process is completed.

(3) Unless the provisions of paragraph (d)(2) apply, a debt is in delinquent status even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) is in delinquent status for purposes of this section.

(4) Nothing in this section defines the terms "delinquent" or "delinquent status" for any purposes other than those described in this section.

(e) *Delinquency resolution.* (1) For purposes of this section, a person's delinquent debt is resolved only if the person:

(i) Pays or otherwise satisfies the delinquent debt in full;

(ii) Pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full;

(iii) Cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or

(iv) Enters into a written repayment agreement with the creditor agency to

pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

(2) Unless the provisions of paragraph (e)(1) of this section apply, a delinquent debt is not resolved even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) would not be "resolved." If the provisions of paragraph (e)(1) of this section do apply, a delinquent debt is considered resolved. For example, if a portion of a debt has been written off after the person has paid the debt in part where the creditor agency accepts such part payment as a compromise in lieu of payment in full, the entire debt would be deemed "resolved" for purposes of this section in accordance with paragraph (e)(1)(ii) of this section.

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of the head of the creditor agency to which a class of debts is owed, the Secretary may exempt any class of debts from affecting a debtor's eligibility for Federal financial assistance based on the provisions of 31 U.S.C. 3720B and this section.

(2) The creditor agency recommending an exemption for a class of debts will provide the Secretary with information about:

(i) The nature of the program under which the delinquencies have arisen;

(ii) The number, dollar amount, and age of the debts in the program for which exemption is recommended;

(iii) The reasons why an exemption is justified, including why the granting of financial assistance to persons owing the type of debt for which exemption is requested would not be contrary to the Government's goal to reduce losses by requiring proper screening of potential borrowers; and,

(iv) Other information the Secretary deems necessary to consider the exemption request.

(3) The Secretary may exempt a class of debts if exemption is in the best interests of the Federal Government.

(g) *Waivers by the agency.* (1) The head of an agency from which a person seeks to obtain Federal financial assistance may waive the eligibility requirement described in paragraph (c) of this section. Waivers shall be granted only on a person by person basis. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency. The Chief Financial Officer may redelegate the authority only to the Deputy Chief Financial Officer of the agency.

(2) The authorized agency official should balance the following factors when deciding whether to grant a waiver under paragraph (g)(1) of this section:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal Government; and

(ii) Whether the agency's granting of the financial assistance to the person is contrary to the Government's goal to reduce losses from debt management

activities by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (d)(2) of this section, the authorized agency official should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) Each agency shall retain a centralized record of the number and

type of waivers granted under this section.

(h) *Effect of denial of Federal financial assistance.* Nothing contained in this section precludes a person who has been denied Federal financial assistance from obtaining such assistance after that person's delinquent debt has been resolved in accordance with paragraph (e)(1) of this section.

Dated: December 2, 1998.

**Richard L. Gregg,**

*Commissioner.*

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