Department of Energy
Washington, DC 20585

December 10, 2004

MEMORANDUM FOR DISTRIBUTION

FROM: DEAN G. OLSON, DIRECTOR
OFFICE OF FINANCIAL POLICY

SUBJECT: Accounting Handbook - Chapter 8, Receivables

Attached is the final version of Chapter 8, "Receivables" of the Department's Accounting Handbook. A draft version of this chapter was circulated for review and comment in a May 5, 2004, memorandum "Request for Review of Chapter 8 Draft." Many of the comments received have been incorporated into the chapter.

We appreciate your assistance in the update of the Accounting Handbook. When all chapters of the Accounting Handbook have been updated, we will re-issue the entire Handbook. If you have any questions or would like to discuss any provisions of this chapter, please contact me on 202-586-4860.

Attachment

Printed with soy ink on recycled paper

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December 9, 2004

CHAPTER 8

RECEIVABLES

1. INTRODUCTION.

a. **Purpose.** To prescribe the policies and general procedures for receivables management and accounting.

b. **Background.** The following constitute the framework for the Departmental policy and procedural requirements prescribed in this chapter:

(1) Federal Claims Collection Act of 1966 (31 U.S.C. 3701-3719), as amended by the Debt Collection Act of 1982 (Public Law 97-365, 96 Stat. 1754);

(2) Debt Collection Improvement Act of 1996 (Public Law 104-134, chapter 10, section 31001) (DCIA);

(3) General regulations contained in the Federal Claims Collection Standards (31 CFR 900-904) (FCCS);

(4) Debt Collection Authorities Under the Debt Collection Improvement Act of 1996 (31 CFR 285);

(5) DOE's overall debt collection regulations (10 CFR 1015);

(6) Relevant provisions contained in the General Accountability Office (GAO) Accounting Principles, Standards, and Requirements;

(7) Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards Number 1, Accounting for Selected Assets and Liabilities;

(8) Office of Management and Budget (OMB) Circular A-129, Managing Federal Credit Programs;

(9) Supplemental guidance set forth in the Department of the Treasury (Treasury)/Financial Management Service (FMS), "Managing Federal Receivables"; and

(10) Treasury Financial Manual (I TFM 6-8000).

c. Applicability.

(1) The applicability of this chapter is specified in Chapter 1, "Accounting Overview." The Power Marketing Administrations (PMAs) are subject to all financial policies and procedures of the Department unless those policies and procedures are superseded by the Federal Columbia River Transmission System Act, the Government Corporation Control Act, or other statutory authority. When there are conflicts between the provisions of this chapter and superseding statutes, the PMAs shall observe the policies and meet the reporting requirements of the Federal Energy Regulatory Commission (FERC) and other industry standards.

(2) Employee receivables are addressed in DOE Order 533.1, Collection from Current and Former Employees for Indebtedness to the United States.

(3) Reimbursable work receivables are addressed in Chapter 13, Reimbursable Work, Revenues, and Other Collections.

2. TAXPAYER IDENTIFICATION NUMBERS. The taxpayer identification number (TIN) is a nine digit Employer Identifying Number or Social Security Number as defined in Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). Pursuant to 31 U.S.C. 7701(c), offices must obtain the TIN of all persons or businesses doing business with DOE. DOE shall inform a person required to furnish a TIN that the TIN is required, and it may be used for collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. A person is considered doing business with DOE if the person is:

a. a lender or servicer in a Federal guaranteed or insured loan program administered by DOE;

b. an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by DOE;

c. a contractor of DOE;

d. assessed a fine, fee, royalty or penalty by DOE; or

e. in a relationship with DOE that may give rise to a receivable due to DOE.

For example, a person or business requesting information under the Freedom of Information Act enters into a relationship with DOE that may give rise to a receivable due to DOE by agreeing to reimburse DOE for costs incurred to collect and provide the information. Therefore, the requestor is required to furnish their TIN at the time the request is made.

Contracting officers are required by the Federal Acquisition Regulations (48 CFR 4.203) to attach a copy of the completed Taxpayer Identification solicitation provision as the last page of the copy of the contract sent to the payment office. If the contractor provides its TIN and type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within seven days of its receipt.

3. **CREDIT EXTENSION.** A limited credit analysis to determine the creditworthiness of the customer should be performed before providing goods or services on credit (for example, isotope sales). At a minimum, this would include obtaining a credit rating and the customer's TIN. For goods and services under $1,000, the credit report is not required. The TIN and periodic credit evaluations should be required in the sales order or contract. Updated credit reports for current customers should be obtained as frequently as necessary to minimize the risk of loss from default while giving due consideration to the cost of such reports.

4. **ANALYSIS OF COSTS.** The Energy Finance and Accounting Service Center (EFASC), PMAs and FERC should prepare an annual comparison of costs incurred and amounts collected, as required by the FCCS (31 CFR 901.10). Costs should be based upon actual costs incurred or upon a cost analysis establishing an average of actual additional costs incurred by the office in processing and handling claims against debtors in similar stages of collection. Costs should include the staffing and resource costs incurred to recover debts and the costs associated with using various collection tools to enforce recovery of debts, including, but not limited to, the costs of obtaining a credit report, using private collection agencies, and fees charged by other agencies such as the Department of Justice (DOJ) or Treasury. This cost analysis should be used to establish minimum debt amounts below which collection efforts need not be taken, compare the cost effectiveness of alternative collection techniques, assist in evaluating offers in compromise, and establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries. The portion of the costs incurred in the collection of delinquent debt should be included in determining the amount of administrative costs. (See section 6e(1)(b), Administrative Costs.)

5. **ACCOUNT SERVICING.**

   a. **Recording the Receivable.**

      (1) **Timeliness.** Receivables should be recorded within 5 working days of the event that entitles DOE to be due funds, unless the cost-effectiveness of a longer period has been demonstrated. Normally, receivables are recorded as soon as reasonably possible after goods are delivered or accepted, services are performed, power bills are issued, licenses or permits are issued or renewed, interest is earned, or debt determinations involving disallowed costs or other overpayments under acquisition or financial assistance instruments are rendered. If a collection is received before the recording of the related

receivable, the receivable shall be recorded and the collection shall be processed against that receivable.

(2) **General Ledger and Subsidiary Records.** Record each receivable directly into the appropriate general ledger account code. Select the appropriate account code by determining the responsible DOE entity that must record the receivable, the type of debtor, or the type of receivable. The chart of accounts and explanation of each account are set forth in the MARS/SGL Chart of Accounts and Related Codes published by the EFASC and is available on their website (www.mbe.doe.gov/ficor). If necessary, record each receivable in a subsidiary ledger to segregate and summarize billing information by debtor.

(3) **Treasury Account Symbol** (appropriation, fund or receipt account). Record the receivable in the Treasury account symbol that will be credited when collections are accomplished, unless otherwise provided by law or Departmental policy. Detailed information on Treasury account symbols is contained in the Federal Account Symbols and Titles (FAST) book. The FAST book is available on the Treasury website (www.fms.treas.gov). Except where statutory authority exists to do otherwise, record late charges (late charge interest, administrative costs, and penalties) into the following miscellaneous receipt accounts:

(a) **Interest.**
Account 891435, General Fund Proprietary Interest, Not Otherwise Classified.

(b) **Administrative Costs and Penalties.**
Account 891099, Fines, Penalties, and Forfeitures Not Otherwise Classified.

(4) **Contingency Fees.** Fees such as those charged by Treasury in the Cross-Servicing Program, by the DOJ for collections from litigation cases, or by a collection contractor, shall be added to the amount of the outstanding delinquency and recorded in Account 891099, Fines, Penalties, and Forfeitures Not Otherwise Classified.

(5) **Earned but Unbilled Receivables.** Earned but unbilled receivables shall be recorded at the end of each monthly accounting period.

(6) **Classifying Receivables.** A receivable should be classified as current if payment is due within 12 months and as long term (non-current) if payment is not due within 12 months.

(7) Allowance Accounts.

(a) If an office determines that a receivable will not be totally collected, the appropriate Allowance for Loss account should be increased to reduce the gross amount of the receivable to its net realizable value.

(b) When a debt is referred to Treasury in the cross-servicing program or DOE is notified a debtor has filed for bankruptcy, an allowance for loss should be established.

(c) The estimated uncollectible amount should be based on past experiences, present market conditions, and an analysis of the outstanding balances. The allowance for uncollectible amounts should be reestimated on each annual financial reporting date and when information indicates that the latest estimate is no longer correct. The allowance should be established in the same fund as the original receivable and the general ledger allowance account associated with the original receivable.

(8) Bankruptcy. When an office learns that a bankruptcy petition has been filed with respect to a debtor, it should immediately seek legal advice from the Office of General Counsel at Headquarters concerning the impact of the Bankruptcy Code on any pending or contemplated collection actions. Unless Counsel determines that the automatic stay imposed at the time of filing has been lifted or is no longer in effect, collection action against the debtor should stop immediately. The following actions must also be taken to protect the Government's interest:

(a) Forward a copy of the bankruptcy notice to the Office of General Counsel at Headquarters, or the Office of Chief Counsel at the field location, for filing of a proof of claim. If the debt has been referred to DOJ, the Office of General Counsel at Headquarters or the Office of the Chief Counsel at the field location will coordinate the proof-of-claim filing with DOJ attorneys.

(b) The finance office will follow up with General Counsel to obtain a copy of the bankruptcy petition or proof of claim for their records. No late charges will accrue from the date of the bankruptcy filing. The finance office will follow up with General Counsel (or the bankruptcy trustee if legal action is completed) at a minimum every 6 months, or on a case-by-case basis, for a status report on the case. General Counsel will forward to the finance office copies of documents relevant to the amount and date of any distribution as they are received.

(c) If the Department is a secured creditor, it may seek relief from the automatic stay regarding the security, subject to the provisions of 11 U.S.C. 362.

(d) Offices should seek legal advice from Counsel to determine whether payments to the debtor and payments to other agencies available for offset may be frozen by the DOE until relief from the automatic stay can be obtained from the bankruptcy court. Legal advice should also be sought to determine if recoupment is available.

(e) Establish an allowance for the entire amount of the debt.

b. Billing the Debtor.

(1) Timeliness and Content. As directed in the Treasury Financial Manual (I TFM 6025.10), receivables should be billed within 5 working days of the event that entitles DOE to be due funds, unless the cost-effectiveness of a longer period has been demonstrated, taking into consideration the minimum debt amounts below which collection efforts need not be taken. (See section 4.) The notice/invoice is dated with the date on which it is mailed, hand-delivered, or otherwise transmitted to the debtor. The initial billing notice, demand letter, or invoice should inform the debtor of:

(a) The amount and the basis of the debt;

(b) The date on which payment is due;

(c) The right of the debtor to inspect and copy records related to the debt;

(d) The right of the debtor to request an administrative review of the debt;

(e) The requirement that the request for review must reach DOE by the payment due date;

(f) The requirement that the request for review must provide an explanation why the debt is incorrect and the explanation should be supported by affidavits, canceled checks, or other available evidence (See section 6f(5).);

(g) The right of the debtor to enter into a repayment agreement;

(h) The Department's intent to assess interest, penalties, and administrative costs if the debt is not paid by the due date, and to add any charges incurred in collection of the debt, such as fees charged by Treasury, private collection agencies, and DOJ to the amount of the debt;

(i) The Department's intent to transfer the debt to Treasury for further collection action if the debt is still outstanding 60 days from the date of the original invoice;

(j) The additional enforcement actions Treasury or DOE will take to collect the debt, such as:

1. Administrative wage garnishment;

2. Reporting the debtor's name, address, TIN number, and the amount and type of debt to a credit reporting agency;

3. Referral of the debt to a collection contractor;

4. Federal salary offset;

5. Tax refund offset;

6. Administrative offset; and

7. Referral to DOJ for litigation;

(k) The request that the debtor provide his or her TIN by completing Internal Revenue Service (IRS) Form W-9, "Request for Taxpayer Identification Number and Certification," as required by the DCIA (if not already available to the finance office);

(l) The name, phone number, and address of an individual (or customer service area) to contact within the Department; and

(m) Payment instructions. Electronic payment methods should be used when available.

The information above must be provided to the debtor to meet the due process requirements for debt collection. The information may be contained in the body of the invoice or demand letter or enclosed as a "fact sheet" with the invoice.

(2) Partial Invoices. When the actual value of goods or services cannot be specifically determined, an invoice equal to at least 75 percent of the estimated value shall be prepared. This invoice shall be clearly identified as partial and shall include a statement that a final invoice will be prepared.

(3) Number of Demand Letters. Generally, one notice/invoice/demand letter should suffice. The initial notice to the debtor should include the information contained in section 5b(1). An additional notice is optional. However, the

debtor must have 60 days notice before the debt is transferred to Treasury for additional collection action through the Treasury Cross-Servicing Program or reported to a credit reporting agency.

Day 1	Day 31	Day 61	Day 91
Initial notice contains required due process information	2nd notice (optional)	Transfer to Treasury	
Initial notice does **not** contain required due process information (This should only happen in rare instances where the original notice was not sent by the finance office.)	1st notice	2nd notice (optional)	Transfer to Treasury

(4) Foreign Receivables. All receivable payment provisions in financial agreements with foreign entities should be based on U.S. dollars.

(5) Debts Originating Under Acquisition or Financial Assistance Instruments.

(a) Debt Determination. The contracting officer shall determine the amount of debt to be recovered under an acquisition or financial assistance instrument. Such a debt determination may be in the form of a negotiated settlement or a unilateral debt determination. Negotiated debt determination settlement occurs where the two parties agree on the amount of debt due DOE; for example, as a result of a contract price adjustment, overpayments due to disallowed costs, or some other overpayment condition. For such debt determination, the contracting officer shall concurrently issue a confirmation of the negotiated settlement to the debtor. When mutual agreement cannot be reached, the contracting officer shall issue a unilateral debt determination (final decision rendered pursuant to the award's disputes article). The contracting officer shall forward a copy of the confirmation of the negotiated settlement or unilateral debt determination to the servicing finance office, which records the debt as a receivable.

(b) Demand for Payment.

1. The confirmation of the negotiated settlement or unilateral debt determination shall include or be accompanied by a written demand for payment, which shall serve as the invoice or the initial demand for payment. The demand shall be mailed on the date it is signed and dated by the contracting officer. The contracting officer shall forward a copy of any accompanying demand for payment along with a copy of

the related confirmation of the negotiated settlement or unilateral debt determination that is forwarded to the servicing finance office.

2. The demand for payment of a debt originating under an acquisition contract or financial assistance instrument must be prepared in accordance with applicable acquisition or financial assistance regulations and the terms and conditions of the DOE award(s) involved. The requirements of section 5b shall be incorporated unless prohibited or explicitly provided otherwise by statute, regulation, or the terms and conditions of the DOE award instrument(s).

3. In cases where the contract debt amount and associated interest are determined under other contractual terms and conditions (for example, cost accounting standards, defective pricing, or unallowable costs), the demand for payment should be modified accordingly.

4. Offices shall coordinate collection action on a particular claim with the cognizant contracting officer. If the contractor or financial assistance recipient challenges the contracting officer's determination on a claim through a formal dispute process or court action, the Field CFO or equivalent, in coordination with the contracting officer, shall determine whether to suspend collection action until the appeal or court action is resolved. However, late charges (interest, penalties, and administrative costs) on the outstanding amount of the debt shall continue to accrue during the formal appeal process or litigation, subject to final adjudication.

(c) Collections from Debtors.

1. All payments from debtors should be posted to the receivable in a timely fashion to preclude inappropriate follow-up notices and assessment of late charges.

2. There are three methods to satisfy an awardee's indebtedness: direct payment, recoupment, and administrative offset. The selection of the appropriate method is dependent upon the nature of the debt, the necessity for making contractual price adjustments and funding changes, and the feasibility of recoupment or offset.

   a. *Direct Payment.* A direct payment shall be required if the indebtedness involves a price adjustment and funding change or if recoupment cannot be effected within a reasonable period of time.

   b. *Recoupment.* Recoupment action should be initiated from amounts that are due or will become due within a reasonable period under the same award if the indebtedness does not involve a price

adjustment and funding change. The contracting officer and the Field CFO or equivalent shall coordinate on any recoupment action that requires that recoupment be made from amounts that will not become due to the awardee until more than 30 days after the date of the initial demand for payment. The contracting officer, or Field CFO or equivalent, as appropriate, shall provide the awardee with written advance notice of the recoupment action on the amount of the debt and late charges (interest, penalties, and administrative costs). The notice may be included in the demand for payment and follow up demands, if any. Recoupment shall not be used as a means to delay or avoid pricing adjustments or funding actions.

c. *Administrative Offset.* When payment has not been made by the payment due date, the Field CFO or equivalent may undertake action to administratively offset the debt and any late payment charges from payments owed the awardee on other Federal awards, in accordance with the provisions of section 6h.

3. The Field CFO or equivalent shall advise the contracting officer when a debt referred for collection is collected or compromised or when collection action is suspended or terminated.

6. DEBT COLLECTION.

a. Managing Delinquencies. The Field CFO or equivalent shall aggressively follow up on all delinquent receivables, whether they originated in that office or were referred to it for collection by another office or Federal agency. The Field CFO or equivalent shall coordinate with the cognizant contracting officer on collection actions related to claims that originate under acquisition or financial assistance agreements. The policy and procedures for collecting claims due from current and former DOE employees, including provision of due-process rights prior to collecting an indebtedness owed to the United States through salary or other administrative offset, are contained in DOE 533.1, Collection from Current and Former Employees for Indebtedness to the United States.

b. Payment Due Date. The payment due date is the date by which payment should be made to avoid late charges (i.e., interest, penalties, and administrative costs) and enforced collection. This should generally not be more than 30 days from the date that the demand letter is mailed or hand-delivered.

c. Date of Delinquency.

(1) Administrative Debt. In the case of administrative debts such as fines, fees, penalties, and overpayments, a debt becomes delinquent when payment is not made by the payment due date specified in the initial billing notice. *The date of delinquency is the date DOE mailed or delivered the billing notice.*

(2) **Loans or Repayment Agreements**. In the case of debt being paid in installments, a debt becomes delinquent when payment is not made by the payment due date or the end of the "grace period" as established in a loan or repayment agreement. *The date of delinquency is the payment due date.*

d. **Debt Collection Strategy**. Collection actions with regard to all claims arising out of the activities of, or referred to, the Department shall be made in an aggressive and timely manner in accordance with the provisions of this chapter. Each responsible organization shall implement a debt collection strategy designed to provide a systematic, uniform method for collecting accounts. Consideration should be given to collecting advance payments, when appropriate, to avoid having to initiate collection action.

(1) Heads of DOE Headquarters Elements and Field Elements or their designees must immediately notify the appropriate financial office of claims arising from their operations. A claim will be recorded and controlled by the responsible finance office upon receipt of documentation from a competent authority establishing the amount due.

(2) DOE will aggressively collect all debts arising out of DOE activities in accordance with the FCCS (31 CFR 900-904) and DOE's debt collection regulations (10 CFR 1015). Collection action shall be undertaken promptly with follow-up action taken as necessary.

(3) DOE will cooperate with other DOE offices and Federal agencies in its debt collection activities.

(4) DOE will transfer debts to Treasury for cross-servicing as soon as due process requirements are complete, usually at 61 days delinquent, but no later than 180 days delinquent. Upon transfer of debts for cross-servicing, all Departmental collection efforts shall be discontinued. On behalf of DOE, Treasury will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the DOJ. (See section 6g.)

(5) A contractor using DOE funds for operations should not advance these funds to a contractor employee without a signed offset agreement from the employee. Attachment 8-1 is a sample contractor employee offset agreement for travel advances. In lieu of obtaining offset authorizations for each advance, it may be more appropriate to have the employee sign a blanket offset agreement for all amounts owed the employer. Contractors may make the right of offset a condition of employment.

e. Assessing Late Charges.

(1) The Debt Collection Act of 1982, as amended, requires DOE to assess three separate and distinct types of late charges:

(a) Interest accrues from the date of delinquency, or as otherwise provided by law. The date of delinquency is the day the invoice is mailed, hand delivered or otherwise transmitted to the debtor. The interest rate will be set at the same rate as the Treasury's Current Value of Funds Rate (CVFR) for the period in which the debt became delinquent. The CVFR is available on Treasury's website at www.fms.treas.gov. The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. Interest is calculated based on a 365-day year except in a leap year, when it is calculated based upon a 366-day year. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, DOE may require payment of interest at a new rate that reflects the CVFR at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, and administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(b) Administrative Costs cover the cost associated with collecting a delinquent debt. Costs will be determined by the annual comparison of costs incurred and amounts collected, as required by the FCCS. (See section 4.)

(c) Penalty is set, by statute, at 6% per year. The penalty charge accrues from the date of delinquency, and is assessed on *any portion* of a debt that is outstanding for more than 90 days, including any interest and administrative costs.

(2) Contingency fees such as those charged by Treasury in the Cross-Servicing Program, by the DOJ for collections from litigation cases, or by a collection contractor, shall be added to the amount of the outstanding delinquency.

(3) When a debt is paid in partial or installment payments, amounts received by DOE shall be applied first to any contingency fees, second to outstanding penalties, third to administrative costs, fourth to interest, and last to principal, as required in the FCCS (31 CFR 901.9).

(4) DOE shall waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. DOE may extend this 30-

day period on a case-by-case basis. In addition, DOE may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if DOE determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(5) When a debtor requests a waiver or review of the debt, DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of DOE's review, interest, penalties, and administrative costs related to the portion of the debt found to be without merit will be waived.

(6) Referrals to Treasury for cross-servicing and to Justice for litigation should reflect late charges accrued through the date of the referral document regardless of whether they have been booked in the accounts.

(7) DOE is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

f. Administrative Review of the Debt. DOE shall consider any available evidence in response to a debtor's request for a review. Typically, the Field CFO or equivalent, or a designee, reviews and decides the existence and amount of the debt. However, on a case-by-case basis, the Field CFO or equivalent may request the Chairman of the Board of Contract Appeals to appoint a reviewing official to review and decide the existence and amount of a debt. In such a case, the Board of Contract Appeals reviewing official will conduct the review in accordance with procedures established by the Board of Contract Appeals. However, the Board of Contract Appeals reviewing official will conduct an oral hearing when the requirements of (1) of this section are met. In any case, the debtor's right to a hearing or review of the claim is as follows:

(1) Offices shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Field CFO or equivalent, or a designee, determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although offices should carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the Field CFO or equivalent, or a designee, has

determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when this section does not require an oral hearing, offices shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

(5) If the claim is disputed in full or in part, the debtor's written response to the demand for payment must include a request for review of the claim within DOE. If the debtor disputes the claim, the debtor shall explain why the debt is incorrect. The explanation should be supported by affidavits, canceled checks, or other available evidence. The written response must reach DOE by the payment due date. The demand letter must inform the debtor that supporting evidence must be submitted to DOE by the payment due date if it is to be considered in the review. A written response received after the payment due date may be accepted if the debtor can show that the delay was due to circumstances beyond the debtor's control or failure to receive notice of the time limit. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion should be paid by the date stated in the initial demand.

(6) The debtor shall be notified, within 30 days of receipt of the debtor's response whenever feasible, of whether determination of the debt has been sustained, amended, or canceled. If such action is not feasible within 30 days, the debtor should be notified, in writing, before the end of the 30-day period, that the request for waiver or reconsideration is being processed and that notification as to whether the determination of the debt is sustained, amended, or canceled will be forwarded by an estimated date. Normally, the results of the review should be forwarded to the debtor no later than 60 days after receipt of the debtor's request. If the determination is sustained or amended, the debtor shall be notified of DOE's intent to take additional collection action(s); for example, referring the delinquent debt to Treasury unless payment or request for reconsideration is received within 15 days of the mailing of the notification of the decision.

(7) The decision of the reviewing official becomes final unless, within 15 days of its receipt, the debtor requests reconsideration of the decision. In cases where the decision is made by a Board of Contract Appeals reviewing official, the DOE official who referred the case to the Chairman of the Board of Contract Appeals also may request reconsideration within 15 days of receipt of the decision. Reconsideration will be granted only on the grounds of an asserted error of law or new evidence that could not have been discovered before the decision through the exercise of due diligence by the requesting party or that was not available before the decision through no fault of the requesting party.

(8) When a debtor's written response to a demand for payment constitutes an appeal of or notice of court action on a claim that originated under an acquisition contract or financial assistance instrument, the Field CFO or equivalent shall refer the matter to the cognizant contracting officer for action. The Field CFO or equivalent, in coordination with the contracting officer, shall determine whether to suspend collection action until the resolution of the appeal or court action; however, late charges shall continue to accrue during the formal appeal process or litigation.

g. Department of Treasury Cross-Servicing and Administrative Offset Programs. Pursuant to the DCIA, debts delinquent over 180 days must be transferred to Treasury for cross-servicing (collection of debts on behalf of DOE) or for administrative offset (Treasury Offset Program-TOP). The Department has executed an agreement with Treasury formalizing its participation in the Cross-Servicing Program, which contains all Treasury and Departmental responsibilities. As part of the Cross-Servicing Program, Treasury will submit debts to TOP on behalf of the Department for administrative offset.

(1) Mandatory transfer of debts to Treasury.

(a) DOE will transfer debts to Treasury for collection action in the Cross-Servicing Program as soon as due process requirements are complete, usually at 61 days delinquent, but no later than 180 days delinquent. On behalf of DOE, Treasury will take appropriate action to collect or compromise the transferred debt, or recommend DOE suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and action. Upon transfer of debts for cross-servicing, all Departmental collection efforts shall be discontinued. For accounting and reporting purposes, the debt remains on the books and records of the DOE office that transferred the debt.

(b) Before referring the debt to Treasury, offices must ensure that the debtor:

1. Has been sent written notice of the type and amount of the debt, the intention of Treasury to use administrative offset and other tools to collect the debt on behalf of DOE, and

2. Has been given:

a. The opportunity to inspect and copy DOE records related to the debt;

b. The opportunity for a review within DOE of the determination of indebtedness; and

c. The opportunity to make a written agreement to repay the debt.

3. Has been given 60 days notice before transfer to Treasury to comply with consumer credit bureau reporting requirements.

(c) When DOE previously has given a debtor any of the required notice and review opportunities with respect to a particular debt, DOE need not duplicate such notice and review opportunities before administrative offset may be initiated.

(d) When DOE refers delinquent debts to Treasury, DOE must certify, in a form acceptable to Treasury, that the debts are past due and legally enforceable; and DOE has complied with all due process requirements under 31 U.S.C. 3716(a) and DOE regulations. Certification forms are available on Treasury's website at www.fms.treas.gov or in FMS's Cross-Servicing Implementation Guide. Certification should be made by the supervisor of the employee responsible for debt collection.

1. A debt is legally enforceable if there has been a final DOE determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due.

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

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

(e) When a debt is referred to Treasury it is more likely than not that a receivable will not be totally collected, and an allowance should be established.

(f) DOE offices are not required to transfer to FMS, debts that are less than $25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Offices may transfer debts less than $25 to FMS if DOE, in consultation with FMS, determines that transfer is important to ensure compliance with DOE's policies or programs. Offices may combine individual debts of less than $25 owed by the same debtor

for purposes of meeting the $25 threshold. In addition, FMS has determined that it is not cost effective to refer debts under $100 for cross-servicing if no TIN is available. FMS will continue to accept these debts and refer them to TOP if a TIN is available, however, offices should seriously consider write-off if they have had no response to notices, they do not have a TIN, and the debt is less than $100. Also, the debt must be $100 in order for FMS to refer it to a Private Collection Agency.

(g) Treasury is authorized to charge a fee for services rendered regarding referred or transferred debts. DOE will add the fee to the debt as a contingency fee.

(2) Exceptions to mandatory transfer.

(a) Offices are not required to transfer a debt to FMS when the debt:

1. Is in litigation or foreclosure as described in (b) of this section;

2. Is being collected by internal offset as described in (c) of this section; or

3. Is covered by an exemption granted by the Secretary of the Treasury. There are currently no DOE debts that are covered by an exemption.

(b) A debt is in litigation if:

1. The debt has been referred to the Attorney General (DOJ) for litigation by DOE; or

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

(c) A debt is being collected by internal offset if an office expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. "Internal offset" means withholding of funds payable by the DOE to the debtor to satisfy, in whole or part, the debt owed to the DOE by that debtor.

h. Administrative Offset. Administrative offset occurs when the Government withholds or intercepts moneys due to, or held by the Government for, a person to offset amounts owed to the Government. Fair and prudent decisions shall be made that protect DOE's financial interests, give appropriate consideration to the debtor, give full consideration to all Government interests, and ensure that the proper process is followed. Federal employee salary offset and tax refund offset are types of administrative offset, although each program is subject to its own

distinct regulatory requirements. Administrative Offset regulations are contained in the FCCS at 31 CFR 901.3.

(1) Time Available. Unless otherwise provided by law, administrative offset of payments to collect a debt under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the DOE's right to collect the debt first accrued, unless facts material to the DOE's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(2) Mandatory Centralized Administrative Offset.

(a) DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (i.e., cross-servicing). Administrative offset is one type of collection tool used by Treasury to collect debts transferred. Thus, by transferring debts to Treasury, DOE will satisfy the requirement to notify Treasury of debts for the purposes of administrative offset and duplicate referrals are not required. A debt, which is not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement of notification to Treasury for purposes of administrative offset.

(b) As required in 31 CFR 901.3 (b)(4), DOE will refer a delinquent debt to Treasury for administrative offset, only after DOE has completed the procedures required in section 6g(1)(b)*1-2*.

(c) DOE may omit the procedures in section 6g(1)(b)*1-2* when:

1. The offset is in the nature of a recoupment;

2. The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (Notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

3. In the case of non-centralized administrative offsets conducted under (3) of this section, DOE first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, DOE shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(d) The names and TINs of debtors who owe debts that have been referred to Treasury shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary of Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(e) Treasury will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of DOE as the creditor agency requesting the offset, and a contact point within DOE who will respond to questions regarding the offset.

(3) Non-centralized Administrative Offset.

(a) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that DOE conducts, at DOE's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, DOE may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(b) DOE shall comply with offset requests by other agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(c) When collecting multiple debts by non-centralized administrative offset, DOE should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) DOE may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employee Retirement System (FERS). Upon providing OPM written certification that a debtor has been afforded the procedures provided in g(1)(b) of this section, DOE may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund in accordance with regulations codified at 5 CFR 831.1801-831.1808 and under the FERS in accordance with regulations codified at 5 CFR 845.401-845.408. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from OPM. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in h(1) of this section.

i. Reporting Debts to Credit Bureaus.

(1) DOE should report delinquent debts to credit reporting agencies in accordance with 31 U.S.C. 3711(e), the DCIA, the revised FCCS (31 CFR parts 900-904), the OMB Circular A-129 (Revised), and other applicable authorities. DOE is required to report delinquent consumer debt as soon as the debtor has been given the 60-day notice of intent to report to a credit bureau. This notice should be part of the initial notice to the debtor. (See section 5b(1).) The 60-day notice of intent to report to a credit bureau is not required for commercial accounts. DOE shall ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled. Additional guidance is contained in Treasury's "Guide to the Federal Credit Bureau Program" of October 2001.

(2) Offices should refer debts 60 days delinquent to Treasury for purposes of debt collection (i.e., cross-servicing) to comply with DCIA credit bureau reporting requirements. As part of its regular debt collection procedures, Treasury will report debts it is collecting on behalf of DOE to the appropriate designated credit reporting agencies. A debt not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement to report all non-tax delinquent debts to credit reporting agencies.

j. Credit Reports. To aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, penalties, and administrative costs; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim. As part of its regular debt collection procedures, Treasury may also institute a credit investigation of the debtor on behalf of DOE.

k. **Contracting With Private Collection Contractors and With Entities That Locate and Recover Unclaimed Assets.**

(1) DOE may contract with private collection contractors in accordance with 31.U.S.C 3718(d), the DCIA, the revised FCCS (31 CFR parts 900-904), and other applicable authorities. As part of its regular debt collection procedures, Treasury may refer delinquent debts to private collection contractors on behalf of DOE.

(2) DOE may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets. The Office of Financial Policy will establish procedures acceptable to Treasury for entering into contracts to recover assets of the United States held by a state.

(3) DOE may enter into contract for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges DOE for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

l. **Suspension or Revocation of Eligibility for Loans and Loan Guaranties, Licenses, Permits, or Privileges.** Unless waived by the Secretary of DOE, or designee, DOE is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of DOE. DOE may extend credit after the delinquency has been resolved. (See 31 CFR 285.13, Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees.)

m. **Administrative Wage Garnishment.** DOE may use administrative wage garnishment to collect money from a debtor's disposable pay to satisfy delinquent debt. Treasury issued regulations implementing the administrative wage garnishment provisions contained in the DCIA at 31 CFR 285.11. As part of its regular debt collection procedures, Treasury may use administrative wage garnishment on behalf of DOE.

n. **Tax Refund Offset.** DOE may authorize the IRS to offset a tax refund to satisfy delinquent debt in accordance with 31 U.S.C. 3720A. Treasury issued regulations implementing tax refund offset as part of Treasury's mandatory centralized offset at 31 CFR 285.2. As part of its regular debt collection procedures, Treasury may use tax refund offset on behalf of DOE.

o. **Liquidation of Collateral.** DOE should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to

pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

p. Use and Disclosure of Mailing Addresses.

(1) When attempting to locate a debtor to collect or compromise a debt under 31 CFR 900-904 or other authority, DOE may send a request to the Secretary of Treasury (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(2) DOE is authorized to use mailing addresses obtained under (1) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

q. Installment Payments.

(1) Whenever possible, an overdue debt should be collected in a single lump sum. If the debtor claims financial inability to repay the debt in a single lump sum, DOE may accept payment in regular installments. DOE should obtain a current financial statement showing the debtor's assets, liabilities, income and expenses from debtors who represent that they are unable to pay in one lump sum, and independently verify such representations whenever possible. DOE may also obtain credit reports or other financial information to assess installment requests. DOE may use their own financial information form or a DOJ form, such as the Financial Statement of Debtor (OBD-500).

(2) Upon agreeing to installment payments, the debtor and DOE must execute a legally enforceable written agreement, signed by the Field CFO or equivalent, or a designee, that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event the debtor defaults.

(3) When DOE obtains a written agreement with the debtor, the finance office should maintain documentation sufficient to demonstrate that the debtor signed the note knowingly and voluntarily.

(4) Security for deferred payments should be obtained in appropriate cases.

(5) At the option of the Field CFO or equivalent installment payments may be accepted notwithstanding the refusal of a debtor to execute a written agreement or to give other security.

(6) Installment agreements should require debtors to use a preauthorized debit to make the required installment payments, if available.

r. **Litigation**. Debts will usually be referred for litigation by Treasury as part of the collection process in the cross-servicing program. The following will apply if the servicing finance office refers a debt directly to DOJ.

(1) **Referral of Claims.** The Field CFO or equivalent, in coordination with the General Counsel or the Office of Chief Counsel at the field location, is responsible for timely referral of claims to DOJ for litigation or review. DOE shall not refer claims less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Field CFO or equivalent shall prepare the referral package in accordance with 31 CFR 904, Referrals to the Department of Justice, and submit it, through the Office of General Counsel at Headquarters, or the Office of Chief Counsel at the field location, to DOJ. Claims should be referred no later than 1 year from the date such claims became delinquent.

(2) **Preservation of Evidence**. Care must be taken to preserve all files, records, and exhibits on claims referred or to be referred to DOJ for litigation. Under no circumstances shall original documents be sent to DOJ or the U.S. Attorney without specific prior approval of DOJ or the U.S. Attorney. Copies of relevant documents should be sent whenever necessary.

(3) **Follow-up.** The Field CFO or equivalent must establish a tracking system to account for cases referred to and returned from DOJ. Action should be taken periodically to determine the status of referred claims. Some suggested follow-up frequencies are as follows: at least monthly for recommended compromises and doubtful claims, and at least quarterly for recommended suspensions or terminations and claims referred for litigation.

s. **Audit Exceptions Taken by GAO**. Claims arising from audit exceptions taken by GAO to payments made by DOE must be referred to GAO for review and approval prior to referral to DOJ for litigation.

t. **Interagency Claims**. Claims that cannot be resolved by negotiation between the involved Federal agencies should be submitted to the Attorney General as directed by Executive Order 12146.

7. **COMPROMISE**. The CFO or the Heads of Field Elements, or designees, may compromise claims arising out of Departmental activities where the claims, exclusive of interest, penalties, and administrative costs, do not exceed $100,000 or such higher amount as the Attorney General may prescribe (31 U.S.C. 3711). Any further delegation of this authority must be in writing.

a. **Criteria for Compromise**. A compromise may be considered when one or more of the following criteria apply or DOE is notified by Treasury through the cross-servicing program that one or more of the following criteria apply:

(1) The debtor is unable to pay within a reasonable time period. In determining the debtor's inability to pay, DOE should consider relevant factors such as the 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 that may be realized by enforced collection proceedings.

To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, DOE should obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. DOE also may obtain credit reports or other financial information to assess compromise offers. DOE may use their own financial information form or a DOJ form, such as the Financial Statement of Debtor (OBD-500).

(2) The agency is unable to enforce collection within a reasonable time period. DOE should consider the applicable exemptions available to the debtor under state and Federal law in determining DOE's ability to enforce collection. DOE may also consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(3) The cost of collection does not justify enforced collection of the full amount. DOE may compromise a debt if the cost of collecting the debt 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, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, DOE should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) There is a real doubt concerning the Government's ability to prove its case in court. If there is significant 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 because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the

probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, DOE should consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412 that may be imposed against the Government if it is unsuccessful in litigation.

b. **Enforcement policy.** Pursuant to this part, DOE may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if DOE's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by DOE's acceptance of the sum to be agreed upon.

c. **Joint and Several Liability**. When two or more debtors are jointly and severally liable, collection action shall not be withheld against one such debtor until the other or others pay their proportionate share. No attempt should be made to allocate the burden of paying such claims among the debtors; rather, DOE should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release DOE's claim against 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 that will be required from other debtors jointly and severally liable on the claim.

d. **Further review of compromise offers.** If DOE is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within DOE's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. The DOJ may act upon such an offer or return it to DOE with instructions or advice.

e. **Consideration of tax consequences to the Government.** In negotiating a compromise, DOE should consider the tax consequences to the Government. In particular, DOE should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

f. **Mutual releases of the debtor and the Government.** In all appropriate instances, a compromise that is accepted by DOE should be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action

against the Government and its officials related to the transaction giving rise to the compromised debt.

g. **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-carryforward and tax loss-carryback rights of the debtor.

8. WRITE-OFF, USE OF CURRENTLY NOT COLLECTIBLE, TERMINATION OF COLLECTION ACTION, AND CLOSE-OUT.

a. **Authority**. The authority to compromise or terminate collection action on claims for violations of the Emergency Petroleum Allocation Act of 1973 is vested in DOJ, regardless of the amount of the claim. Authority for all other claims that do not exceed $100,000, or such higher amount as the Attorney General may prescribe, and authority to recommend such actions to DOJ on claims that exceed the $100,000 threshold rests with the CFO or the Heads of Field Elements, or designees. DOE must refer an account to DOJ for its concurrence on compromising or terminating collection action on claims where such concurrence is required, but the authority to write off claims as administratively uncollectible rests solely with the CFO or the Heads of Field Elements, or designees, regardless of the dollar amounts involved. Receivables may be written off the accounts of the Department while DOJ or the Office of Hearings and Appeals are actively pursuing the claims. (See 8b of this section.) Redelegation of CFO or Head of Field Element authority to write off claims must be in writing. The written redelegation must indicate clearly the designee, preferably by title or position, and the dollar limits of the authority. The dollar limits of a designee's authority shall be consistent with the requirement that the write-off of progressively higher amounts be authorized by progressively higher officials. The signatures of all officials participating or concurring in each write-off decision shall be obtained before the debt is written off.

b. **Write-off**. "Write-off" is an accounting procedure separate and distinct from the legal procedures of "termination" and "suspension of collection."

c. **Criteria for write-off.** As directed in OMB Circular A-129, Appendix A, write-off should occur when an office determines that the likelihood of collection is less than 50%, but no later than two years from the date of delinquency unless documented and justified to OMB in consultation with Treasury. It is not necessary for write-off, termination of collection activity, and close-out to occur simultaneously, since legal and accounting procedures may follow different timetables. For example, a debt in litigation, and more than two years delinquent must be written off. However, since legal proceedings are not complete, collection action will not be terminated at this time. Instead, the debt will be written off and reported as "currently not collectible" (CNC) on the Treasury

Report on Receivables (TROR). At the completion of the legal action, collection action will be terminated and the debt closed out, if appropriate.

(1) All debt must be adequately reserved for in the allowance account. All write-offs must be made through the allowance account. Under no circumstances are debts to be written off directly to expense. Receivables that have been approved for write-off shall be recorded in the accounting records in accordance with entries prescribed in the Standardized Pro Forma Accounting Transactions Document maintained by the EFASC.

(2) Once the debt is written-off, the field office must either classify the debt as CNC, or terminate collection action and close out the debt. Treasury will recommend write-off and termination of collection action for debts that have been referred to the cross-servicing program and report the debts to IRS on the appropriate Form 1099 for DOE. Offices must, therefore, promptly write off debts when they receive the recommendation to do so from Treasury.

d. Use of Currently Not Collectible. Cost effective collection efforts should continue, specifically, if DOE determines that continued collection efforts after mandatory write-off are likely to yield higher returns. In such cases the written-off debt is not closed out but classified as CNC and reported on the TROR as written-off and "currently not collectible." The collection process continues until the agency determines it is no longer cost effective to pursue collection. At that point, collection action is terminated and the debt should be closed-out.

e. Termination of Collection Action. Termination of collection action ceases active collection of the debt. Offices may terminate collection activity when:

(1) DOE is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) DOE is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

f. Close-out. Close-out, or discharging a delinquent debt, occurs when an office determines that additional future collection efforts on a written-off, terminated debt would be futile. Discharge of indebtedness is distinct from termination of collection activity and is governed by the Internal Revenue Code. When

collection action on a debt is terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the FCCS at 31 CFR 903.3. When DOE discharges a debt in full, or in part, further collection action is prohibited. Before discharging a debt, offices must terminate debt collection action and report the amount of a debt to the IRS on Form 1099-C, "Cancellation of Indebtedness." Treasury will prepare Form 1099-C for debts that have been referred to Treasury in the cross-servicing program. Responsible offices must prepare Form 1099-C for debts that were not referred to Treasury as directed in Chapter 5 of FMS's "Managing Federal Receivables."

g. **Documentation**. Compromised amounts and administratively uncollectible receivables which have been written-off or collection action has been terminated shall be recorded in a manner sufficient to support the write-off or termination. This includes written approval to write off or terminate the compromised amount or receivable, and the signatures of all officials participating or concurring in the write-off or termination decision. The approval and signatures should be kept with the applicable receivable.

h. **Suspension of Collection Activity**. Collection activity may be suspended when one or more of the following criteria apply:

(1) The office is unable to locate the debtor.

(2) The debtor owns no substantial equity in property and is unable to make payments, but the debtor's future financial prospects justify retaining the debt *and* the statute of limitations has tolled or future collections may be realized through administrative offset, or the debtor has agreed to pay the interest accruing on the debt during the suspension.

(3) The debtor has requested a waiver or administrative review of the debt.

i. **Reinstatements and Collections**. Upon receipt of a collection against a written-off receivable, the account should be reestablished for the amount of the collection. The collection is then processed in the same manner as it would have been if the receivable had never been written off. If a collection is received after a receivable has been referred to GAO, DOJ, or a collection agency, inform the appropriate office as soon as possible.

9. **DOE REPORTING REQUIREMENTS**. Pursuant to I TFM 2-4100, DOE is required to submit a Report on Receivables to the Department of the Treasury each quarter. Each finance office shall submit information on receivables to the EFASC for consolidation in the DOE TROR prepared and submitted in accordance with instructions issued by the EFASC.

ATTACHMENT 8-1

SAMPLE CLAUSE FOR TRAVEL AUTHORIZATIONS AND OTHER DOCUMENTS USED FOR ADVANCING FUNDS TO CONTRACTOR EMPLOYEES

I hereby agree to submit an approved Travel Expense Report 5 days after official travel is completed. If the advance received exceeds the allowed reimbursable costs, the excess will be repaid at the time the Travel Expense Report is submitted. In light of IRS regulations (26 CFR 1.62), which require excess advances to be reported as taxable income, I also agree that any advance I have received may be withheld from my salary or other moneys due me if I have not repaid the advance or substantiated the expenses within 60 days of the End-of-Trip-Date for which the advance was received.

_____

Traveler's Signature