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Part II

Department of the Treasury

Fiscal Service

**31 CFR Part 285
Barring Delinquent Debtors From
Obtaining Federal Loans or Loan
Insurance or Guarantees; Proposed Rule**

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: Notice of proposed rulemaking.

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). This proposed rule defines 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. In addition, this proposed rule prescribes when the Secretary of the Treasury may exempt a class of delinquent debts from affecting a debtor's loan eligibility. This proposed rule also sets forth factors for authorized agency officials to consider when deciding whether to waive the DCIA eligibility requirement.

DATES: Comments must be received on or before May 22, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this proposed rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6859; or Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

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 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 proposed 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 proposed 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.

Section Analysis*(a) Definitions*

The intent of section 3720B is to prevent persons owing delinquent nontax obligations to the Government from receiving Federal financial assistance. The definition of the term "debt" in paragraph (a)(3) is intended to cover all amounts owed to the United States, including debts administered by a third party as an agent for the Federal Government, and has the same meaning as set forth in 31 U.S.C. 3701(b)(1).

As stated in paragraph (a)(4), the term "Federal financial assistance" or "financial assistance" as defined in section 3720B means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee. Although disaster loans are not covered by section 3720B and this proposed rule, nothing in this proposed rule is intended to suggest that a delinquent debtor is eligible for a disaster loan unless he or she meets all eligibility requirements under applicable law.

In paragraph (a)(7), the term *person* is defined to include all individuals and organizations, including state and local governments, but does not include Federal agencies. FMS requests comments on the extent to which

foreign entities are barred from obtaining Federal financial assistance under the DCIA (31 U.S.C. 3720B).

(b) Purpose and Scope

The purpose and scope of this proposed rule are described in paragraph (b) of this section. Section 3720B and this proposed rule apply to persons owing delinquent nontax debt to the Government. This proposed rule sets forth the standards for determining whether a debt is in delinquent status for the purpose of barring a debtor from receiving Federal financial assistance as required by section 3720B. In addition, the proposed rule addresses when an agency waiver or Treasury exemption is appropriate. Nothing in this proposed rule is intended to define the term "delinquent" for purposes other than the application of section 3720B.

As stated in paragraph (b)(3), this proposed rule is not intended to replace agency policies or procedures for determining whether a person is eligible for financial assistance or for agency review of denials of such assistance. For example, although the DCIA bar does not apply to a person owing delinquent Federal tax debt, nothing in this proposed rule precludes an agency from denying financial assistance to such a person under other applicable eligibility requirements. The fact that a debtor has had debts discharged in bankruptcy also may be a factor that agencies consider in assessing creditworthiness although the DCIA and this proposed rule do not bar the extension of credit. Similarly, the granting of a waiver or an exemption under this section does not mean that a loan application must be approved. For example, a waiver of this rule by the head of an agency under the provisions of section 3720B does not prohibit the agency from denying credit to a person based on general creditworthiness requirements, such as repayment ability or failure to pay obligations when they become due.

As stated in paragraph (b)(4), this proposed rule does not confer any new rights or benefits on persons seeking Federal financial assistance. The DCIA mandated a new eligibility requirement for persons seeking financial assistance, namely that delinquent Federal debtors are ineligible for Federal direct and indirect loan assistance (other than disaster loans). Agencies are not required to add new review procedures for persons who do not qualify for or are denied financial assistance based on the DCIA eligibility requirement. Those persons who are denied financial assistance based on the DCIA requirement are entitled to the same

opportunities for review, if any, as those who are denied financial assistance based on other applicable eligibility requirements.

(c) General Rule

Paragraph (c) of this section states the general rule contained in the DCIA that a person is ineligible for a Federal direct loan (other than disaster loans), loan insurance or loan guarantee if that person owes a delinquent nontax debt to the Federal Government. The DCIA 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. The DCIA eligibility requirement applies to all Federal loans (other than disaster loans) including those loans for which creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. Since there are many ways in which agencies may obtain delinquent debt information, this proposed rule does not mandate a particular method of collecting such information. Agencies may request delinquent debt information on loan applications, obtain credit reports, and use the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) to determine whether a person seeking financial assistance owes a delinquent nontax debt to the Federal Government. For information about the CAIVRS program, agencies should contact the Director of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

This proposed rule encourages persons seeking financial assistance to resolve their delinquent debt. Therefore, after a person's delinquency is resolved in accordance with the provisions of paragraph (e)(1) of this section, the DCIA and this proposed rule no longer provide a basis for denying financial assistance to that person. As noted above, a credit-granting agency may use other factors in determining whether to grant or deny credit based on other applicable eligibility requirements.

The DCIA authorizes the head of the agency to waive the application of the general rule. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency who may redelegate the authority only to the Deputy Chief Financial Officer. Paragraph (g) of this section, discussed below, prescribes the factors that authorized agency officials should consider when deciding whether to waive the DCIA requirement.

(d) Delinquent status

Paragraph (d) defines when a debt is in delinquent status for purposes of section 3720B. As noted above, this proposed rule does not define the term "delinquent" for any purpose other than the application of section 3720B.

As stated in paragraph (d)(2)(i), a debt is not in delinquent status if the creditor agency has released the person seeking Federal financial assistance from the obligation to pay the debt. A creditor agency may release a person from an obligation because the person has paid the debt in an amount acceptable to the creditor agency, the debt was determined not to be owed, or for other reasons. The release of an individual obligor does not mean that all obligors on the debt have been released. In addition, as stated in paragraph (d)(2)(i), a debt is not in delinquent status if an adjudication or determination has been made that the person does not owe or does not have to pay the debt.

As stated in paragraph (d)(2)(ii), a debt is not in delinquent status for purposes of this proposed rule if the debtor is the subject of a bankruptcy proceeding or has been discharged in bankruptcy. In this circumstance the debt is not in delinquent status so long as the debtor is current on any applicable court authorized repayment plan.

Nothing in this proposed rule is intended to deny persons seeking financial assistance the opportunity to contest a creditor agency's determination that a debt is owed. Therefore, as stated in paragraph (d)(2)(iii), for purposes of this proposed rule a debt is not considered to be in "delinquent status" if a timely-filed appeal challenging the creditor agency's determination that the debt exists or is delinquent is pending. The purpose of requiring that an appeal be filed timely is to prevent debtors from appealing an agency's determination solely to avoid the application of section 3720B. To the extent permissible, agencies should defer making a determination as to whether or not to extend credit until the appeal process is completed.

(e) Delinquency resolution

A person may remove the bar to financial assistance mandated by the DCIA by resolving a delinquency in accordance with the provisions of paragraph (e)(1). The debtor must resolve the debt with the creditor agency responsible for the collection of the debt or with the agency to which the creditor agency has referred the debt for collection. For purposes of this proposed rule, the debt is "resolved" if

the debtor pays the debt in full, pays a compromise amount agreed to by the creditor agency, brings the debt current i.e., makes up all past due monthly payments, including interest, fees, and penalties, or enters into a written agreement with the creditor agency to pay the debt under terms acceptable to the creditor agency. The fact that the creditor agency has ceased its collection efforts for a reason other than one set forth in paragraph (e)(1) of this section does not mean that the delinquency has been resolved. For example, unless one of the provisions of paragraph (e)(1) apply, 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., cancelled) would not be deemed "resolved."

(f) Exemptions by the Secretary

Upon the written request and recommendation of the head of an agency, the Secretary of the Treasury may exempt any class of delinquent debt from affecting a debtor's eligibility for financial assistance based on Section 3720B. Paragraph (f)(2) specifies the information that an agency should provide when recommending an exemption. Generally, an exemption will not be granted unless compelling reasons justify the elimination of the bar to Federal financial assistance for a class of delinquent debtors. Paragraph (f)(3) contains the circumstances under which Treasury may grant an exemption.

(g) Waivers by the Agency

The DCIA authorizes the head of the agency, on a person by person basis, to grant a waiver of the DCIA eligibility requirement. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency who may redelegate the authority only to the Deputy Chief Financial Officer. Paragraph (g) prescribes factors that an agency official should consider when deciding whether to grant a waiver of the DCIA requirement that financial assistance be denied. A waiver will be granted only when compelling circumstances require.

(h) Effect of Denial of Federal Financial Assistance

Paragraph (h) states that nothing in this proposed rule precludes a person from obtaining Federal financial assistance after a delinquent debt has been resolved.

Regulatory Analysis

This proposed 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 proposed 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 proposed to be amended as follows:

1. The authority citation for Part 285 is proposed to be 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 proposed to be 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.).

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) FMS may provide additional guidance in "Managing Federal Receivables" and other FMS publications concerning debt collection and debt management.

(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.* 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.

(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 by the payment due date or by the end of any grace

period provided by statute, regulation, contract, or agreement. 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.

(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) 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.*, cancelled) would not be "resolved."

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of an agency, 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 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: April 16, 1998.

Richard L. Gregg,
Commissioner.

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