

#### § 903.4

has been discharged in bankruptcy, regardless of the amount. Agencies may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of an agency that it is a known creditor of a debtor may survive a discharge if the agency did not receive formal notice of the proceedings. Agencies should seek legal advice from their agency counsel if they believe they have claims or offsets that may survive the discharge of a debtor.

#### § 903.4 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, agencies may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

#### § 903.5 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), agencies shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under part 903 of this title and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this chapter. When an agency discharges a debt in full or in part, further collection action is prohibited. Therefore, agencies should make the determination that collection action is no longer warranted before discharging a debt. Before dis-

#### 31 CFR Ch. IX (7-1-01 Edition)

charging a debt, agencies must terminate debt collection action.

(b) Section 3711(i), title 31, United States Code, requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), agencies may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, agencies must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. An agency may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the agency's behalf.

(d) When discharging a debt, agencies must request that litigation counsel release any liens of record securing the debt.

### PART 904—REFERRALS TO THE DEPARTMENT OF JUSTICE

Sec.

- 904.1 Prompt referral.
- 904.2 Claims Collection Litigation Report.
- 904.3 Preservation of evidence.
- 904.4 Minimum amount of referrals to the Department of Justice.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 65 FR 70404, Nov. 22, 2000, unless otherwise noted.

#### § 904.1 Prompt referral.

(a) Agencies shall promptly refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with part 901 of this chapter and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with parts 902 and 903 of this chapter. Agencies may refer those debts arising out of activities of, or referred or transferred for collection services to, that agency. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the Civil