

CHAPTER 2. DEBT ORIGINATION AND ROUTINE COLLECTION

2-1. HOW DEBTS ARISE. There are a number of ways by which HUD may come to be owed money. (See Appendix 2 for a list of typical debts.) Program participants contractors, area management brokers, or employees may at any time in the course of their interaction with HUD incur a debt to the agency. Many times, however, this debt is not recognized at the time of its actual occurrence.

Debts generally have their origins in:

- o Contract, grant, cooperative agreement, or program monitoring;
 - o Sustained audit findings; and
 - o Investigation.
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Regardless of how the debt arises, the end result is the same: the debt is recorded, and the debt recovery (i.e., collection) process begins.

2-2. CONTRACT/PROGRAM MONITORING. A debt can originate during the course of routine monitoring by Action Officials of contracts, grants, cooperative agreements, and programs. Accounting staffs, during their routine review of invoices received by HUD for payment, can also expose irregularities and subsequently debts owed HUD. When this occurs, the accounting staff notifies the Action Official who follows up to determine the extent of the debt.

The Action Official should then review the situation and request legal counsel and/or Inspector General assistance if it is appropriate. Procedures prescribed by FAR 32.6 and the Contract Disputes Act of 1978 should also be followed as appropriate.

If the case is not placed under audit or investigation, the Action Official will document the amount and reasons for the debt on an Invoice (HUD-216).

2-3. SUSTAINED AUDIT FINDINGS. Audits are one of the more common ways by which debts come into existence. In the field, audits are made by either the Regional Inspector General for Audit (RIGA), an independent public accountant (IPA), or the Assistant Inspector General for Audit (AIGA). If, in the opinion of the auditing official, an audit reveals disallowed or questioned costs, five main actions are taken:

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- a. Begin Tracking the Audit Findings. The RIGA or AIGA assigns a unique number to the audit report and enters summary data about the report into the Automated Audits Management System (AAMS).

- b. Notify the Action Official. A copy of the audit report is forwarded to the Action Official responsible for the audited project, grant, or activity.

The Action Official now has 120 days to resolve the audit findings -- that is, to determine if (and how) the finding is to be sustained. If the Action Official is within the Office of Procurement and Contracts, he/she is allowed 150 days for resolution.

- c. Begin Audit Resolution. Upon receipt of the audit report, the Action Official evaluates the findings based on his/her records, knowledge of the program, and coordination with the auditee.

If the coordination with the auditee leads to discussion of repayment options and methods, see paragraph 2-7b to negotiate a payment plan.

The Action Official next decides which findings are to be sustained as costs due HUD or costs due the program or project.

- d. Prepare and Submit a Concurrence Memorandum to the AIGA or RIGA. The Action Official reports his/her decisions on sustained audit findings to the AIGA or RIGA. The vehicle used for this purpose is the Concurrence Memorandum, which should include the following:

- o Audit report number;
- o Auditee's name;
- o Date the audit report was issued;
- o Auditee's taxpayer identification number/Social Security number;
- o Project, grant, or contract number;
- o For each finding:
 - Audit finding number;
 - Dollar amounts due HUD and/or program;

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-- Appropriation name and number; and
-- Section of the Act.

See Appendix 3 for a sample Concurrence Memorandum.

- e. Complete Audit Resolution. Upon receiving the Concurrence Memorandum from the Action Official, the AIGA or RIGA validates the findings sustained by the Action Official. The AIGA or RIGA then:
- o Updates the AAMS entry;
 - o Countersigns the Concurrence Memorandum; and
 - o Returns the signed Concurrence Memorandum to the Action Official and a copy to the RAD.

If the AIGA or RIGA does not concur with the Action Official's decisionS on the audit report, the AIGA or RIGA may only validate some of the findings and work with the Action Official to resolve the remainder. Only validated findings will be recorded as accounts receivable.

At this point, the Concurrence Memorandum and the audit report serve as official source documents of the debt and are referred to when recording the account receivable.

The Concurrence Memorandum is filed by the Action Official in the debt file (which may later become the claim file). See paragraph 2-7c(1).

- 2-4. INVESTIGATIONS. If an investigation reveals an adverse finding with money owed HUD, debt collection activities might be initiated. If so, the Assistant Inspector General for Investigation (AIGI) or Regional Inspector General for Investigation (RIGI) will first enter the finding in the Investigative Case Management System (ICMS) for tracking purposes and then forward the investigation report to the Action Official. After reviewing the investigation report and deciding on the proper course of action, the Action Official completes the Disposition Report (HUD-1416) and forwards it to the AIGI/RIGI.

See Appendix 4 for a sample Disposition Report (HUD-1416).

If the Disposition Report (HUD-1416) indicates that the case was referred to a Claims Collection Officer (CCO) for collection or money was recovered, the Action Official will send a copy of the Disposition Report (HUD-1416) to the Regional Accounting Division (RAD) to establish an account receivable.

In cases where court prosecution results in a judgment against an individual, the individual may be required to make restitution to HUD -- either directly or through the court. Notification of the court's judgment should be provided to the RIGI and the Action Official.

2-5. ESTABLISHMENT AND MONITORING OF ACCOUNTS RECEIVABLE.

The RAD establishes the debt as an account receivable upon receipt of any of the following required documentation.

The following documentation is required to set up an account receivable:

- o Transmittal Memorandum requesting set up of a receivable;
 - o A copy of the Initial Letter Requesting Payment of Debt (see paragraph 2-6);
 - o A copy of the Invoice (HUD-216) sent to the debtor with the above letter (see paragraph 2-6); or
 - o A sustained audit Concurrence Memorandum; or
 - o A Disposition Report (HUD-1416).
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a. Determine Proper Ledger. Based on the documentation received, the RAD will determine if the debt is of the type normally maintained in a RAD general ledger account or one maintained at HUD Headquarters.

- (1) Debts Due HUD, Accounted for by the RAD. If a debt to HUD is of the type normally maintained in a RAD general ledger account, the RAD will simply record the receivable in the appropriate general ledger account.

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- (2) Debts Due HUD, Accounted for by Headquarters. If a debt to HUD is of the type normally maintained at HUD Headquarters, the RAD will establish a subsidiary tracking account and will forward the new receivable source documentation to the Office of Finance and Accounting (OFA) to be recorded in the appropriate general ledger.

b. Verify Documentation. The Action Official will ensure that the RAD has or is provided with the following information (this is particularly required for establishing receivables from completed investigations):

- o Debtor's full name and current address;
- o Debtor's taxpayer identification number/Social Security number;
- o Date debt arose, its amount, and its basis;

- o Documentation supporting the basis of the debt;
- o Date debtor was officially notified of indebtedness (see paragraph 2-6);
- o Repayment terms (if these have been established);
- o Appropriation name, number, and section of the Act;
- o Office responsible for accounting on the general ledger;
- o Action Official name, organization, and phone number.

The RAD will follow-up with the Action Official to obtain any of the above information that is missing.

It is extremely important that the RAD and the Action Official report any and all information affecting the status, nature, or condition of the receivable to each other promptly and accurately.

At least quarterly, the RAD will make reconciliations of the RAD and Headquarters accounts as well as the accounts maintained in other systems, such as the AAMS, the investigative Audits Management System, and the delinquent Debt Collection System (also known as the A97 System).

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2-6. Notification AND DEMAND FOR PAYMENT.

The Action Official initiates the debt collection process by making the first payment request and follows up with two more requests for payment. The two follow-up requests will be prepared by the RAD for the Action Official's use. If these three attempts at collection are unsuccessful, the RAD notifies the Action Official, who then refers the delinquent debt to the CCO.

- a. Formal Notification to Debtor. After the Action Official has determined the amount due HUD, he/she will prepare both an Invoice (HUD-216) and the Initial Letter Requesting Payment of Debt. The letter and two copies of the Invoice (HUD-216) should be mailed or hand delivered to the debtor. The debtor should be instructed to return one copy of the Invoice (HUD-216) along with the payment to the RAD. Procedures prescribed by FAR 32.6 should be followed as appropriate.

See Appendix 5 for content and examples of the letter. See Appendix 6 for a sample Invoice (HUD-216).

The Action Official will send the required documentation to the RAD to establish an account receivable. (See paragraph 2-5.)

- b. Follow-up Notices. The Action Official will send out follow-up notices if payment has not been received by the RAD by the due date specified in the initial notification or by the past due date of the established payment schedule. The debt is now considered delinquent.
- (1) Second Notice. Not more than 30 days after the due date set forth in the Initial Letter Requesting Payment of Debt, the RAD will prepare a follow-up letter for payment to the debtor. This request will be stamped "Second Notice," and will note that payment is delinquent and past due. The Action Official will send this letter by certified mail, return receipt requested. This will establish debtor residency if at that address.
 - (2) Third Notice. If payment is not received within 30 days after the follow-up letter, the Action Official will send a second follow-up letter for payment. This request will note that the amount is delinquent and past due, and that, if not paid within 30 days, the debt will be turned over to a CCO.

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See Appendix 5 for the contents and examples of the follow-up letters.

2-7. METHODS OF PAYMENT.

The debtor's method of payment will fall into one of the following categories:

- o payment in full;
 - o payment by installment; or
 - o Nonpayment, leading to more aggressive collection action.
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Through telephone calls, letters, and personal contacts with the debtor, the Action Official should determine the collectibility of the debt. The Claims Collection Litigation Report and Claims

Collection Checklist (see Appendices 7A, 7B, and 8) should be used to document contacts and collection efforts. As stated above, if there are any changes in the status of the debt, the Action Official should notify the RAD promptly so these changes can be reflected in the appropriate accounting records.

All payments for debts arising in the field should be sent to the RAD unless program area exceptions dictate or U.S. Treasury regulations indicate that they should be wire transferred to the Federal Reserve Bank in New York with a copy of the remittance advice forwarded to the RAD.

- a. Payment in Full. Payment in full within the time specified in the initial notification or in any other contractual document satisfies the debt in full and avoids any record of delinquency. This is the most desirable way of collecting a debt and should be the goal of every Action Official.

When a payment in full is received by the RAD, the proper adjustments are made to the accounts. The RAD is responsible for notifying OFA officials when an account receivable maintained by OFA has been satisfied.

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Payment in full after a debt has become delinquent should be noted in the debtor's file for future credit reference purposes.

- b. Payment by Installment. If the Action Official determines that the debt cannot be paid in one lump sum, he/she has the authority to set up regular installment payments. The Action Official should:
- (1) Negotiate a reasonable installment plan that is mutually convenient and acceptable. The size and frequency of the payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than three years. Payments of less than \$50 per month should be discouraged. Interest should be charged. This installment plan should include an acceleration provision in the event of nonpayment.
 - (2) Obtain an executed promissory note containing agreement for judgment. When the total amount of the deferred installments will exceed \$750, and lesser amounts if possible, the Action Official should attempt to obtain an executed promissory note containing agreement for judgment. (See Appendix 9.)

If a note is not feasible in a given situation, the plan should be in writing, signed by the debtor.

- (3) Forward the resulting information to the RAD for entry into the subsidiary tracking system or the RAD general ledger accounts.

Payment by installments according to the terms of the installment plan satisfies the debt in full and without any record of delinquency. The timeliness of payments received should be noted in the debtor's file for future credit reference purposes. Procedures prescribed by FAR 32.6 should be followed as appropriate.

- c. Nonpayment. If no payment is received, or if less than the required number of installment payments are received and then no more are received, the debt becomes delinquent after the allowable time specified. Once a debt is delinquent, both follow-up letters have been issued, and no further response is forthcoming from the debtor, the debt and the accompanying debt file are transferred by the Action Official to the appropriate CCO for further action.

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- (1) Debt File. The information contained in the debt file that is passed on to the CCO is important for the timely resolution of the debt. The Action Official must ensure that the debt file contains the following:
 - o Debtor's name and address;
 - o Taxpayer identification number/Social Security number;
 - o Date of the debt, its amount, and its basis;
 - o Documentation supporting the basis of the debt;
 - o Record of attempts to collect the debt;
 - o Record of collections received;
 - o Debtor correspondence or a note that none was received;
 - o Record of legal review in Field Office;
 - o Credit reports, if obtained (note if not requested);
 - o Verification of employment;
 - o Repayment terms;
 - o Appropriation name, number, and section of the Act;
 - o Office responsible for accounting on general ledger;
 - o RAD name and phone number;
 - o Action Official name, organization and phone number;
 - o Recommended action.
 - (2) Continuity of Accounts. The RAD will continue to maintain the accounts related to this debt and will be responsible for coordinating with the CCO to keep him/her informed of any changes in the status of the account.
- d. Collection by Offset. Action Officials recommend to the CCO to

use administrative offsets to collect a debt due HUD. Some programs routinely use administrative offsets, e.g., some assistance programs, such as Section 8 offsets for the Section 202 program for direct loans for the elderly and handicapped.

For those programs that do not have routine offsets, collection directly from the debtor must be attempted before initiating an administrative offset. The due process provisions of the law, standards, and applicable regulations must be observed, and their observance certified in writing. (See Chapter 8.)

Action Officials must determine the feasibility of administrative offset by considering, on a case-by-case basis:

- (1) The debtor's financial condition;
- (2) Whether offset would substantially interfere with or defeat the purpose of the grants program, or reduce the performance level of the grant or program participant; and
- (3) Whether offset best serves to further and protect all of the government's interests.

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Action Officials are not required to recommend administrative offset in every instance in which there is an available source of funds.

An Action Official can withhold unpaid funds remaining on a single contract, or agree to a price reduction to that contract, to effect the return of misused or misspent contract funds. Such recoveries are not considered a collection of a "debt" and need not be treated as an "offset" within the meaning of the Debt Collection Act. Withholding unpaid funds or reducing a contract will settle a debt only if the goods or services provided are not reduced accordingly.

2-8. PROCESSING PAYMENTS.

- a. Handling Payments. All payments received will be handled in accordance with proper cash management techniques and with HUD Handbook 1911.1 REV, Handling and Protecting Cash and Other Negotiable Instruments.
- b. Processing Payments. All payments will be promptly deposited within 24 hours of receipt by the RAD. All payments received by other offices should be promptly forwarded to the RAD for deposit.
- c. Recording Payments.
 - (1) All collections accounted for by the RAD will be properly posted to the appropriate general ledger accounts by the RAD.

- (2) All collections received in the field for Headquarters accounts will be promptly recorded by the RAD in the subsidiary tracking accounts and will be reported to OFA on a journal voucher with appropriate source documentation.
- (3) When a debt is paid in full by either a lump sum or a final installment payment, the RAD will close the subsidiary tracking account and will notify the relevant Action Official and OFA.

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