

CHAPTER 3. AGGRESSIVE DEBT COLLECTION, RESOLUTION, AND/OR REFERRAL

Section 1. Aggressive Debt Collection

3-1. DEBT REVIEW. When all initial efforts at debt collection have been exhausted, and the debt remains delinquent and unpaid, the Regional Accounting Director notifies the Action Official who forwards the debt file to the Claims Collection Officer (CCO) for aggressive collection action and transferral to claims status.

- a. Review File for Completeness. The CCO begins his/her collection work by ensuring that all necessary documentation is included in the file. (See paragraph 2-7c for a list of the file's contents.) If the file is incomplete, the CCO should contact the Action Official or the Regional accounting Division (RAD) to obtain the missing documents.
- b. Review File for Evidence of Fraud or Misrepresentation. When the CCO is satisfied that the file is complete, he/she reviews the documents for evidence of fraud or misrepresentation. The CCO checks for discrepancies in the information, evidence that the debtor is living beyond his/her means, etc. When fraud is suspected, the CCO forwards the file to either the Assistant Inspector General for investigation (AIGI) or Regional Inspector General for investigation (RIGI), as per HUD Handbook 2000.3 , Office of Inspector General Activities. (See paragraph 1-6 for background information.)

Collection efforts are not suspended while the debt is being reviewed by the AIGI/RIGI unless the CCO is so instructed.

3-2. CLAIM FILE. When the CCO has processed the debt file, he/she adds or updates the following items in the debt file, thus creating what will be the claim file:

- o Record of attempts to collect the debt and other administrative actions taken;
- o Listing of debtor correspondence or a note that none was received;
- o The debtor's financial statement, when appropriate (see Appendix 10);
- o A record of legal review in the Field Office if performed; and

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- o Credit reports (if these were not previously obtained, the

CCO must now do so).

A delinquent debt will be referred to as a claim from the time the CCO completes the claim file and the appropriate information is entered into the Delinquent Debt Control System (also known as the A97 System).

The CCO prepares the A97 System data entry form (HUD-27016) to enter the debt information into the A97 System. (See Appendix 11.) A97 System data entry sheets and the claim file number should always be put in the claim file.

Actual data entry will be done either directly by the CCO or by whomever the Regional Administrator/Regional Claims Collection Officer designates. HUD Guide 2362.35, ADP Terminal Operations Guide for the Delinquent Debt Control System, provides instructions on A97 System use.

3-3. CONTACTING THE DEBTOR. The CCO begins aggressive claim collection by contacting the debtor. The CCO's goal is to obtain a pledge to pay the claim in full and to warn the debtor of the consequences of nonpayment.

When a CCO is having difficulty contacting a debtor, he/she should use the following sources to locate the debtor:

- o Post Office Tracer, HUD-9825 (see Appendix 12) -- this is used if it has been determined that the debtor no longer resides at the last address of record;
- o Credit reporting agencies;
- o Internal Revenue Service (IRS) Tracer;
- o County/city tax records;
- o Neighbors and occupants of any residence where debtor has resided or may be residing;
- o Business references as shown on credit reports or file correspondence;
- o Utility companies in cities in which debtor is believed to reside or has resided recently;

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- o Telephone and city directories;

- o Motor vehicle bureaus for driver's license records, automobile title, and/or registration records;
- o Clerks of city or county election commissions;
- o Places of employment, if known;
- o Relatives;
- o Public institutions or other Federal Agencies; or
- o Chief of police or county sheriff when the information in the file indicates the debtor has violated a law and may be the subject of a search, held in custody, or reporting to a probation officer.

3-4. INTEREST, PENALTIES, AND ADMINISTRATIVE COSTS. If the CCO has contacted the debtor but has been unable to obtain a pledge to repay the claim, the CCO must send a Notice of Intent for Final Action. (See Appendix 5.) Before the letter is sent, the CCO first determines the total charges on the claim to date so that the letter accurately reflects the amount due. The three charges the CCO is concerned with are:

- a. Interest. Interest accrues from the date the debtor is first notified in writing of the debt and interest requirements (i.e., from the date of the Initial Letter Requesting Payment of Debt sent by the Action Official). The interest on the debt or any portion of the debt that is paid within 30 days after the date it begins to accrue shall be waived.

The rate of interest assessed shall be the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate). The CCO can obtain this interest rate from the Federal Register, Treasury Fiscal Requirements Manual Bulletin, and the Departmental Claims Officer (DCO) or his/her staff.
See Appendix 13 for the U.S. Treasury Rates for Delinquent Debts.

Except as noted below, interest shall not be assessed on interest, penalties, and administrative costs assessed on the debt.

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The rate of interest initially assessed shall remain fixed for the debt's duration. The rate can, however, be adjusted to the current value of funds rate when a new agreement is executed after a debtor has defaulted. Under

a new agreement, interest will be assessed on the old principal balance plus accrued interest, penalties, and administrative costs (i.e., the new principal balance).

- b. Penalties. The CCO assesses a penalty not to exceed 6 percent on any portion of the claim that is delinquent for more than 90 days.
- c. Administrative Costs. Administrative costs -- i.e., what HUD has spent to collect the claim -- are calculated according to the method described in Appendix 14, and should be itemized as a separate category entitled costs of collection.

The CCO applies the calculated charges to each claim. If the CCO believes that the debtor should be exempt from the charges, he/she obtains an opinion from the Office of General Counsel (OGC), Regional Counsel, or Field Counsel. A claim is not suspended while a legal opinion is pending.

Interest, penalties, and administrative costs are not assessed on:

- o Claims incurred by Federal, State, or local government agencies unless the claim arises from default or a contract providing for such charges.
- o Claims that are governed by a statute, regulation, or contract that either prohibits or sets such charges.
- o Claims incurred by contracts executed before October 25, 1982. These claims are charged either 7 percent or another rate of interest as specified in the applicable statute, regulation or contract.

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- 3-5. DEMANDING PAYMENT. After reviewing information in the claim file and attempting to contact the debtor, the CCO must determine how best to resolve the claim. (Options available to the CCO are described in the following paragraphs.)

The CCO then sends the Notice of Intent for Final Action (see Appendix 5) via certified mail stating the next course of action to be taken if payment is not received.

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Section 2. Claim Resolution and/or Referral

- 3-6. METHODS OF RESOLUTION. If the claim is not paid by the date specified in the Notice of Intent for Final Action, the CCO determines if the claim warrants further collection efforts and if such efforts are cost effective. To make this determination, the CCO evaluates the amount of the claim against the cost of HUD's collection efforts; if the latter is greater, the CCO may recommend that the claim be written off or

terminated. (See paragraph 3-12.)

Another evaluation tool available to the CCO is a credit report. If the report indicates that it is within the debtor's means to pay the claim, the CCO will recommend payment in full or an installment payment arrangement.

- a. Payment in Full. This is the payment method most desired. (See paragraph 2-7a.) When a debt is paid in full, the CCO notes it in the claim file and coordinates with the RAD as appropriate to process and record the payment.
- b. Payment by Installment. This arrangement is based on information from the credit report, contact with the debtor, and/or response to previous letters. The CCO should negotiate a reasonable installment plan that is signed by the debtor and forwarded to the RAD. The size and frequency of the payments should bear a reasonable relation to the amount of the debt and the debtor's ability to pay. If possible, the payments should be large enough to liquidate the claim in not more than three years. Payments of less than \$50 a month are discouraged. When instituting an installment agreement, the CCO should:
 - (1) Try to obtain an executed promissory note containing agreement for judgment, particularly when the total amount exceeds \$750. (See Appendix 9.)
 - (2) Forward a copy of the approved repayment agreement to the RAD to adjust accounting records and follow up in the event of nonpayment.

Signed repayment agreements that involve total payments in excess of \$2,500 must be forwarded through the RCCO to the DCO for approval, prior to execution. Upon receipt of DCO approval the RCCO will provide a copy of the repayment agreement to the RAD.

- c. Liquidation. If no arrangement is reached between the debtor and the CCO, the CCO could request Field Counsel or Regional Counsel to liquidate the debtor's collateral. If the value of the collateral is less than the claim, liquidation can be used to supplement other collection methods.

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3-7. OFFSETS. CCOs can arrange to withhold money payable by the U.S. Government to, or held by the government for, a debtor to satisfy a debt owed the government.

- a. Administrative Offset. A CCO can initiate administrative

offset either on the recommendation of an Action Official (see paragraph 2-7d), or on his/her own initiative, except in the following cases:

- o When a statute provides its own collection procedure;
- o When grant reduction is used as a remedial action;
- o When explicitly prohibited by a statute;
- o When the debtor is an agency of the U.S., State, or local government (unless otherwise provided by statute or because of a common law right); or
- o When the debt arose under the IRS Code, the Social Security Act, or tariff laws of the U.S.

See Chapter 8 for specific information regarding offset authority, procedures, and requirements.

Administrative offsets can also be collected within HUD between programs, where legally permissible, and from other Federal Agencies. All Federal Agencies are required by law to cooperate with one another in their debt collection activities. When another Federal Agency is involved, the CCO will forward the claim through the RCCO to the DCO to coordinate the collection by offset.

- b. Salary Offset. The CCO might use administrative offset to collect a debt by one or more deductions at one or more officially established pay intervals from the current pay accounts of federal employees with or without their consent.

The statute of limitations for salary offset is the same as that applicable to administrative offset (10 years).

- c. IRS Offset. IRS tax refund offset is another way to collect a delinquent debt due HUD. This method is used only when other efforts to collect the claim have failed, and will be accomplished only by the DCO after referral from the RCCO.

- 3-8. SUSPENSION. Occasionally, there is a need to suspend claim collection activity for reasons other than a waiver or administrative review. The CCO may suspend collection on claims through \$2,500 when at least one of the following conditions is met:

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- o The debtor cannot be located but there is reason to believe that future periodic reviews of the claim may

be warranted. This is based on the amount of the claim and the sum that may actually be collected.

- o The debtor owns no substantial equity in real or personal property but his/her future prospects warrant retaining the claim for periodic review and action.
- o The debtor sends HUD evidence that disputes the claim and requests a waiver or administrative review. (See paragraph 3-9.)

Claims exceeding \$2,500 which meet the above conditions must be referred to the DCO before collection activity may be suspended.

The CCO notifies the RCCO and the RAD when a claim is suspended.

3-9. WAIVER OR ADMINISTRATIVE REVIEWS. A waiver or administrative review temporarily suspends collection activity until the CCO has considered the request or the time limit for making the request has expired and the debtor, upon proper notice, has not made such a request. Provided that an applicable statute does not prohibit HUD from collecting the claim before considering the request for waiver or administrative review, the collection action may be considered for suspension on a claim-by-claim basis, if:

- o There is a reasonable possibility that the waiver will be granted, or that it will be determined that the debtor does not owe all or part of the claim.
- o HUD's interest would be protected, if suspension were granted, by reasonable assurance that the claim could be recovered if the debtor does not prevail.
- o Collection of the claim would cause undue hardship.

3-10. COMPROMISE. While pursuing collection, the CCO may learn that a debtor is willing and able to pay a part of the debt but is unlikely to be able to pay the entire amount. In such a case, a compromise of the claim may be appropriate. A compromise is a signed agreement between the debtor and HUD in which HUD agrees to "forgive" part of the debt (i.e., forego further collection attempts) in exchange for payment by the debtor of the remaining part. The CCO may compromise part of a claim if the total claim is under \$2,500 and at least one of the following criteria applies:

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- o There is doubt as to the debtor's ability to pay the claim in full and within a reasonable period of time.

- o There is doubt as to the debtor's ability to pay the claim through an installment plan. The CCO must consider the debtor's age, present and future income prospects, number of dependents, health, etc.
- o The cost of collecting the claim in full is greater than the amount of the claim. (See Appendix 14.)
- o The cost of researching records to determine the claim's validity exceeds the amount of the claim.

If the claim exceeds \$2,500 and one of the above criteria applies, the CCO must refer the compromise request through the RCCO to the DCO for approval.

All compromise agreements must be signed by the debtor and be approved by HUD (either by the CCO for claims under \$2,500 or by the DCO for claims more than \$2,500). Approval of the compromise also requires receipt of payment for the remainder of the claim. If the CCO has any doubt about the appropriateness of a compromise agreement, he/she should refer the agreement to the Field Counsel for review prior to execution.

The compromise agreement should note that the amount compromised will be reported to IRS as a taxable benefit. Form 1099-G is used to report compromises to IRS. (See Appendix 15.)

A copy of the signed compromised agreement is forwarded to the RAD for posting.

- 3-11. LITIGATION. The CCO may determine that the debtor has the financial means to pay off the debt. If so, the CCO may refer the claim to Field Counsel which may then refer the case to Regional Counsel for litigation. (See paragraph 6-4 for Regional Counsel's responsibility in these matters.)
- 3-12. TERMINATION. Under some circumstances, the CCO may have no other recourse than to terminate a claim. When a claim is terminated, the CCO stops further collection attempts and informs the RAD to write off the unpaid balance from HUD's accounting records.

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Although termination is the most extreme method of claims resolution available to a CCO, it does not mean that the debtor is absolved of his/her obligation to pay. HUD may resume collection of the claim if its collectibility can be

re-established within the statute of limitations.

CCOs can only terminate claims through \$2,500 in value. Claims exceeding \$2,500 must be submitted through the RCCO to the DCO for termination.

A CCO may terminate a claim when at least one of the following conditions exists:

- o The CCO believes that he/she cannot collect an appreciable amount from the debtor.
- o The debtor cannot be located and there is either no security to be liquidated or the statute of limitations has expired and it is unlikely that the claim can be collected.
- o It has been determined that the claim is legally without merit.
- o It has been determined that the evidence or witnesses necessary to prove the claim cannot be produced and thus efforts to induce voluntary repayment are unavailable.

If the CCO is in doubt about the appropriateness of terminating a claim, he/she should submit the proposed termination to the Field Counsel for review.

- 3-13. ACCOUNT ADJUSTMENT. The CCO must notify the RAD of any changes to the claim, such as those listed previously, while maintaining an up-to-date claim file.
- 3-14. CLAIM REFERRAL. If a claim remains unpaid at the end of six months and all available collection options have been exhausted, the claim will be transferred to the DCO. Excepted from this requirement are claims that the CCO through the RCCO may terminate on his/her own authority. (See paragraph 3-12.)

To prepare a claim for transmittal to the DCO, the CCO will:

- o Ensure that the claim file is complete and has all required documentation;
- o verify the status of collections with the RAD;
- o Obtain legal review from the Field Counsel, as appropriate;

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- o Complete the Claims Collection Litigation Report and Claims Collection Checklist (see Appendices 7A, 7B,

and 8); and

- o Recommend appropriate action.

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