
CHAPTER 4. ADVANCED COLLECTION/RESOLUTION

- 4-1. FINAL COLLECTION EFFORTS. When the Departmental Claims Officer (DCO) receives the claim file from the Claims Collection Officer (CCO), he/she sends a strongly worded letter to the debtor warning of the consequences of nonpayment. If the DCO does not receive a response by the date specified in the letter, he/she writes a Final Action Letter which states what final collection efforts will be taken if there is no response by the given date. These final collection mechanisms available to the DCO are outlined in the following paragraphs.
- 4-2. PAYMENT BY INSTALLMENT. The DCO might be able to negotiate an installment payment plan based on the debtor's response to the final demand letter.
- 4-3. SUSPENSION. The DCO could suspend a claim if the debtor cannot be located but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. For instance, the DCO could suspend a claim when the debtor currently owns no substantial equity in real or personal property but the debtor's future prospects justify retention of the claim, or when the debtor agrees to pay interest on the amount of the suspended claim until able to repay the entire amount.
- 4-4. LIQUIDATION. If no arrangement is reached between the debtor and the DCO, the DCO could liquidate the debtor's collateral securing the debt. If the value of the collateral is less than the claim, liquidation can be used to supplement other collection methods.
- ** 4-5. OUTSIDE COLLECTION SERVICES/CREDIT REPORTING AGENCIES. Coordination by the Office of Management and Budget (OMB) between the various federal agencies with collection responsibilities has resulted in the establishment of relatively uniform procedures for using outside collection services and for reporting accounts to credit reporting agencies. GSA has negotiated national contracts with several private collection firms which are available for Departmental use, and standard contracts are signed annually between involved federal agencies and the credit reporting firms identified by OMB. Within HUD, referral to private collection firms and disclosure to Consumer Reporting Agency are advanced collection techniques which are available to the DCO. **

** a. Application:

- o Consumer Reporting Agency. The Department may disclose to a Consumer Reporting Agency information on consumer and commercial debts from a system of records that an individual or corporation is responsible for a debt that is:
 - More than \$100.00 (exclusive of interest and other charges);
 - At least 180 days past due (consumer debts only);
 - Valid and legally enforceable; and
 - The obligation of a debtor who is a natural person for consumer debts; the obligation is of a corporation, organizational entity, etc., for commercial debts.

Notice is required by the Privacy Act indicating that the information in the system of records may be disclosed to a Consumer Reporting Agency (consumer debts only).

- o Collection Services. Accounts which satisfy the above criteria for disclosure to consumer reporting agencies are eligible for referral to private collection firms.
- b. Legislation and Regulations. HUD's Disclosure to Consumer Reporting Agency regulations for consumer debts are contained in 24 CFR 17.76. HUD regulations for Contracts for Collection Services are in 24 CFR 17.77. Reference is also made to related statutes as follows:
 - o Privacy Act of 1974 (5 U.S.C. 552a(e)(4)&(m))
 - o Fair Credit Reporting Act (15 U.S.C. 1681)
 - o Debt Collection Practices Act (15 U.S.C. 1692)
- c. Account Selection. The DCO must review the account to assure that it meets the criteria for reporting to credit reporting agencies and referral to private **

- ** collection firms. In this regard, the DCO must assure that the account meets the Department's eligibility criteria (i.e. more than \$100, valid, enforceable, consumer debt is over 180 days past due, etc.) and must ascertain that the debtor:
- o Has not been legally declared bankrupt;
 - o Has not negotiated a compromise settlement of the debt;
 - o Is not experiencing financial hardship (as determined by the DCO based on a review of the financial statement of the debtor);
 - o Has not been referred to the Department of Justice;
 - o Has not already made special payment arrangements;
or
 - o Is not deceased or suffering from a terminal illness.
 - o Commercial debts do not have to meet the above requirements due to the fact they are reported whether in a delinquent status or not.
- d. Notice Requirements. Before any disclosure to Consumer Reporting Agencies or referral to a private collection firm, the DCO must send to the debtor a written "Notice of Disclosure of Debt to Consumer Reporting Agencies" (Notice requirements are not necessary for commercial debts since they are not subject to the privacy act). An example is provided in Appendix 18. The Notice shall be sent by "Certified Mail-Return Receipt Requested" and shall inform the individual:
- o That payment of the debt is overdue;
 - o That the Department intends to disclose to Consumer Reporting Agencies that the individual is responsible for the debt;
 - o Of the specific information intended to be disclosed;
 - o That such disclosure will also take place within no less than 60 days of the Notice; and **
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1900.25 REV-3
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- ** o That the account will be referred to a private collection firm with attendant additional charges.

The Notice also advises the debtor of the nature and amount of the debt and provides the debtor with the following options:

- o Repay the debt (or reach a repayment agreement with HUD) within 65 days of the date of the Notice;
- o Request further information about the debt;
- o Dispute information in HUD's records concerning the debt; or
- o Request a review or appeal with respect to the debt within 65 days of the date of the Notice.

Before sending the Notice and prior to any disclosure, the DCO must take reasonable action to locate an individual for whom the Department does not have a current address. If the notice is undeliverable, the Department can still disclose the debt to the credit bureau and collection agency (consumer debts only).

- e. Appeals, Disputes and Requests for Review or for Additional Information. The DCO is responsible for handling and responding to all disputes, appeals and requests for review or for additional information. Accordingly, the debtor should be advised to direct any such correspondence to the DCO.
 - f. Request for Reconsideration. Requests for reconsideration of determinations made by the DCO will be referred to the Office of General Counsel for final action.
 - g. Credit Bureau Reporting. A standard controlling contract (developed by OMB) must be signed annually by the Department and by each Consumer Reporting Agency. This contract includes assurances that the Agency is complying with the Fair Credit Reporting Act (15 U.S.C. 1681) and any other Federal laws governing the provision of consumer credit information. **
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** Reporting to the various credit reporting firms is accomplished via magnetic tape in a regular recurring cycle. The information being provided includes:

- o Debtors name, address, and if available, social security (or taxpayers identification) number;
- o The amount, status and history of the claim; and
- o The program under which the claim arose.

Any substantial change in the condition or amount of previously reported debts will be included as updates in the quarterly reporting cycle.

Upon the request by a Consumer Reporting Agency, the DCO will promptly correct or verify information about any previously reported claim.

h. Contracts for Collection Services. All contracts utilized by the Department for collection services on consumer and commercial debts will include provisions to assure that:

- o The Department retains all authority (and no authority is delegated to the contractor) to:
 - Resolve disputes;
 - Compromise claims;
 - Cease collection action (i.e. charge off); or
 - Refer an account to the Department of Justice for suit.
- o Private collection firms utilized by the Department are subject to:
 - The provisions of the Privacy Act of 1974 covering government contracts (15 U.S.C. 5522 (m)) (consumer debts only); and **

- ** - State and Federal laws governing debt collection practices (e.g. The Debt Collection Practices Act).

Note: The private collection firms selected through the GSA procurement have satisfied these requirements.

- o Upon return of the file for referral to the Department of Justice for litigation, the contractor will include:
 - Any data contained in the files relating to actions taken to collect the debt;
 - The current address of the debtor; and
 - The debtor's current credit data and any other current information requested and available.

Contractors hired to collect claims are strictly accountable for all amounts collected and for returning a properly documented claim file which HUD can then refer to the Department of Justice (DOJ) if necessary.

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- 4-6. OFFSETS. The DCO has been designated the official HUD coordinator for offsets between Federal Agencies. Therefore, all offsets involving another Federal Agency -- except for programs with their own collection authority -- must be referred to the DCO for coordination. This includes collecting debts owed HUD by offsetting Internal Revenue Service (IRS) income tax refunds due taxpayers when all other collection efforts have been attempted.

For administrative and salary offsets, the DCO can initiate collection actions, even if all other collection efforts have not been exhausted.

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

4-7. COMPROMISE. The DCO can compromise a claim if there is doubt as to the ability of the debtor to pay or the government's ability to collect (provided there is no appeal pending). A compromise reflects a collection of part of the claim and forgiveness of the uncollected portion of the claim.

The DCO can compromise claims through \$20,000 excluding interest, penalties, and administrative costs, but must forward larger claims either to DOJ or the General Accounting Office (GAO). DOJ approval is not required if HUD wishes to reject a compromise offer.

The DCO could compromise a claim when:

- o The debtor's ability to pay the full amount of the claim within a reasonable time is doubtful;
- o The debtor's present and prospective ability to pay in accordance with a reasonable repayment plan is doubtful;
- o HUD's ability to collect the full amount is doubtful;
- o The cost of collecting the claim in full does not justify enforced collection; or
- o The cost of researching records to determine the claim's validity exceeds the amount of the claim.

In some cases, the DCO negotiates a lump sum compromise agreement, possibly including security. The DCO does not accept a percentage of a debtor's profits or stock in a debtor corporation in claim compromise. In negotiating a compromise with a business concern, the DCO considers requiring a waiver of the debtor's tax-loss-carry forward and tax-loss-carry-back rights.

The DCO reports all compromises he/she makes to the appropriate RAD, and the accounting office writes off the amount compromised.

4-8. TERMINATION. The DCO terminate claims through \$20,000 exclusive of interest, penalties, and administrative costs after deducting the amount of partial payments or collections, if any, under the following conditions:

- o The DCO cannot collect or enforce collection of any significant sum from the debtor. In determining the debtor's ability to pay, the DCO considers several factors, including the debtor's age and health, present and potential income, inheritance prospects, evidence that the debtor has concealed or improperly transferred assets, and the availability of assets or income that may be realized by enforced collection proceedings.
- o The debtor cannot be located.
- o There is no security remaining to be liquidated.
- o The statute of limitations has run out, and the likelihood of collecting by offset, notwithstanding the bar of the statute of limitations, is too remote to justify retaining the claim.
- o The costs of collecting will exceed the amount of the claim, when the claim is without legal merit, or when the DCO cannot produce the necessary evidence and witness to prove the claim.

The DCO can terminate a claim of any amount based on DOJ authorization. When DOJ reports that a claim is uncollectible or when a tort or false claim is referred to DOJ, DOJ then advises the DCO that the file is closed.

- 4-9. LITIGATION AND GENERAL ACCOUNTING OFFICE REFERRALS. The DCO and RCCO/CCO may refer claims of more than \$600 through the OGC and Regional Counsel respectively, to DOJ for litigation. Smaller claims may be referred if important policy matters are at stake.

For a claim arising from a GAO audit exception, the DCO refers the claim to GAO for review and approval prior to its referral to DOJ unless the DCO has been granted an exception by GAO. When the merits of HUD's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the DCO refers the matter to GAO for resolution and instruction prior to proceeding with collection action and/or referral to DOJ for litigation.

Letters containing recommendations and comments that the DCO prepares when he/she transfers claims to DOJ or GAO are routed for concurrence through Headquarters program personnel and the Office of General Counsel (OGC). Matters involving policy or the reduction of a claim are also routed through the OGC for concurrence.

After reviewing for legal sufficiency, the OGC prepares the necessary court papers and sends a litigation package to the appropriate U.S. Attorney or, in some cases, to the Regional Counsel. Unless there are unusual circumstances involving the Civil Division of DOJ, the OGC sends all cases where a claim is not more than \$200,000 to the U.S. Attorney. If the claim exceeds \$200,000, the OGC also sends a copy of the litigation package to the Commercial Litigation Branch of the Civil Division (\$200,000 is the maximum amount the U.S. Attorney may compromise or terminate without Civil Division concurrence).

When a judgment against the debtor is needed for HUD to impose administrative sanctions on the debtor, the DCO may refer the claim for litigation even though he/she might otherwise consider termination of collection activity.
