

## **CHAPTER 2. RECEIVABLES MANAGEMENT**

### **2-1 Establishing a Debt**

- A.** Federal agencies are required to aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. This requirement mandates that debt collection actions be taken promptly, once it is determined that a debt is owed.
- B.** Debts owed to HUD can arise from noncompliance with requirements in various sources, including contracts, grant agreements, and cooperative agreements. The noncompliance that results in a debt is sometimes not recognized at the time of its actual occurrence but is discovered during routine monitoring and accounting activities, audits, and investigations.
- C.** When noncompliance that may result in a debt is observed, the monitor, auditor, investigator, or other person making this observation is required to notify the PAO responsible for the program activity and to provide the PAO with all relevant information, including the name(s), address, phone number, Social Security number (or Tax ID), amount related to the noncompliance, date of noncompliance, source of the requirement, and any documents that substantiate the noncompliance. In some instances, where illegal activities are suspected, OIG auditors or investigators may delay providing this information until an investigation is completed by the appropriate federal authority or the authority declines to investigate.
- D.** The terms “claim” and “debt” are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. §§ 3716, the terms “claim” and “debt” include an amount of money, funds, or property owed by a person to HUD.
- E.** If the PAO determines a debt is owed and suspects the debt to be based in whole or in part on conduct involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; the PAO must consult with Office of General Counsel (OGC) to determine if referral to the DOJ for action is required. At its discretion, DOJ may return the debt to HUD for handling in accordance with the standards and requirements described in this chapter.

### **2-2 Demand Letter**

- A.** The PAO determines if a debt is owed. If fraud, misrepresentation, or other irregularity is suspected, the PAO consults with the Office of General Counsel or the Office of Inspector General. Unless the case is placed under investigation or

audit, the PAO immediately initiates collection of the debt by sending a demand letter to each eligible (*i.e.*, not bankrupt) debtor. (A sample demand letter is included at Appendix 2)

- B.** Incorporating the Notice of Intent to Offset and Demand Letter as one document:  
The PAO should incorporate the Demand Letter and the Notice of Intent to Offset as one document. Sending them separately as two documents is allowed by HUD regulations at 24 C.F.R. § 17.65 and can be done in extenuating circumstances.
- C.** In determining the timing of the demand letter(s), the PAO should give due regard to the need to refer debts promptly to the Department of Justice for litigation. When necessary to protect the Government's interest (for example, to prevent the running out of a statute of limitations), written demand may be preceded by other appropriate actions, including immediate referral for litigation.
- D.** The demand letter should include all relevant information regarding the debt, including:
  - 1. The amount due, basis for the indebtedness, and the rights, if any, the debtor may have to seek review;
  - 2. The applicable standards for imposing any interest, penalties, or administrative costs;
  - 3. The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 calendar days from the date that the demand letter is mailed or hand-delivered;
  - 4. Clear instructions on how to make a payment, including the requirement to note on the check or money order information identifying the debtor's name, address, phone number, HUD case number, and an email address; and
  - 5. The name, address, and phone number of a contact person or office within HUD.
  - 6. If the debt could be referred for litigation, the demand letter should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163), which provides guidance for just and efficient administrative adjudication. If not included in the demand letter, the notification may be given in a separate document. Litigation counsel for the Government should be advised that this notice has been given.
- E.** The date of the demand letter should be the same as the date when it is mailed or hand delivered.

- F.** The FCCS does not provide a prescribed format for demand letters; however, for consistency, the format reflected in the sample in Appendix 3 should be used. HUD should use demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.
- G.** When any HUD employee involved in the collection of a debt learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the PAO should immediately seek legal advice from the Office of General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities.
- H.** In accordance with the FCCS, HUD personnel involved in debt collection should respond promptly to communications from debtors, within 30 calendar days whenever feasible and should advise debtors who dispute debts to furnish available evidence to support their contentions.

### **2-3 Notice of Intent to Offset (Notice)**

- A.** The PAO should incorporate the Demand Letter and the Notice of Intent to Offset as one document. Sending them separately as two documents is allowed by HUD regulations at 24 C.F.R. § 17.65 and can be done in extenuating circumstances.
- B.** HUD is required to mail a Notice of Intent to Offset to a debtor at the most recent address available at least 60 calendar days prior to referring the debt to Treasury for collection by offset against any amount payable by Treasury as a Federal payment.
- C.** The Notice of Intent to Offset must include:
  - 1. The type and amount of the debt;
  - 2. A statement of HUD's intent to use administrative offset to collect the debt; and
  - 3. An explanation of the debtor's rights under 31 U.S.C. § 3716, including:
    - a. An opportunity to inspect and copy the records related to the claim;
      - (1) The Notice must provide an address for response and inform the debtor of the obligation of the debtor to inform HUD within 20 calendar days of the date of the notice via letter to the response address that the debtor intends to inspect or copy the records related to the claim.
      - (2) The Notice must further inform the debtor that, during that 20 day period, the debtor may request that HUD provide the debtor with a copy of the departmental records related to the debt.

- b. An opportunity for a review through the HUD Office of Appeals of HUD's decision related to the claim; and
  - (1) The Notice must provide the address for the Office of Appeals and inform the debtor that the debtor has 60 calendar days in which to present evidence that all or part of the debt is not past due or not legally enforceable. Failure to submit evidence within the 60 calendar day period will result in a dismissal of the request for review by the Office of Appeals.
  - (2) The Notice must further instruct the debtor to submit a copy of the Notice along with a letter notifying the Office of Appeals of the intention to present evidence. Failure of the debtor to submit this notice does not jeopardize the debtor's right to present evidence within the 60 calendar days provided above.
  - (3) If the Office of Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after the request or review is received and docketed by the Office of Appeals.
- c. An opportunity to make a written agreement with the Secretary of HUD to repay the amount of the claim.

**2-4 Locating Debtors**

- A.** When attempting to locate a debtor in order to collect or compromise a debt, HUD may obtain a debtor's mailing address through the Department of the Treasury, Treasury Offset Program (TOP) Client database as well as from other agencies through interagency share agreements. Various skip tracing methods can also be used, including credit reports, Social Security records, voter registration records, etc.
- B.** HUD is authorized to use mailing addresses obtained in this manner to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

**2-5 Interest, Penalties, and Administrative Costs**

- A.** The FCCS requires executive agencies, including HUD, to charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. § 3717 (see exceptions below). The demand letter should include language explaining HUD's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.
- B.** HUD is required to charge interest on debts owed the United States as follows:
1. Interest shall accrue from the date of delinquency (see 3-1 for clarification), or as otherwise provided by law.
  2. Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by Treasury in accordance with 31 U.S.C. § 3717. HUD may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The reason(s) for HUD's determination that the higher rate is necessary should be documented.
  3. The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, HUD may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.
- C.** HUD is required to assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the program office and approved by the CFO.
- D.** HUD shall charge a penalty, unless otherwise established in a contract, repayment agreement, or by statute, pursuant to 31 U.S.C. § 3717(e)(2), not to exceed six percent a year on the amount due on a debt, excluding any previous charges, that is delinquent for more than 90 calendar days. This charge shall accrue from the date of delinquency.
- E.** HUD may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt"

includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. HUD will only use this option when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

- F. When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding Treasury fees, second to penalties, third to administrative charges, fourth to interest, and last to principal.
- G. Interest and administrative charges must be waived for any portion of the debt that is paid within 30 calendar days, starting from the date when interest began to accrue. HUD may extend this 30-day period on a case-by-case basis. Interest, penalties, and administrative costs charged under this section, in whole or in part, may be waived without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if HUD determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.
- H. HUD does not impose interest and related charges for periods during which collection activity has been suspended pending HUD review.
- I. HUD may impose interest and related charges on debts not subject to 31 U.S.C. § 3717, "Interest and Penalty on Claims," in accordance with the common law. To determine whether this section applies to a particular case, the Claims Officer should consult with the Office of General Counsel.

## **2-6 Receiving a Payment**

- A. HUD handles all receipts and payments for outstanding debts through numerous processes: [Pay.gov](https://www.pay.gov), lockbox contracts, Fedwire Transfers, and direct mail. The government is generally moving towards the use of online payments through Treasury authorized methods such as Paper Check Conversion Over the Counter (PCC OTC), Over the Counter Channel Application (OTCnet), Fedwire transfers, and [Pay.gov](https://www.pay.gov), a website set up by Treasury's Bureau of the Fiscal Services (BFS) to receive government payments. In addition, some receipts come through lockbox contracts, also established by Treasury. Some payments are sent to government offices, which in turn log the payments and forward them to a lockbox for deposit. Debtors are notified in the demand letter where payments are to be sent. For

regulations pertaining to payments for FHA debts, see Handbook 4740.2. Payments received at the FWAC are forwarded to a lockbox. In all cases, payments are handled in accordance with Handbook 1911.1 REV-6, *Handling and Protecting Cash and Other Negotiable Instruments*. Debt files are updated electronically where possible.

- B. If payment in full is received within the time specified in the initial notification or in any other contractual document, the debt is satisfied in full and the debtor avoids any record of delinquency. Payment in full received after a debt has become delinquent should be noted in the debtor's file for future credit reference purposes.

## **2-7 Repayment Agreements**

- A. According to the FCCS, HUD should collect the total amount of a debt in one lump sum, whenever feasible. For HUD debts, if the PAO determines that the debt cannot be paid in one lump sum, he or she shall implement a repayment agreement with the debtor. The PAO should obtain financial statements and independently verify statements from debtors who represent that they are unable to pay in one lump sum. For FHA claims, the guidelines are set forth in Handbook 4740.2. For OIG audits, the guidelines are included in Handbook 2000.06 REV-4.
- B. The PAO, should obtain a legally enforceable written agreement.
- C. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay with a maximum repayment period of ten years.
- D. Interest should be charged. The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness.
  - 1. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section.
  - 2. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.
  - 3. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Claims Officer may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed.

## **2-8 Audit Recommendations**

- A. For debts determined through review of OIG audits, the responsibility and procedures for collection are defined in Handbook 2000.06 REV-4, *Audits Management System (AMS)*, except in cases where a judgment has been entered.

- B.** In cases of debts determined through review of an audit, the PAO responsible for collecting debt is the same Action Official as defined in Handbook 2000.6 REV-4, Audits Management System (AMS). The PAO is responsible for coordinating with and reporting progress to the claims officer as well as notifying the Audit Liaison Officer assigned to the recommendations.

**2-9 Court Enforced Payments**

- A.** There are several primary stakeholders in the criminal debt data management process. Most of these stakeholders are located at the district, rather than at the national level. In the judicial branch, Courts, stakeholders are: District Court Clerk's Office and Probation Office. In the executive branch, Department of Justice, stakeholders are U.S. Attorney's Office (USAO) and their Financial Litigation Units (FLUs) and the Bureau of Prison (BOP). In cases where a criminal judgment has been entered, restitution payments are received and processed by the United States District Court Clerk's Office. The Clerk's office maintains the official docket of the case and issues copies of receipts to the debtor and the United States Attorney's Office (DOJ). Collecting debts arising from criminal and civil cases is an important and enormous responsibility for the Department of Justice. The Department's 94 U.S. USAO located throughout the country are primarily responsible for the enforcement and collection of debts owed to the United States and the victims of federal crimes. The USAOs have largely assigned this task to their Financial Litigation Units. The debt collection process is managed by the Court, and the Court determines when and whether the obligation has been fulfilled.
- B.** For OIG investigations, the OIG forwards a copy of Form 15G to the FWAC for information and action. The form provides information that is useful in establishing a receivable for a court-enforced payment. For judgments involving FHA debts, Form 15H is used.