

CHAPTER 4. DEBT DISPOSITION

4-1 Referring to Justice

- A. Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity for valid, legally enforceable HUD debts with a principal amount due of greater than \$100,000, criminal restitution debts for any amount, or any debt involving fraud, misrepresentation, or a false claim. However, based on Treasury Debt Management Services' Cross-Servicing Technical Bulletin Number 09-03, if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury, collection action may be terminated on debts with a principal balance of \$500,000 or less without prior approval from DOJ.
- B. Delinquent debts are referred to the Department of Justice by the DCCO or Treasury on HUD's behalf. Debts are referred prior to compromising, suspending or terminating collection action on any HUD debt greater than \$100,000 (or \$500,000 if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury).

4-2 Compromise

A. Basis for Compromise

In establishing procedures for the compromise of debts, PAOs and Claims Officers should refer to 31 C.F.R. part 902, *Standards for the Compromise of Claims*, which describes the scope, limitations, basis, and review standards for compromising debts.

1. A debt may be compromised if it cannot be collected in full because one or more of the following criteria apply:
 - a. The debtor is not able to pay in full in a reasonable time, as verified through financial statements, credit reports, or other financial documentation;
 - b. HUD is not able to collect the debt in full within a reasonable time by enforced collection proceedings;
 - c. The cost of the additional collection measures required to collect the debt in full exceeds the additional collection amounts that are likely to be recovered;
 - d. There is significant doubt concerning the Government's ability to prove its case in court.
2. Compromise settlements may be paid in a lump sum or by installment. Installment agreements should be for as short a period as possible, due to the

added time and administrative expense. The basis for accepting an installment agreement should be sufficiently justified and documented, and the payment agreement must be in writing and include a covenant that the agreement to compromise the debt is null and void with all prior payments retained and applied to the full unpaid balance of the debt if the debtor defaults on the payment agreement. (See Section 2-6. F. regarding interest on repayment agreements.)

B. Joint and Several Liability

1. Many debts owed to HUD involve two or more debtors who are jointly and severally liable. A decision to compromise or settle a debt must be based on one or more of the factors outlined above and should consider the individual financial circumstances of each debtor.
2. A compromise of the debt results in the release of liability of all debtors, the release of any security held, and the termination of further collection actions. When appropriate, the portion of the debt that is uncollected and cancelled is reported to the IRS and to the debtor(s) via form 1099C as required by the IRS tax code.
3. A partial settlement is where one (or more) debtor(s) is released from liability (or security for the debt is released or subordinated), but where other debtor(s) remain on the account. As collection actions continue after a partial settlement, no 1099C reporting is made regarding the released debtor(s). The amount accepted as a partial settlement for one debtor is not to be considered as a precedent in determining an amount that would be sufficient for the release of other debtors.

C. Evaluation and Documentation

1. Each compromise/settlement offer should be documented in writing. This documentation should include (1) the specific terms of the settlement, (2) the basis for the decision with supporting documentation (Financial Statement, Credit Report, etc.), and (3) the signature of the official who made the final decision.
2. Information about each Settlement Offer should be maintained in a log for tracking and management reporting.
3. The final decision should be communicated in writing to the debtor(s) with clear instructions regarding how/where to remit payment, and disclosure regarding the terms of the settlement including information on IRS Form 1099C reporting.

D. Payment by Installment. HUD discourages compromises payable in installments due to the time and administrative expense involved.

1. If the Claims Officer determines that a compromise in installments is necessary, he or she should obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated.
2. Whenever possible, the agreement should include obtaining security for repayment in the manner set forth in part 901 of the FCCS.
3. The agreement should incorporate as few payments as possible, with the term of repayment not to exceed three months.
4. For FHA claims, the guidelines are set forth in Handbook 4740.2. In the case of repayment of debts sustained in OIG recommendations, the guidelines in Handbook 2000.06 REV-4 will be followed.

E. Releases and Reporting

1. No compromise is final until all required payments have been received and credited, and until all other terms of the settlement have been met. At that time, appropriate releases should be issued as soon as possible.
2. The appropriate collection system should be updated to reflect the settlement. In the case of a partial settlement, the debtor status should be updated as necessary for the appropriate debtor(s) in order to cease future collection actions. In the case of a full compromise, the appropriate financial transaction should be authorized and processed to cancel the remaining balance on HUD's records. When appropriate, HUD must issue IRS Form 1099C reports to the debtor(s) and to the IRS by January 31 of the year following the cancellation of the debt.

4-3 Suspension of Collection Activity

Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on any debt 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.

- A.** The HUD Claims Officer may suspend collection activity on a debt when DOJ approval is not required and:
1. The debtor cannot be located;
 2. The debtor is unable to pay, but the debtor's financial condition is expected to improve; or
 3. The debtor has requested a waiver or review of the debt.

- B.** Based on the current financial condition of the debtor, the Claims Officer may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

 - 1. The applicable statute of limitations has not expired; or
 - 2. Future collection can be affected by administrative offset, notwithstanding the expiration of any applicable statute of limitations for litigation of claims; or
 - 3. The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.
- C.** The HUD Claims Officer must suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits collecting the debt during that time.
- D.** If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, the Claims Officer may use discretion, on a case-by-case basis, to suspend collection.

 - 1. If, for a given case, HUD is prohibited by statute or regulation from issuing a refund of amounts collected prior to consideration of the debtor's request, the Claims Officer should suspend collection action upon a request for waiver or review.
 - 2. However, the Claims Officer should not suspend collection when it is determined that the request for waiver or review is frivolous or was made primarily to delay collection.
- E.** When it is learned that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. §§ 362, 1201, and 1301, unless the Claims Officer can clearly establish that the automatic stay has been lifted or is no longer in effect. The Claims Officer should seek legal advice immediately from the Office of the General Counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by HUD to the debtor until relief from the automatic stay is obtained. (See also Section 2-10.)

4-4 Termination of Collection Activity

It is the policy of HUD to refer all eligible delinquent debts to Treasury BFS for cross-servicing at the earliest possible date. Collection may be terminated without referral to cross-servicing, if any of criteria 3 through 6 below are met. In this instance, the case should be closed out as soon as possible.

- A.** The DCCO may terminate collection activity when:
1. HUD is unable to collect any substantial amount through its efforts or those of Treasury BFS, private collection agencies, or the DOJ, as appropriate;
 2. The debtor or assets of the debtor cannot be located;
 3. Costs of collection are anticipated to exceed the amount recoverable;
 4. The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
 5. The debt cannot be substantiated; or
 6. The debt against the debtor has been discharged in bankruptcy.
- B.** BFS is responsible for aggressive collection action, including referral to private collection agencies, referral to the DOJ for litigation, and administrative wage garnishment as appropriate. Thus, collection action may be terminated for all debts returned uncollected from BFS cross-servicing. Based on Debt Management Services' Cross-Servicing Technical Bulletin Number 09-03, if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury, collection action may be terminated on debts with a principal balance of \$500,000 or less without prior approval from DOJ.
- C.** Before terminating collection activity, HUD should have pursued all appropriate means of collection, and the Claims Officer has determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude HUD from retaining a record of the account for purposes of:
1. Selling the debt, if HUD determines that such sale is in the best interests of the United States;
 2. Pursuing collection at a subsequent date in the event there is a change in the debtor's status, or a new collection tool becomes available;
 3. Offsetting against future income or assets not available at the time of termination of collection activity; or
 4. Screening future applicants for prior indebtedness.
- D.** Generally, the DCCO shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. HUD 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, HUD's claims as a known creditor of a debtor may survive a discharge if HUD did not receive

formal notice of the proceedings. The DCCO should seek legal advice from the Office of the General Counsel if it is believed that claims or offsets may survive the discharge of a debtor.

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

4-5 Discharge of Indebtedness

A. Basis for Discharge

A debt is discharged (also referred to as cancelled or as forgiven) when it is closed out without collection in full. When a debt is closed out, the DCCO has determined that no further active or passive debt collection will be taken. A write-off of the debt and a decision to terminate collection action must occur prior to close out.

B. Close Out

When a debt is closed out, all collection actions cease including referral to the Treasury Offset Program. While payments may be accepted after close out, e.g., to clear credit or a lien problem(s), the debt is no longer reflected in HUD's records as an active or CNC debt/receivable.

C. Evaluation and Documentation

1. All close-out actions must be documented in writing. This documentation should include the basis for the decision with applicable supporting documentation and the signature of the official who made the final decision.
 - a. If DOJ approval is required, a written justification and recommendation should be prepared and sent with appropriate supporting documentation to DOJ for the decision.
 - b. However, based on Debt Management Services' Cross-Servicing Technical Bulletin Number 09-03, if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury, collection action may be terminated on debts with a principal balance of \$500,000 or less without prior approval from DOJ.
2. Close outs must be reported to BFS on the quarterly Treasury Report on Receivables.

4-6 IRS Form 1099C

- A. All eligible discharged/closed out debts must be reported to the IRS on Form 1099C by January of the year following discharge of the debt and these amounts must be

reported to BFS on the Treasury Report on Receivables within the same reporting period that the 1099Cs were actually filed with the IRS.

- B.** Each January, all debts that were closed out during the preceding calendar year should be evaluated to determine if a 1099C report should be issued. The criteria for this task should be based on the written instructions issued by IRS for the applicable tax year. The 1099C data is transmitted to IRS (electronically or on paper) and paper 1099C forms are mailed to the appropriate debtor(s) to their last known address. A report of all 1099Cs issued should be produced to monitor this process and to aid in responding to debtor inquiries.