

Appendix A – Sample Notice and Demand Letter/Management Decision Letter

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [Optional]

[Date]

[Name of Recipient/Debtor]

[Address Line 1]

[Address Line 2]

[Add “Attn:” and Name & Title of General Partner, Corporate President, or State Governmental Official, as appropriate, for Organizational Recipients/Debtors.]

RE: [Name of Recipient/Debtor] (Recipient)

Management Decision (Letter)

Financial Assistance Agreement Number: _____ (Agreement)

Audit Report Number: _____ (Audit Report)

Dear _____:

Recipient entered into the Agreement with the U. S. Department of Commerce, [Operating Unit] (Agency). An audit has been performed relating to the Agreement, the Audit Report prepared, and Recipient provided a copy of the Audit Report. The Agency has reviewed the Audit Report (which includes Recipient comments, if any), determined that Recipient owes the Agency a refund, and established a debt in the amount of that refund. A summary of the financial and non-financial findings in the Audit Report, and the Agency’s resolution of them, is enclosed as Exhibit A.

Debt and Demand for Payment

There is currently owing and unpaid by the Recipient to the Agency a debt, described above, in the amount of \$_____ principal, plus interest thereon at the rate of ____ % per annum. Demand is hereby made for payment in full within 30 calendar days of the date of this Letter (Due Date). The amount demanded should be paid in one lump sum by the Due Date in accordance with the bill enclosed as Exhibit B. [Obtain bill from agency setting up the account receivable. Assure that the content of the bill does not conflict with the terms of this Letter.]

Under the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701 *et seq.*, and 15 CFR Part 19, interest will accrue on the principal, or any portion thereof, owing and unpaid from the date of this Management Decision Letter until the debt is paid in full. However, interest will automatically be waived on any portion of the principal that is paid within 30 days. The rate of interest that Recipient will be assessed is specified above and was determined in accordance with 31 U.S.C. § 3717.

The debt will be delinquent if not paid in full by the Due Date. If the debt becomes delinquent, interest will continue to accrue on the principal balance remaining due and unpaid at that time, and Recipient will also be assessed both a penalty charge and, to cover the cost of processing and handling the delinquent debt, an administrative charge.

The penalty charge will accrue on the principal, or any portion thereof, owing and unpaid from the date of delinquency, 31 days after the date of this Management Decision Letter, until the debt is paid in full. However, the penalty charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency. The penalty charge is ____ % per annum [**maximum of 6.0%**] and the administrative charge is \$____ [**currently \$25.00**]. Both charges are in accordance with 31 U.S.C. § 3717.

Interest and penalty charges will continue to be added until the entire debt has been paid in full. This includes payment of all principal, interest, and penalty and administrative charges. Keep in mind that any sums received will be applied first to administrative and penalty charges, then to interest, and lastly to principal.

Collection Actions

The Agency is entitled to take all appropriate steps to collect delinquent debts and will do so in this case if the debt is not paid as demanded above. Those steps may include:

- referring the debt to the U.S. Department of the Treasury for offset of Recipient's income tax refunds, Recipient's contractor/vendor payments and any other Federal payments, including but not necessarily limited to certain benefit payments and loans to Recipient, that are not exempt from offset;
- referring the debt to a private collection agency;
- reporting the debt to a credit bureau;
- referring the debt to the U.S. Department of Justice for litigation;
- reporting the debt, if discharged, to the Internal Revenue Service as potential taxable income;
- referring the debt to the U.S. Department of the Treasury for any of the above-described actions, which referral is required when the debt has been delinquent for 180 days; and
- performing administrative offset or common law set-off of the debt against any payments or credits that may be owned to Recipient by the Agency.

Also, failure to pay the debt by the Due Date could result in payments being withheld under any current Agency awards to Recipient and in the termination of such awards. In addition, Recipient will become ineligible for Federal loans (except disaster loans), loan insurance or guaranties. Persons controlled by [or controlling] [**Add for Organizational Recipients.**] Recipient may be similarly ineligible. Also, it is U. S. Department of Commerce policy that no award of Federal funds shall be made to a grant or cooperative agreement applicant who has an outstanding delinquent debt to the Department. [Finally, the Agency may deny, suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of Recipient to pay the debt.] [**Add where agency has such authority.**]

The Agency believes that the payment of this debt is entitled to priority treatment in accordance with 31 U.S.C. § 3713. Failure to satisfy the Agency's claims before paying the claims of other creditors may result in the personal liability of one or more of Recipient's officers, employees or other representatives for this debt.

Inspection and Copying of Documents

Recipient has the right to inspect and copy the agency records related to the debt as determined by the responsible agency official(s). However, with respect to this debt, the responsible agency official(s) has (have) determined that all documents have been previously provided to Recipient or are being provided herewith. These documents include the applicable Financial Assistance Agreement, the Audit Report, and this Management Decision Letter. If Recipient wishes additional copies, the Agency point of contact identified at the end of this letter will, upon request, explain the procedures for inspecting and copying the originals. [If this is a special case with additional or different documents, refer to and enclose such records as are needed to support the proper establishment of the debt. Consult with legal counsel respecting such cases.]

[Waiver of Indebtedness and] [Insert where applicable.] Repayment Agreement

[Recipient has the right to request, pursuant to _____, a waiver of all or a portion of the indebtedness. **[Add applicable statutory and regulatory authorities. Contact legal counsel for advice in this regard.]** If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Management Decision Letter or, if Recipient files a Request for Reconsideration, discussed below, then together with that Request. These will be Recipient's only opportunities to do so.] **[Insert where applicable.]**

Recipient also has the right to request to enter into a written repayment agreement with the responsible Agency official(s) to repay the debt, including interest, penalties and administrative charges determined by the Agency. If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Letter or, if Recipient files a Request for Reconsideration, discussed below, then within 10 days of the Agency issuing to Recipient a decision on such Request (Reconsideration Determination). These will be Recipient's only opportunities to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency's decision(s) on Recipient's request(s), interest and, should the debt become delinquent, penalty and administrative charges, will continue to accrue unless and until the debt is paid in full.

[To request a waiver, Recipient must submit an explanation of why, under the pertinent facts and the applicable legal authority, Recipient should be granted a waiver of all or part of the indebtedness. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the Agency at the address specified below for the filing of a Request for Reconsideration. The Agency will consider all evidence submitted in a timely manner and, in due course, issue a Reconsideration Determination to Recipient and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.] **[Insert where applicable.]**

To request to enter into a repayment agreement, Recipient must complete and return the Financial Statement form [U.S. Department of Justice OBD-500 or OBD-500C for individual or corporate recipients, respectively] [Insert appropriate form designation.], enclosed as Exhibit C [D if special documents related to the debt are attached as discussed above.], together with a proposed repayment schedule or, if Recipient is unable to pay the full amount of the debt, a settlement proposal in lieu of the

schedule. This submission must be timely made to the Agency at the address specified below for filing a Request for Reconsideration. The Agency will review all information and materials submitted in a timely manner and any obtained from other sources (e.g., credit reports), and, in due course, issue a Reconsideration Determination to Recipient.

Request for Reconsideration

Recipient has the right to request that the Agency reconsider this Management Decision Letter, including providing Recipient with a review of any indebtedness established (Request for Reconsideration). If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Management Decision Letter. This will be Recipient's only opportunity to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency's Reconsideration Determination, interest and should the debt become delinquent, penalty and administrative charges will continue to accrue unless and until the debt is paid in full. The exception would be if the Agency and Recipient previously entered into a written repayment agreement, in which case that agreement would apply.

To request reconsideration, Recipient must file a Request for Reconsideration containing an explanation of why, under the pertinent facts and the applicable legal authority, Recipient disagrees with this Management Decision Letter. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the address specified below. The Agency will consider all evidence submitted in a timely manner and, in due course, issue to Recipient a Reconsideration Determination and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.

The original and one copy of a Request for Reconsideration must be timely filed with the Agency at:

US Department of Commerce
[Operating Unit]
1401 Constitution Avenue, NW, Room _____
Washington, DC 20230
Attn: [Agency Point of Contact]

Contemporaneously with filing such a Request, submit one copy thereof to:

US Department of Commerce
Office of the Inspector General
Principal Assistant IG for Audit and Evaluation
1401 Constitution Avenue, NW, Room 7721, MS H7721
Washington, DC 20230
Attn: [Name and Title of Appropriate OIG Official]

[Other Rights] [Add when applicable.]

[Recipient's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service provided that the spouse is not also delinquent on a debt to the United States.]
[Add for Individual Recipients.]

[If there are any rights and remedies available to Recipient under programmatic statutory or regulatory authority under which the debt arose, state what they are and how they may be exercised. Consult with legal counsel respecting such provisions.]

Civil and Criminal Penalties

If you knowingly make or provide any false or frivolous statements, representations or evidence, you may be liable for civil penalties under the False Claims Act, as amended, 31 U.S.C. § 3729, *et seq.*, or other applicable law; and/or subject to criminal penalties under 18 U.S.C. §§ 286, 287, 1001 and 1002, or other applicable law.

Agency Point of Contact

Please direct any questions regarding this matter and, also, any notice that Recipient has filed bankruptcy, to _____, the Agency point of contact, at the address for filing a Request for Reconsideration, above, or at (____) ____-____.

Sincerely,

[Name and Title of Responsible Official]

Enclosures

cc: _____, Principal Assistant IG for Audit and Evaluation