

## 14. ESTABLISHMENT AND COLLECTION OF FINANCIAL ASSISTANCE-RELATED DEBTS

---

### A. Standards for the Establishment and Collection of Debts

---

In accordance with DOC credit and debt management procedures, debts owed to DOC and its operating units, shall be properly and promptly established, billed, and collected. The authorities listed below must be adhered to in the establishment and collection of debts:

1. Debt Collection Act (DCA) of 1982, as amended (31 U.S.C. § 3701 *et seq.*), and the Federal Claims Collection Standards (31 CFR Parts 900-904);
2. DOC debt collection regulations set forth in 15 CFR Part 19 (Commerce Debt Collection);
3. 2 CFR § 200.346 (Collections of amounts due);
4. DAO 213-5 (Audit and Evaluation Resolution and Follow-up);
5. DOC Office of Financial Management's Credit and Debt Management Operating Standards and Procedures Handbook (Debt Management Handbook);
6. OMB Circular A-129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables); and
7. Any other relevant laws, regulations, OMB circulars, and DOC policies, including any DOC operating unit-specific policies and procedures.

### B. Establishment of a Debt

---

1. Debts owed to DOC are often established as a result of a financial assistance audit resolution between DOC and a recipient or subrecipient. The establishment of an audit-related debt must follow the substantive and due process notice requirements set forth in 31 U.S.C. § 3716(a), 15 CFR § 19.4, DAO 213-5, and Chapter 8 of the Debt Management Handbook.
2. Debts owed to DOC may be established for other reasons, such as the disallowance of costs by a Grants Officer, or failure of a recipient or subrecipient to meet cost sharing requirements. In such cases, the Grants Officer will notify the recipient or subrecipient in accordance with 15 CFR § 19.4 and Chapter 8 of the Debt Management Handbook. The Grants Officer will also coordinate the recipient's billing with accounting and other appropriate offices.
3. Both the audit resolution and debt collection processes require that debtors be given written notice concerning the debt and an opportunity to inspect and copy non-privileged records pertaining to the DOC debt. All reasonable efforts should be made to satisfy the requirements in a single process. In particular, the management decision letter should, wherever reasonably possible, also serve as a demand and notice of intent letter as required by the DCA, as amended. *See* 15 CFR § 19.4 for the elements that must be contained in the notice and demand letter; *see also* Debt Management Handbook, Chapter 8. A sample notice and demand letter is set forth in Appendix A of this Chapter.

## C. Debt Collection

---

1. DOC entities shall fairly and aggressively collect debts owed to DOC in accordance with the DCA, 15 CFR Part 19, and Chapter 8 of the Debt Management Handbook. In this connection, DOC operating units shall use Debt Work Groups for follow-up with debtors and for the collection of delinquent debts.

2. A DOC financial assistance-related debt becomes delinquent when payment in full has not been made by the due date specified in the operating unit's initial written demand for payment. The due date is generally between 30 and 60 calendar days from the date upon which the debt is established, unless other payment arrangements have been made between the operating unit and the debtor (*e.g.*, an installment payment plan).

3. Delinquent debts shall be assessed the following charges (*see*, 31 CFR § 901.9, 15 CFR Part 19.5, and the Debt Management Handbook Chapter 8):

a. An interest charge on the amount due shall be applied and collected.

- Interest will automatically be waived on any portion of the principal that is paid within 30 calendar days from the date upon which the debt is established.
- If the debt is not paid within 30 calendar days from the date upon which the debt is established, interest will accrue on the principal, or any portion thereof, owing, and unpaid from the date the debt is established until it is paid in full.
- The minimum annual rate of interest to be charged is the Department of the Treasury's (Treasury) Current Value of Funds. This rate is published annually in the *Federal Register* by Treasury and is available on Treasury's Bureau of the Fiscal Service website. The assessed rate shall remain fixed for the duration of the indebtedness.

b. A penalty charge, not to exceed six percent a year, shall be added to delinquent debts. The charge will accrue on the principal, or any portion thereof, owing, and unpaid from the date of delinquency, 31 days after the date the debt is established, until it is paid in full. However, the charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency.

c. An administrative charge (currently \$25.00) shall be applied to cover the processing and handling of the amount due.

d. In most cases, interest, penalties, and administrative costs will continue to accrue during any period when collection has been suspended for any reason (*e.g.*, a debtor requested an audit appeal) (*see* 15 CFR § 19.5(c)).

e. For specific information on waiving interest, penalties, or administrative costs, refer to 15 CFR § 19.5(b) and Chapter 8 of the Debt Management Handbook.

4. The Grants Officer shall advise the recipient that payment of debts cannot be from:

- Funds received from DOC,

- Funds from other Federal financial assistance awards (including program income generated under such awards), or
- A reduced level of program activity.

5. Section 5 of the Digital Accountability and Transparency (DATA) Act of 2014 amends 31 U.S.C. § 3716(c)(6), Administrative Offset, and requires agencies to refer to Treasury valid, delinquent non-tax debts for the purpose of administrative offset at 120 days. DOC is cross serviced by Treasury for administrative offset. As a result, effective October 1, 2015, all debts delinquent by more than 120 days must be referred to Treasury for cross-servicing, which will allow for referrals to Treasury for administrative offset. *See Debt Management Handbook, Chapter 8, Section 1.0.* DOC debts delinquent for less than 120 days may be transferred for cross-servicing at the election of DOC. The appropriate official must comply with notification requirements contained in 15 CFR Part 19, before debts are transferred to Treasury for action. *See also* 31 CFR Part 901 (Standards for the Administrative Collections of Claims).

#### D. Impact of Delinquent Federal Debts on Award Eligibility

1. Delinquent debtors are ineligible for and prohibited from obtaining Federal loans, loan insurance or guaranties. As required by 31 U.S.C. § 3720B and 31 CFR § 901.6, DOC operating units will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person or organization delinquent on a debt owed to a Federal agency. This prohibition does not apply to disaster loans, unless otherwise required by statute, and DOC entities may extend credit after the delinquency has been resolved. *See* 15 CFR § 19.17(a) for situations where a waiver of ineligibility may be granted.

2. A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to DOC funds that the debtor is entitled to as a beneficiary. *See* 15 CFR § 19.17(b) for situations in which this prohibition may be waived.

3. Unless otherwise prohibited by law and in accordance with 15 CFR § 19.17(c), operating units with the authority to do so under the circumstances should deny, suspend or revoke licenses, permits or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The DOC operating unit responsible for distributing the licenses, permits or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors.

4. In accordance with 15 CFR § 19.17(d), it is the policy of DOC that no award of Federal funds shall be made to an applicant who has an outstanding delinquent DOC debt until:

- a. The delinquent account is paid in full;
- b. A negotiated repayment schedule is established and at least one payment is received; or
- c. Other arrangements satisfactory to DOC are made.

5. Once an outstanding receivable becomes a delinquent Federal debt, no further awards to the recipient may be considered until the debt is paid, except in circumstances cited in subparagraph 4, above, and discussed in subparagraph 6, below. This includes debts that have been written off, but not

yet closed out. Although a delinquent debt becomes inactive once it is written off and the operating unit takes no further action to collect it, the debt is still owed to the Federal Government. If, however, the debt is then closed out by the Finance/Accounting Officer, no further collection action may be taken after the debt is reported to the IRS on Form 1099-G (Certain Government Payments) as income to the debtor.

6. Federal policy as established under OMB Circular A-129 (Policies for Federal Credit Programs and Non-Tax Receivables) requires the aggressive but fair management of Federal receivables. It is the general policy of DOC that delinquent outstanding receivables be repaid in full in a lump sum. Mitigating circumstances may exist which justify issuance of an award outside the parameters of the policy if a repayment schedule is negotiated and approved and one payment received, or other arrangements satisfactory to DOC are made before an award is issued. Issuance of an award to a recipient who has an outstanding debt must be in accordance with the guidance provided below. The steps taken to safeguard the Federal Government's interests until repayment is made must be noted in the official award file.

a. If a recipient is unable to repay the delinquent debt in one lump sum, a repayment schedule may be formally negotiated and entered into by the operating unit and the recipient. As long as the recipient is making payments in accordance with the repayment schedule, a new award may be made. Recipients must be placed on a reimbursement payment method until the debt is paid unless the Grants Officer authorizes other arrangements.

(1) The Finance/Accounting Officer shall notify the Grants Officer and recipient when payment on a repayment schedule is 10 calendar days delinquent.

(2) The Grants Officer may suspend payments under any current award(s) if payment on a repayment schedule is 14 calendar days delinquent. The Grants Officer must suspend the current award(s) when payment is 30 calendar days delinquent unless the Grants Officer determines and sets forth in writing the reasons that it is not in the best interest of the Federal Government to do so. This written determination shall become part of the official award file. Before sending the request to suspend an award to the Finance/Accounting Officer and the notification of suspension to the recipient, the Grants Officer must verify with the Finance/Accounting Officer that the repayment schedule remains delinquent.

(3) Suspended awards may be reactivated when payment on the repayment schedule becomes current.

(4) The Grants Officer may terminate a suspended award based on nonpayment of the debt.

b. Other extraordinary circumstances may exist which may warrant proceeding with an award prior to repayment of a delinquent debt. Circumstances that merit such action include:

(1) The recipient has acknowledged that it owes the debt, and has made satisfactory arrangements to repay; or

(2) The debt is reported as unpaid as a result of an error; or

(3) When a determination is made that:

(i) There may be sufficient justification for delaying repayment of the debt that merits further investigation; and

(ii) Not proceeding with the award will frustrate successful achievement of programmatic goals.

The Program Officer shall prepare and sign a written justification for the concurrence of the Grants Officer, who shall maintain the documentation in the official award file. The justification must have the concurrence of the Head of the operating unit or designee and be included in the official award file.

## E. Exceptions

---

The procedures set forth in this chapter are applicable to all operating units except those that are not subject to the disposition of claims under the DCA or its implementing regulations. Where an operating unit is not required by law to follow DCA procedures, it must develop and follow its own alternative procedures, but to the extent feasible, it also must comply with and employ the guidelines set out in this chapter. As set forth in Debt Management Handbook, Chapter 8, Section 1.0, an operating unit may follow procedures that differ from those in Chapter 8 of the Debt Management Handbook (which are summarized in this Chapter of the DOC Federal Financial Assistance Manual) only if approval of alternative procedures has been granted in writing by the Deputy Chief Financial Officer and Director for Financial Management. Any request for authority to deviate from these procedures must be submitted to the Deputy Chief Financial Officer and Director for Financial Management and be accompanied by the proposed alternative in detail.