

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

Recoupment means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

Salary offset means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514 to satisfy a debt that person owes the Government.

Secretary means the Secretary of Agriculture, unless otherwise specified.

Settlement or debt settlement means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

Tax Identification Number or TIN means the identification number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or employer identification number (EIN).

TOP means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

Treasury means the United States Department of the Treasury.

USDA means the United States Department of Agriculture.

Withholding of payment means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility and may delegate and authorize the re-delegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities will be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency will follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency will give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1.

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When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) In demand letters, the USDA creditor agency will inform the debtor:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with §3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) Of any willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (see §3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office;

(6) The intent to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset the debtor's USDA payments and refer the debtor's debt to TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) Refer the debt to a private collection agency.

(iii) Report the debt to a credit reporting agency in accordance with §3.12;

(iv) Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) Refer the debt to Justice in accordance with §3.21 to initiate litigation to collect the debt;

(vi) Refer the debt to Treasury for collection in accordance with subpart C of this part;

(7) How the debtor may inspect and copy records related to the debt;

(8) How the debtor may request an administrative review of the determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see subpart F of this part);

(9) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see subpart G of this part);

(10) How a debtor may request a waiver of the debt, if applicable;

(11) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (see <http://www.irs.gov>);

(12) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(13) That certain debtors may be ineligible for government loans, guarantees, and insurance (see §3.14);

(14) If applicable, the intention to suspend or revoke licenses, permits, or privileges (see §3.14); and

(15) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(16) The debtor's right to appeal the determination in accordance with applicable appeal procedures;

(17) The debtor's right to present evidence that all or part of the debt is not past-due or not legally enforceable.

(c) A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt. In the case of foreign debt that is subject to insolvency or bankruptcy proceedings outside the United States, a USDA creditor agency may, in lieu of a demand letter, submit such documentation necessary to establish its claim as a creditor.

(d) Agencies will exercise care to ensure that demand letters are mailed or delivered (as applicable for the program) on the same day that they are

dated. There is no prescribed format for demand letters. Agencies will utilize 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.

(e) Agencies will respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, administrative offset, the procedures applicable to offset must be followed (see subpart D of this part). The availability of funds or money for debt satisfaction by administrative offset, and the agency's determination to pursue collection by administrative offset, will release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies will advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification complies with Executive Order 12988 (58 FR 51735, October 4, 1993) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government will be advised that this notice has been given. In general, only one agency should service a debt at a time; that is, agencies should not simultaneously refer a debt to both Treasury and Justice for collection.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately request legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency is advised that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity

against the debtor must stop immediately. The agency should take the following steps:

(1) After requesting legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may request relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies may request legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also may request legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting of debts to Credit Reporting Agencies.

(a) In demand letters to debtors sent in accordance with § 3.11, agencies will inform debtors:

(1) The intent of the agency to report the delinquent debt to credit reporting agencies after 60 days;

(2) The specific information to be transmitted (that is, name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (that is, repayment in full or a repayment agreement); and

(4) The rights of the debtor to request review of the existence of the debt in accordance with subpart F of this part.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F of this part, the agency need not duplicate such notice and review opportunities