MANAGING FEDERAL RECEIVABLES

A Guide for Managing Loans and Administrative Debt

BUREAU OF THE
Fiscal Service
U.S. DEPARTMENT OF THE TREASURY

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GLOSSARY

Purpose of Managing Federal Receivables

The purpose of "Managing Federal Receivables," is to provide Federal agencies with a general overview of standards, guidelines, and procedures for the successful management of Federal activities ranging from the extension of credit or financial assistance to closing-out uncollectible debts. **Agency personnel who manage Federal credit programs and accounts receivable should also familiarize themselves with the laws, regulations, policies and procedures specific to their agency's programs.** Agencies should use the parts of these guidelines which pertain to their credit management and debt collection activities and types of debt. The appendices include various checklists, documents and the appropriate references to assist agencies in managing their credit and debt collection activities. A glossary of relevant terms is also included at the end of the document. This edition supersedes the prior version of "Managing Federal Receivables" dated July 1994.

Since 1994, many changes have been made to Federal credit extension and debt collection policies and procedures. Federal agencies are now required to use credit reports as a screening tool and have applicants certify the accuracy of their initial application for assistance. There are also several new delinquent debt collection techniques, most notably, the requirement to refer debts that are delinquent 180 days or more to Treasury's (Treasury) Financial Management Service (FMS). This document provides guidance on these and other changes to laws and policies governing Federal receivables management and is consistent with the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA); the revised Federal Claims Collection Standards (FCCS -31 CFR Parts 900-904) published November 22, 2000; and the revised Office of Management and Budget (OMB) Circular No. A-129 published November 29, 2000

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Scope and Coverage

This document covers credit extension and receivables management functions related to:

- **all direct loans** where the Federal Government has disbursed funds to a borrower and enters into a contract with the borrower for repayment;
- **defaulted guaranteed loans** where, under a guarantee or insurance agreement, the Federal Government has reimbursed a private financial institution or other entity for a borrower's default and assumed responsibility for recovering any outstanding amounts;
- **financial contracts** designed to support borrowing;
- **grant programs and contracts** where financial responsibility is a factor; and
- **administrative debt**, such as fines, fees, penalties and overpayments.

The standards, guidelines and procedures described in this document generally must be followed by all Federal agencies for all types of debt, unless otherwise provided by law. The standards, guidelines and procedures do not apply if they are statutorily prohibited or are inconsistent with statutory requirements. See, for example, Chapter 6, Delinquent Debt Collection, Overview (page 6-1).

For the purposes of this document, the term "Federal agency" includes all Federal agencies and Government corporations defined under 5 U.S.C. 105 and all other Federal instrumentalities, **unless** the application of a particular portion of this document is specifically prohibited by statute. The term “Federal agency” also includes judicial and legislative agencies to the extent authorized by law. See, for example, 31 U.S.C. 3701 *et seq*. requiring judicial and legislative agencies to collect delinquent debts using specified collection remedies.

Key Related Legislation, Regulations and Guidance

This document incorporates the relevant provisions of the:

- **Federal Claims Collection Act of 1966 (FCCA)** which authorized agencies to collect delinquent debt;
- **Debt Collection Act of 1982 (DCA)** which expanded the Federal Government's right to use debt collection tools such as offset, credit bureau reporting and private debt collection agencies;
- **Deficit Reduction Act of 1984** which added tax refund offset as a debt collection tool;
- **Chief Financial Officers Act of 1990 (CFO Act)** which instituted effective financial management practices for the Federal Government and provided for the improvement of the Government's financial management, accounting, and internal control systems;
- **Federal Credit Reform Act of 1990** which required agencies to estimate a credit program's subsidy cost for direct and guaranteed loans for inclusion in budget outlays;
- **Federal Debt Collection Procedures Act of 1990 (FDCPA)** which established a uniform process through the court system for collecting debts owed the Federal Government and provides for uniform procedures for enforcing judgments to collect Federal debts;
- **Administrative Dispute Resolution Act of 1990 (ADRA)** which temporarily raised the authority of agencies to compromise, suspend, and terminate collection action to $100,000 and gives the Attorney General the authority to increase this threshold administratively. This authority was made permanent by the *Debt Collection Improvement Act of 1996;*

- **Cash Management Improvement Act Amendments of 1992 (CMIAA)** which expanded the use of tax refund offset;

- **Omnibus Budget Reconciliation Act of 1993 (OMBRA), as amended,** which mandated that agencies, including the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration, report discharged debts to the Internal Revenue Service as income to the debtors;

- **Department of Justice 1994 Appropriation Act** which authorized the Department of Justice to charge a 3% administrative fee on amounts collected;

- **Debt Collection Improvement Act of 1996 (DCIA)** which centralized offset and other administrative debt collection procedures at the Treasury; bars delinquent debtors from obtaining Federal loans, loan insurance or loan guarantees; mandates credit bureau reporting; and authorizes administrative wage garnishment;

- **General Accounting Office Act of 1996** which transferred from the General Accounting Office to Treasury certain authorities, including the authority to promulgate the Federal Claims Collections Standards with the Department of Justice;

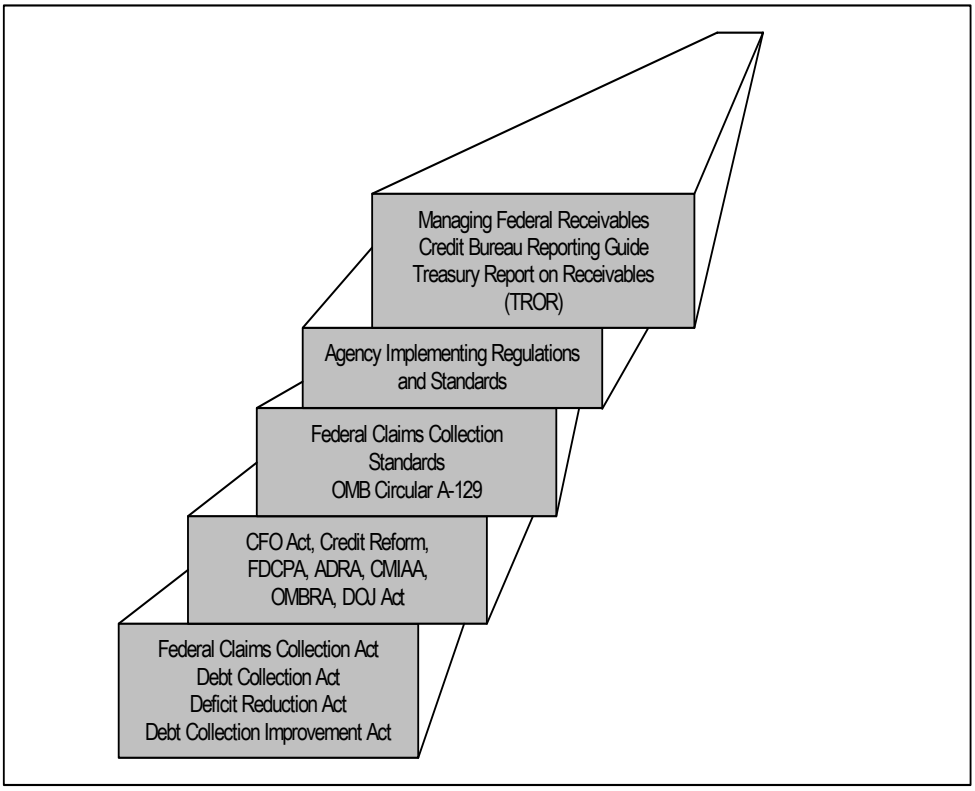
- **Federal Claims Collections Standards (FCCS) (revised November 22, 2000)** which clarified and simplified Federal debt collection procedures and reflects changes under the DCIA and the General Accounting Office Act of 1996;

- **Treasury Regulations** which establish rules for certain debt collection tools such as centralized administrative offset, cross-servicing and administrative wage garnishment, as well as standards for barring delinquent debtors;

- **Office of Personnel Management Salary Offset Regulations** which established rules and process for offsetting the salaries of federal employees to collect delinquent nontax debt; and

- **OMB Circular No. A-129 "Policies for Federal Credit Programs and Non-Tax Receivables"** which established policies and procedures for justifying, designing and managing Federal credit programs and for collecting outstanding receivables.

Key Credit Related Laws and Policies



Responsibilities of Departments and Agencies

The successful implementation of a governmentwide credit management/debt collection program depends upon the active participation and support of several key agencies**:**

Office of Management and Budget (OMB)

- reviews legislation to establish new credit programs or modify existing credit programs;
- monitors agency conformance with the Federal Credit Reform Act;
- formulates and reviews agency credit reporting standards and requirements;
- reviews testimony pertaining to credit programs and debt collection activities;
- reviews agency budget submissions for credit programs and debt collection activities;
- develops and maintains the Federal credit subsidy calculator used to calculate the cost of credit programs;
- formulates and reviews credit management and debt collection policy;
- approves agency credit management and debt collection plans;
- provides training to credit agencies;
- chairs the Federal Credit Policy Working Group (FCPWG) which provides advice and assistance to agencies in the formulation and implementation of credit/debt policy governmentwide;
- resolves interagency issues;

- sets credit management and debt collection program priorities; and
- approves the asset management portions of the Chief Financial Officer Status Report and Five-Year Plans.

Department of the Treasury's Financial Management Service

- serves as part of the FCPWG;
- develops and publishes, with the Department of Justice, the FCCS;
- works with OMB to develop Federal credit policies and/or review legislation to create new credit programs or to expand or modify existing programs;
- promulgates governmentwide debt collection regulations implementing the debt collection provisions of the DCIA and other debt collection laws;
- provides collection services for delinquent non-tax Federal debts (referred to as "cross-servicing"), and maintains a private collection contract for referral and collection of delinquent debts;
- maintains a governmentwide delinquent debtor database and conducts offsets of Federal payments, including tax refunds, under the Treasury Offset Program;
- works with Federal program agencies to identify debt that is eligible for mandatory and voluntary referral to Treasury for cross-servicing and offset, and to establish target dates for referral;
- issues operational and procedural guidelines regarding governmentwide credit management and debt collection;
- assists in improving credit and debt management activities governmentwide;

- tracks Federal Government receivables through the Treasury Report on Receivables and agency implementation of credit and debt management initiatives;
- develops guidelines and procedures on credit accounting and management information;
- provides operational assistance and consulting services to agencies;
- provides training on credit management and debt collection related topics nationwide; and
- reports to Congress on governmentwide debt collection activities.

Department of Justice

- litigates on behalf of the Federal Government;
- approves compromises and terminations of collection action for debts over $100,000;
- develops and publishes, with Treasury, the FCCS;
- manages the Nationwide Central Intake Facility (NCIF) to track and monitor agency referrals to the Department of Justice;
- works with the program agencies to facilitate referrals to the Department of Justice and resolve problems; and
- administers private counsel and special assistant U.S. attorney programs to collect Federal Government debt.

Program Agencies

Each agency is ultimately responsible for managing its own receivables activities and **shall** manage credit programs and non-tax receivables in accordance with applicable statutory authorities and prescribed policies to protect the Federal Government's assets and minimize losses in relation to social benefits provided.

Each agency shall ensure that:

- Federal credit program legislation, regulations and policies are designed and administered in compliance with prescribed legislative and regulatory requirements and that the costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of that Act (unless an agency is expressly exempted from the statute);

- every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determining creditworthiness and to determine whether the DCIA bars a loan applicant from loan assistance;

- lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;

- informed and cost effective decisions are made concerning portfolio management, giving full consideration to options such as contracting for loan servicing functions or selling the portfolio;

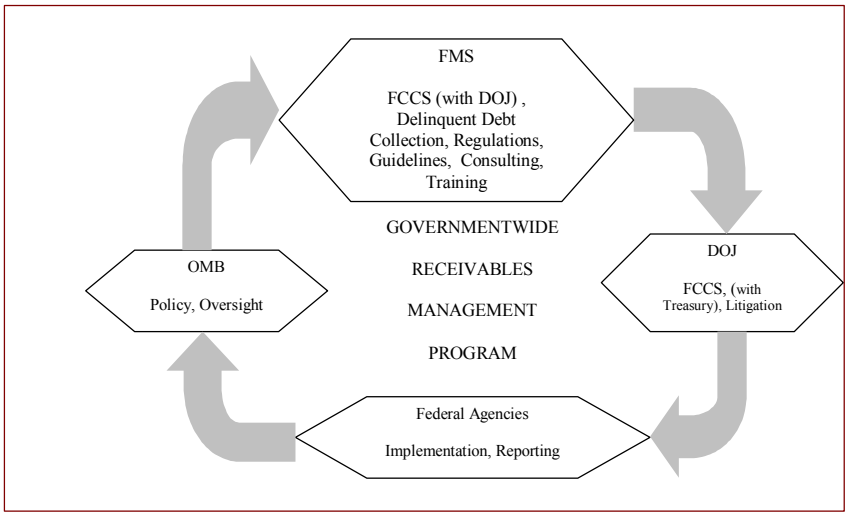
- the full range of available and appropriate delinquent debt collection techniques are used, such as those found in this document (see Chapter 6, Delinquent Debt Collection), the Federal Claims Collection Standards and Treasury regulations. Debt collection techniques include demand letters, administrative offset, salary offset, tax refund offset, private collection agencies, cross-servicing by Treasury, administrative wage garnishment, and litigation;

- delinquent debts are written-off as soon as they are determined to be uncollectible, but no later than two (2) years from the date of delinquency (see Chapter 7, Termination of Collection Action, Write-off and Close Out/Cancellation of Indebtedness);

- timely and accurate financial management and performance data are submitted to OMB and Treasury so that the Government's credit management and debt collection programs and policies can be evaluated;

- regulations and forms are amended to comply with statutory and regulatory requirements;
- credit management/debt collection tools and techniques appropriate for the type and size of the agency's debts are implemented;
- its personnel receive training on agency and governmentwide credit and debt management regulations and procedures;
- the agency provides for receivables reporting and account tracking systems to inform its own management, OMB, and FMS of essential credit information and to ensure accurate financial reporting on the Treasury Report on Receivables (see Chapter 4, Account Servicing);
- the agency develops and implements portfolio performance-based systems to ensure management and staff accountability in administering and managing receivables activities;
- the agency develops and implements the capability to track and monitor key indicators of portfolio performance;
- the agency separates individual responsibility for credit activity, for example, differentiating between extending credit and servicing accounts; and
- the agency maximizes the use of available technology and systems to facilitate program operations.

Key Participants in the Receivables Management Program



In order to establish these objectives, OMB Circular No. A-129 requires that each agency shall:

(1) as appropriate, establish in accordance with OMB Circular No. A-129, Section I, Subsection 4. b. (1), a board to coordinate agency-wide credit management and debt collection activities and to ensure full consideration of credit management and debt collection issues by all interested and affected organizations within the agency. At a minimum, the board should include the agency Chief Financial Officer (CFO) and the senior officials for program offices with credit activities or non-tax receivables. The board may seek input from the agency's Inspector General based on findings and conclusions from past audits and investigations;

(2) ensure that the statutory and regulatory requirements and standards set forth in OMB Circular No. A-129, governmentwide regulations (e.g., FCCS and Treasury regulations), and the supplementary guidance set forth in this document are incorporated into agency regulations and procedures for credit programs and debt collection activities;

(3) propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of OMB Circular No. A-129;

(4) submit proposed legislation and testimony affecting credit programs for review under the OMB Circular No. A-19 legislative clearance process, and budget proposals for review under the OMB Circular No. A-11 budget justification process;

(5) periodically evaluate Federal credit programs to assure their effectiveness in achieving program goals;

(6) assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;

(7) prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit Management and Debt Collection Plan for effectively managing credit extension, account servicing, portfolio management and delinquent debt collection. The plan must comply with the standards OMB Circular No. A-129; and

(8) ensure that information contained in loan applications and documents pertaining to individuals is managed in accordance with the Privacy Act of 1974, as amended, and the Right to Financial Privacy Act of 1978, as amended.

Program Review

Proposals submitted to OMB for new programs and for preauthorizing, expanding or significantly increasing funding for existing credit programs should be accompanied by a written review which examines at a minimum:

- Federal objectives to be achieved;
- justification for the use of a credit subsidy;
- estimated benefits of the program or program change;
- the effects on private capital markets;
- the estimated subsidy level; and
- the administrative resource requirements.

Form of Assistance

When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee. **For further information on Form of Assistance, see OMB Circular No. A-129, Section II.2.**

Financial Standards

In accordance with the Credit Reform Act of 1990, each agency must analyze and control the risks and costs of its programs. An agency must develop statistical models predictive of default and other deviations from loan contracts. An agency is required to estimate subsidy costs and obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Instructions for budget justification and subsidy cost estimation under the Federal Credit Reform Act of 1990 are provided in OMB Circular No. A-11, and instructions for budget execution are provided in OMB Circular No. A-34. **For further information on Financial Standards, see OMB Circular No. A-129, Section II. 3.**

The Credit Management and Debt Collection Cycle

The DCIA and OMB Circular No. A-129 have placed increased emphasis on credit management and debt collection. New tools and techniques have been introduced to reduce the Federal Government's risk of losses and strengthen the Government's ability to collect its debts. The major elements of the "credit management and debt collection cycle" will be explained in this document as follows:

- ***credit extension*** - screen applicants for creditworthiness and financial responsibility, including the required use of credit reports; verify the accuracy of applicant credit information and whether the applicant owes delinquent Federal debts (and is barred by the DCIA from obtaining loan assistance); and determine the applicant's inability to obtain funding from private sector markets;

- ***account servicing*** - bill and collect accounts, including automating this process and reporting current (non-delinquent) consumer and commercial accounts to credit reporting agencies (also known as credit bureaus) on a routine, non-exclusive basis. Lenders participating in the Federal Government's guaranteed loan programs are also required to report accounts to credit bureaus;

- ***debt collection*** - collect delinquent accounts, including the referral of delinquent debts to FMS for collection, offset, administrative wage garnishment, referral to private collection agencies, referral to the Department of Justice for litigation, and reporting of delinquent consumer and commercial accounts to credit bureaus;

- ***write-off/currently-not-collectible*** - remove the account from the agency's receivables, determine whether the debt is "currently not collectible" and place the account on a subsidiary ledger for continued collection activity;

- ***write-off/close out*** - cease all collection action on uncollectible debt and report the discharged debt amount to the Internal Revenue Service (IRS) as potential income to the debtor.

Each element of the cycle applies to guaranteed and direct loan activities. Individual elements, such as account servicing, debt collection, and write-off, apply to defaulted guaranteed loans, grants, contracts, and administrative debt.

Document Organization

This document is divided into eight (8) chapters, with Chapters 3 through 7 covering the elements of the credit management and debt collection cycle. The chapters are:

- Chapter 1 - Introduction;
- Chapter 2 - Budget and Legislative Policy for Credit Programs;
- Chapter 3 - Credit Extension;
- Chapter 4 - Account Servicing;
- Chapter 5 - Management of Guaranteed Lenders and Servicers;
- Chapter 6 - Delinquent Debt Collection;
- Chapter 7 - Termination of Collection Action, Write-off and Close-Out/Cancellation of Indebtedness; and
- Chapter 8 - Portfolio Sales.

Separate detailed guidance on reporting debts to credit bureaus is available in the "Guide to the Federal Credit Bureau Program," which is available on FMS's web site at *www.fms.treas.gov*. Other credit management and debt collection guidance is also available on the FMS web site.

Inquiries

For information on this or other FMS publications/activities, please contact the Financial Management Service, Director, Agency Liaison and Reporting Division, Debt Management Service (DMS) at 202-874-6660 or the Director, Agency Enterprise Solutions Division, Federal Finance at 202-874-6638.

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Chapter 2 Budget and Legislative Policy for Credit Programs

Overview

This Chapter describes policies with respect to Federal credit programs, as outlined in the Office of Management and Budget (OMB) Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables" which may be found at the OMB web site at *www.whitehouse.gov/omb* and the Department of the Treasury's Financial Management Service web site at *www.fms.treas.gov*. When developing new or revising existing credit programs, Federal agencies must take into consideration the Budget and Legislative Policy for Credit Programs promulgated in OMB Circular No. A-129, which states:

"Federal credit assistance should be provided only when it is necessary and the best method to achieve clearly specified Federal objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the nation's resources through the operation of Federal credit programs should be minimized."

OMB Circular No. A-129, Section II., provides four subsections to assist agencies with respect to development and review of budget and legislative policy.

Program Review

Proposals submitted to OMB for new programs and for reauthorizing, expanding, or significantly increasing funding for existing credit programs should be accompanied by a written review. See OMB Circular No. A-129, Section II., subsection 1., paragraphs a-f, for the factors that must be included in the written review.

Form of Assistance

When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee. See OMB Circular No. A-129, Section II., subsection 2., paragraphs a-f, for details on the use of guaranteed loans over direct loans and other considerations regarding loan guarantees.

Financial Standards

In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Agencies must develop models (statistical or otherwise) predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and issuing loan guarantee commitments. **Specific instructions for budget justification, subsidy cost estimation and budget execution under the Federal Credit Reform Act of 1990 are provided in OMB Circular No. A-11**.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. **Unless a waiver is approved, agencies should follow the financial practices discussed in Circular No. A-129, Section II., subsection 3., paragraphs a-g**.

Implementation

The provisions of OMB Circular No. A-129, Section II will be implemented through the OMB Circular No. A-19 legislative review process and the OMB Circular No. A-11 budget justification and submission process.

For accounting standards for Federal credit programs, see Accounting for Direct Loans and Loan Guarantees, Statement of Federal Financial Accounting Standards Number 2, developed by the Federal Accounting Standards Advisory Board. See OMB Circular No. A-129, Section II., subsection 4., paragraphs a-c, for details on such matters as:

a. proposed legislation on credit programs, reviews of credit proposals made by others, and testimony on credit activities submitted by agencies under the OMB Circular No. A-19. The legislative review process should conform to the provisions of this OMB Circular No. A-129;

b. How to request a waiver from OMB for use of proposed provisions or language not in conformance with the policies of OMB Circular No. A-129. Agencies will be required to request in writing that OMB waive the requirement, and the request must be submitted on a standard waiver request form, available from OMB. See OMB Circular No. A-129, Section II., subsection 4., paragraph (c) 1, for details on how requests should be completed;

c. the checklist for review of legislative and budgetary proposals. See **Appendix B** of OMB Circular No. A-129; and

d. the model bill language to be used in developing and reviewing legislation (unless OMB has approved the use of alternative language that includes the same substantive elements) See **Appendix C** of OMB Circular No. A-129.

Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A-11, Section 15.2) should include:

a. a plan for periodic, results-oriented evaluations of the effectiveness of the program, and the use of relevant program evaluations and/or other analyses of program effectiveness or causes of escalating program costs. See OMB Circular No. A-129, Section II. for further details on program evaluation;

b. a review of the changes in financial markets and the status of borrowers and beneficiaries to verify that continuation of the credit program is required to meet Federal objectives, to update its justification, and to recommend changes in its design and operation to improve efficiency and effectiveness; and

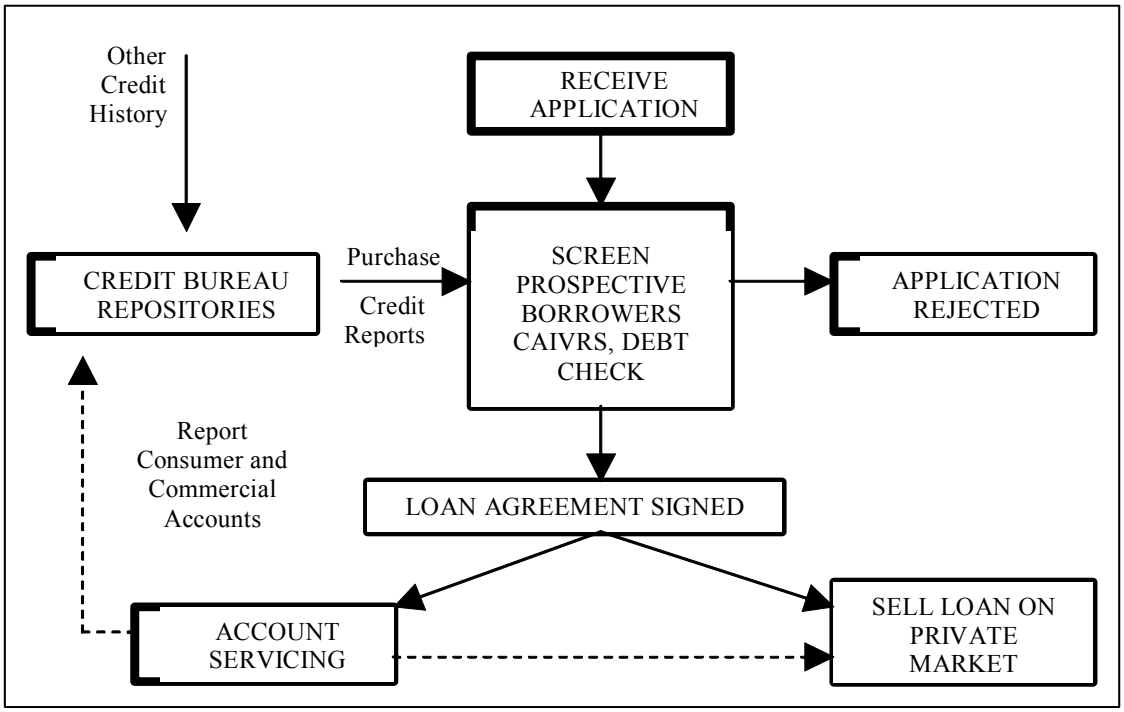
c. proposed changes to correct those cases where existing legislation, regulations, or program policies are not in conformance with the policies of OMB Circular No. A-129, Section II. When an agency does not deem a change in existing legislation, regulations, or program policies to be desirable, it will provide a justification for not conforming with the Circular.

Questions regarding this chapter should be referred to the Office of Management and Budget, Budget Review Division at 202-395-3945.

Extending Credit

This Chapter details how Federal agencies and lenders participating in guaranteed loan programs (guaranteed loan lenders) should manage, process, evaluate, and document loan applications and awards for loan assistance. See Chapter 5 "Management of Guaranteed Loan Lenders and Servicers" for information on how Federal agencies should manage lenders and servicers that participate in Federally insured guaranteed loan programs. See also Office of Management and Budget (OMB) Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," which may be found online at *www.whitehouse.gov/omb* or *www.fms.treas.gov* .

Credit Extension



When extending credit through a Government loan program, agencies and guaranteed loan lenders must ensure that applications are processed and that credit is analyzed in accordance with all statutory and regulatory requirements. Lenders and agencies need to assess and document their loan applicants' eligibility for the specific type of credit offered. Except where required by statute, an agency will not extend credit to individuals or entities who could obtain credit from private sector sources. Further, except in limited circumstances, no agency or guaranteed loan lender may extend credit to an individual or entity that is delinquent on a Federal non-tax debt, until the delinquency is resolved and proof of the resolution is presented by the debtor. Where permitted by law, individuals who owe delinquent child support obligations are likewise barred from obtaining Federal loan assistance. Federal credit granting agency personnel should work with their agency counsel to determine whether the eligibility requirements may be extended to principals of entities in commercial transactions.

The Application

Federal credit granting agencies and private sector lenders in guaranteed loan programs shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. Lenders and agencies should use the application process as a first step in their effort to evaluate an applicant's request for credit and to determine eligibility for the credit being sought by the applicant. The application form itself is a critical piece of documentation for capturing key information about the applicant(s), co-applicant(s) and guarantor(s), including:

- full name and any "also/known/as" (AKA);
- taxpayer identification numbers (TINs) (Social Security Numbers [SSNs] for individuals or Employer Identification Numbers [EINs] for all other entities). An agency must require a loan applicant to provide the applicant's TIN for any program under which the agency makes, guarantees, or insures loans. See 31 U.S.C. 7701(b). Applicants must be asked to identify all prior TINs that were used in other Federal Government applications;
- address(es) and telephone number(s);

- any personal information, such as number in household, required by the program in accordance with provisions of the Privacy Act of 1974, as amended;
- name(s), address(es), and telephone number(s) of applicant's and co-applicant's employer(s);
- all relevant financial information, such as income, assets, payments, and liabilities; and
- collateral information, including collateral location, estimated value and description.

The application form will also contain the following:

- a statement signed by each applicant attesting to the accuracy of the information provided. The statement will describe any penalties the Federal Government imposes on those who knowingly provide false information on a Federal credit or financial assistance application;
- a "Certification of Non-Delinquency" signed by each applicant stating that he/she/it is not delinquent on a Federal Government debt, including any tax debt, and does not own any property that is subject to a judgment lien securing a debt to the Government. If the applicant is unable to make such certification, the applicant should be asked to explain any delinquencies or defaults and informed that the applicant must resolve the delinquency or default, and present evidence of that fact to the agency, before the application process can proceed. ***The agency shall stop processing on the application until such evidence is presented***.

Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), persons owing outstanding delinquent non-tax debt to the United States may not obtain Federal loan assistance until the delinquency is resolved. The DCIA eligibility requirement does not apply to disaster loans, or if the requirement is waived by the head of the lending agency. Otherwise, the DCIA eligibility requirement applies to all Federal direct, guaranteed and insured loans regardless of whether creditworthiness is an eligibility requirement. An agency is not required to grant a loan merely because the DCIA does not render an applicant ineligible (for example, in the case of a delinquent tax debt or if the delinquent debt has been resolved but evidences bad credit history);

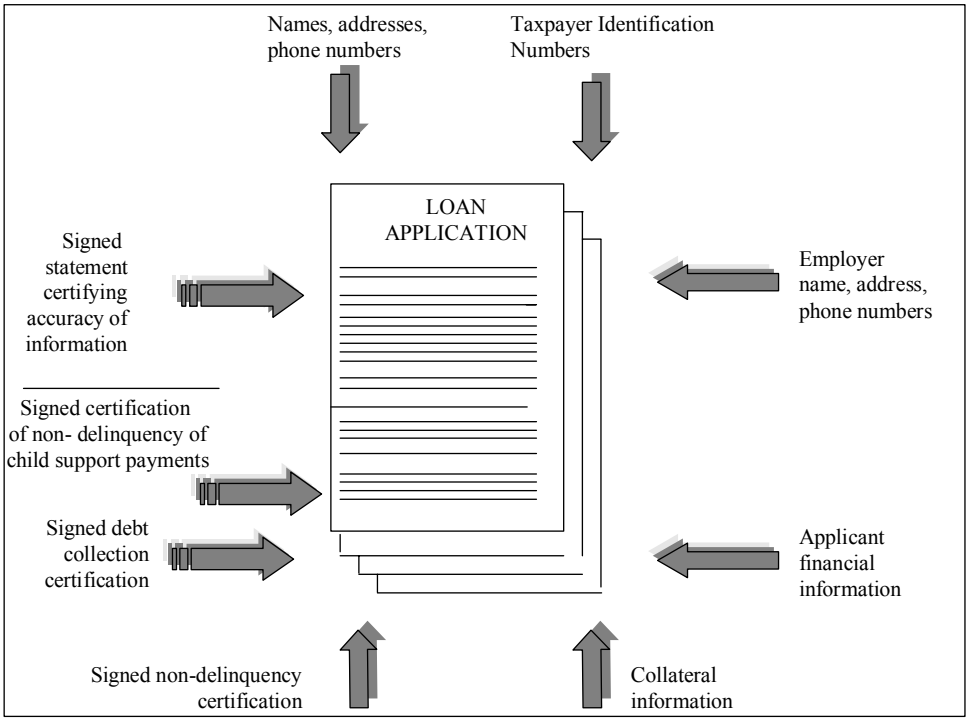
- to the extent allowed by law, a statement that each applicant does not owe delinquent child support obligations. As permitted by law, lenders and agencies shall deny Federal loan assistance to individuals who owe delinquent child support obligations that have been submitted to the Department of the Treasury (Treasury) for collection through the offset of Federal tax refund and other payments. See Executive Order 13109, "Supporting Families: Collecting Delinquent Child Support Obligations." An agency that is authorized to deny a loan pursuant to Executive Order 13109 must provide the loan applicant with a review process described in "Minimum Due Process Guidelines: Denial of Federal Financial Assistance" issued by the Attorney General. The Executive Order and due process guidelines may be found on the web site of Treasury's Financial Management Service (FMS) at *www.fms.treas.gov*;

- a statement requiring the applicant(s) to affirm that he/she has been unable to obtain credit from private sector sources (where it is consistent with statutory, regulatory and administrative eligibility requirements); and

- a "Debt Collection Certification Statement" signed by the applicant, detailing the consequences of delinquency (for example, credit bureau reporting, tax refund offset, etc.) and certifying that the Federal Government's debt collection policies have been discussed with the applicant at the time of application.

<u>All</u> applicants and co-applicants must be required to sign and date the completed application form.

<u>The Application</u>



Application and Origination Fees

The agency should assess a non-refundable application fee that, at a minimum, covers the costs of obtaining credit reports, appraisals, and supplemental data, where applicable. The application fee should be collected at the time the applicant(s) completes and submits the application form. The amount of the application fee should be reviewed on a regular basis and adjusted accordingly.

In addition, the agency should charge an origination or funding fee which covers the costs of making the loan, including an amount sufficient to cover as much of the estimated losses as possible, based on past performance of the portfolio. The agency should reassess and adjust, as necessary, the amount of the origination or funding fee at least annually, where permitted by statute.

The agency must inform the applicant at the time of application of any application, origination or funding fees. The agency must collect the origination or funding fee at the time of application, upon loan approval, or at the time the loan funds are disbursed as agency regulations require.

Verifying Information Provided by the Applicant

After receiving the completed application form and making an initial determination based on the application alone that the applicant is eligible for the credit being sought, the agency and/or its lender, as appropriate, should verify the information provided by the applicant by:

- matching the applicant's name and social security number against the Internal Revenue Services's delinquent tax files to determine if the applicant has a Federal tax liability. Applicants with such liablity are ineligible until the liability is satisfied;

- using, as appropriate, the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), the Debt Check program operated by FMS, and other databases including internal agency information systems, to determine if the applicant is delinquent or has defaulted on a Federal Government loan or has an outstanding Federal judgment;

- obtaining and using credit reports available through the General Services Administration's (GSA) Federal Supply Schedule for Business Information Services. The credit report will also be used to conduct the credit analysis and determine the applicant's creditworthiness (see "Conducting the Credit Analysis" in this chapter); and

- requesting verification of the applicant's employment and income, credit history, and bank deposits from the appropriate sources. Requests for verification of this information should carry an expiration date. Information should be reverified if more than 90 days old at the time of loan approval, 120 days old at closing, or at any time prior to closing if there is reason to believe that changes have occurred since the original verification. These time limits may be extended 30 days based upon market conditions in effect at the time of application. All information received during the origination and underwriting process becomes part of the permanent loan file.

Credit Scoring

Credit scoring is a specific standardized, statistical method of rating applicants by assigning points to certain attributes and criteria of the applicant. For example: low consumer debt and no delinquencies -- 5 points; high consumer debt with 3 delinquencies -- 2 points; or, as a second example, occupancy in the same residence for 5 years -- 10 points; occupancy in the same residence for 2 years -- 3 points. In this example, a higher score would indicate greater financial stability and responsibility and, presumably, represent a lower credit risk.

Criteria used in a credit scoring system must be relevant to an applicant's ability to repay and must be uniformly applied to all applicants to ensure agency/lender impartiality in its credit analysis. In developing a credit scoring system, an agency must be able to demonstrate that there is a positive statistical relationship between specific criteria, such as length of time at the same residence, and its applicants' creditworthiness. Where creditworthiness is a criterion for loan approval, agencies and private sector lenders shall determine if applicants have the ability to repay the loan and a satisfactory history of repaying debt.

Credit scoring may be used to determine whether an applicant meets baseline creditworthiness requirements prior to conducting a full credit analysis. Credit scoring should not be used as a substitute for conducting such analysis, nor as the only means for determining creditworthiness.

Using Credit Reports

Agencies and guaranteed loan lenders shall use reports originating from credit bureau repositories as a screening tool. Credit reports and supplementary data sources, such as financial statements and tax returns, should be used to verify or determine employment, income, assets and credit history. In addition to using a credit report to verify information supplied by the applicant and where creditworthiness is a criterion for loan approval, the agency shall also use it to answer two key questions: (1) does the applicant have the ability to repay the loan or credit award in question; **and** (2) does the applicant have a satisfactory history of repaying debt? Guaranteed loan lenders and agencies need to determine what type(s) of credit report(s) will best help them answer these questions and order the appropriate report. Through the GSA's Federal Supply Schedule for Business Information Services, Federal agencies have access to a number of different types of reports, with different types of information.

Depending upon the type obtained, the credit report will reveal:

- the type of credit history that has been established, including whether the applicant has met the terms of established credit accounts;
- whether there have been any recent inquiries about the applicant's credit status; and
- whether there are any outstanding liens against the applicant's property.

The credit report will contain information on amounts owed to, and the status of accounts held by, private sector companies, as well as Government agencies, and public record information, such as judgments, liens and bankruptcies. The agency needs to evaluate all of the information in the credit report in terms of the following questions:

- **How long has credit been established?** A six month credit history may be acceptable if the applicant just graduated from college, but may be a cause of concern if the applicant has indicated that he/she has a well-established credit history.

- **Are the credit accounts being paid as agreed?** The answer to this question will indicate whether the applicant is able to handle the debts he/she incurs, identify potential problem accounts, and identify outstanding delinquent amounts owed to the United States or delinquent child support obligations that need to be resolved before additional Federal loan assistance may be approved.

- **Who is responsible for a given account?** Applicant? Co-applicant? Information on the credit report will tell the agency who is liable for paying a given account. The agency should follow-up with the applicant on any accounts which show up on the credit report, but which the applicant did not reveal.

- **At the time of application, is there any bad credit? Has there been in the past? And, if so, what were the circumstances -- medical problems, death, divorce, unemployment?** If past due accounts have been brought current, the applicant may be trying to reestablish a good credit rating. Repeated one or two month delinquencies may indicate a cash flow problem -- or someone who knows how to "play the system" so that the delinquencies never look so serious as to affect the applicant's ability to obtain new credit.

Agency personnel should exercise judgment when reading an applicant's credit report and should not hesitate to ask the applicant to clarify or explain any items of concern to the agency. (See **Appendix 1** for a key to reading credit reports.)

Credit Ratings

A credit rating may assist the agency in determining the creditworthiness of the applicant. The rating is based upon the applicant's financial condition, experience, and credit history. Under a credit rating system, each application is independently evaluated using specific standards and acceptable deviations from those standards developed by the agency. Ratios, in particular income ratios, are often used to determine a credit rating. Income ratios, which indicate the relationship between expenses and income, are used to assess an applicant's ability to make additional payments or absorb future expenses.

To develop and apply a credit rating system, an agency must:

- determine, based on past credit experience, what it considers to be an acceptable level of risk for its loans;
- establish standards, including acceptable ratio levels, that it can apply to relevant financial information obtained from the applicant;
- calculate all applicable ratios; and
- apply the appropriate standards to a loan application for a specific type of credit to determine the credit rating.

If the agency determines that an applicant has an unacceptable credit rating, it must decide if there are compensating factors which may mitigate the poor rating. Such factors would include the applicant's:

- demonstrated ability for increased annual earnings, based upon employment history;
- long-term employment prospect; and
- conservative use of credit or minimal amount of debt.

Conducting the Credit Analysis

Using the information on the credit report, the verified application information, and the results of the credit rating, the agency should conduct a credit analysis to determine an applicant's creditworthiness, that is, the applicant's ability and willingness to repay the loan.

A credit analysis for a ***consumer applicant*** will consider the following:

- employment history for the past 2 years;
- current and potential income and benefits;
- financial statements including current assets, financial obligations, and liabilities;
- income tax returns for the past 2 years;
- credit rating;
- repayment history of prior debts;
- guarantees and collateral, ensuring that they are not pledged to other debts;
- value of any pledged collateral; and
- homeownership status and residential stability.

A credit analysis for a ***commercial entity*** will consider the following:

- financial condition, as documented by annual and interim financial statements such as the balance sheet, income statement, and cash-flow statements. The agency should use audited statements whenever possible and not require documentation that is cost prohibitive for the applicant to obtain;
- any income tax returns for the past 2 years;
- ratios, such as total liability to total equity, net income to interest expense, current assets to current liabilities, net income to assets, and net income to equity;
- profit margin;
- amount and type of working capital;
- evaluation of the actual or potential market for the commodity or service being offered and the entity's marketing strategy for expanding or creating that market;
- company ownership (e.g., sole proprietor, partnership, corporation);
- managerial ability and/or experience of key company personnel;
- guarantees and collateral, ensuring that they are not pledged or attached to other debts; and
- credit rating.

Generally, an agency should give particular attention to a company's cash flow since it will be the source of the debt repayment. The agency should also consider whether debts owed to the United States by officers, directors, major shareholders and partners render the commercial entity ineligible for loan assistance under the DCIA. See 31 C.F.R. 285.13(c)(2).

The agency should conduct comparable credit analyses on any co-borrower(s) and guarantor(s) listed on the application form. The agency must document and maintain the appropriate credit analyses in the applicant's file.

Appraisal of Real Property

For many types of loans, the Federal Government can reduce its risk of default and potential losses through well managed collateral requirements. Appraisals of real property serving as collateral for a direct or guaranteed loan (or property required for grant agreements and procurement contracts) must be conducted in accordance with the following guidelines:

- agencies should require an independent, unbiased appraisal of property used as collateral. The appraisal should be consistent with the "Uniform Standards of Professional Appraisal Practice" (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, and any additional requirements established by the agency; and

- the appraiser should be qualified in accordance with the applicable State and Federal regulatory requirements. Lenders and/or agencies shall determine whether an appraisal must be performed by a State licensed or certified appraiser based on the size of the loan and/or complexity of the appraisal. For non-business loans over $100,000 and for business loans over $250,000, lenders and agencies should ensure that a State licensed or certified appraiser prepares the appraisal. Agencies may also require the services of a State licensed or certified appraiser for smaller direct or guaranteed loan transactions. The services of a State licensed or certified appraiser are not required for loans with no cash out and for those transactions where the collateral is not a major factor in the decision to extend credit.

The appraisal will establish the fair market value of the property and serve as the basis for the agency's decision as to the maximum loan it will make on the property. The property should be appraised close to the commitment date of the lender. The property should be reappraised if the appraisal is more than 6 months old.

Major elements addressed on the appraisal include:

- **neighborhood analysis**, including data related to the economic background of the region, city and neighborhood;

- **site analysis**, including data related to the size and shape of the property, the types of buildings on the property, front footage and parking;

- **improvement analysis.** A **lot** is considered "improved" if it contains a structure. The **improvement analysis** focuses on the structure or other dwelling(s), such as floor plans, energy efficiency, and age; and

- **property condition and appraiser comments.** The appraiser must express an opinion about the condition of the property.

The “Subject Property Section” of the appraisal provides a complete description of the property and its surroundings. A map, floor plan, and photographs of the property reflecting the property’s “curb appeal” should also be attached.

The appraiser uses the sales price of similar properties and estimated replacement costs to estimate the property's market value. This estimate will be documented in the report's valuation section.

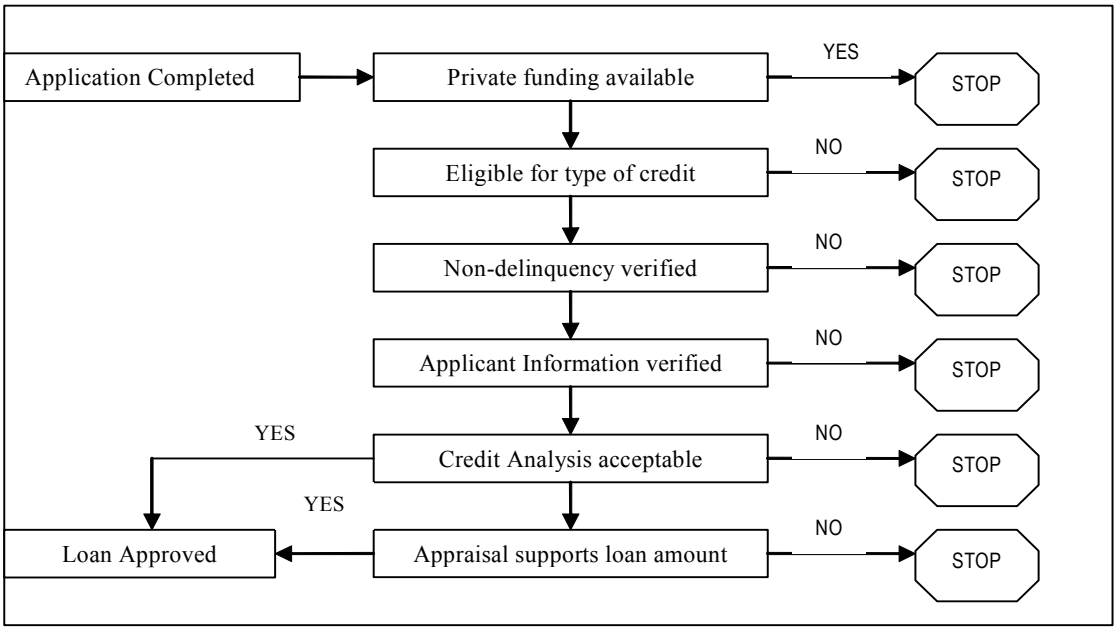
In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Lenders and Federal agencies should ensure that borrowers assume an equity interest in such assets to reduce defaults and losses. Federal agencies should explicitly define the components of the loan-to-value ratio (LTV) for both direct and guaranteed loan programs. Lenders and agencies will review and approve the appraisal report containing the estimated market value in order to determine the maximum available loan on the property (loan-to-value ratio). The approved appraisal report will be placed in the permanent loan file.

Unless exempted or otherwise authorized by law, agencies should establish:

- a maximum acceptable LTV ratio. This could be in the range of 80 to 95%. Financing should be limited by not offering terms (including the financing of closing costs) that result in a LTV equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral;
- limitations on the proportion of up-front fees or transaction related expenses that a borrower can finance;
- an acceptable minimum down-payment amount; and
- a process for assessing higher loan premiums on loans with higher loan-to-value ratios.

Loan Closing

Processing a Loan to Loan Closing



Loan closing occurs after the completion of the processing of a loan which results in loan approval. At loan closing, the agency or lender will collect any loan documents or monies due. The agency is responsible for ensuring that all legal documents including the promissory note, collateral documents (such as security agreement, mortgage, and/or deeds of trust), loan agreement, certification of non-delinquency, and debt collection certification statement, are signed by both the borrower(s) and co-borrower(s).

Where appropriate, the loan documents will state the terms of repayment, including:

- the frequency, due dates, and amount of principal and interest payments. Generally, loan payments should be monthly unless the borrower's projected cash flow would make monthly installments inappropriate;
- the amount of escrow payments, if required;
- the length of the loan - loan maturity should be shorter than the useful economic life of the asset being financed;
- the acceptable means of repayment, i.e., checks, money orders, credit cards, pre-authorized debit or electronic payment via the internet (see, for example, www.Pay.gov);
- an explicit statement of borrower's rights and remedies;
- any special exemptions, such as cases of possible forbearance or deferment;
- Federal delinquent debt collection policies and procedures;
- agency policies regarding the assessment of late charges on delinquent payments. Amounts and/or rates to be assessed should also be provided, when possible; and
- agency policies regarding the acceleration of the debt in the event of a delinquency.

Non-Loan Screening

Where financial responsibility is a factor, an agency should screen its potential contractors and grant applicants, in accordance with all statutory and regulatory requirements. Standards in Part 9 of the Federal Acquisition Regulations (FAR) apply to the screening of contractors. As part of the application process, the agency must obtain the following information from contractors and grant applicants:

- taxpayer identification number(s); and
- certification of non-delinquent status. The applicant will certify that he/she is not delinquent on a Federal Government debt, including tax debt. Agencies should include the certification statement on the application form.

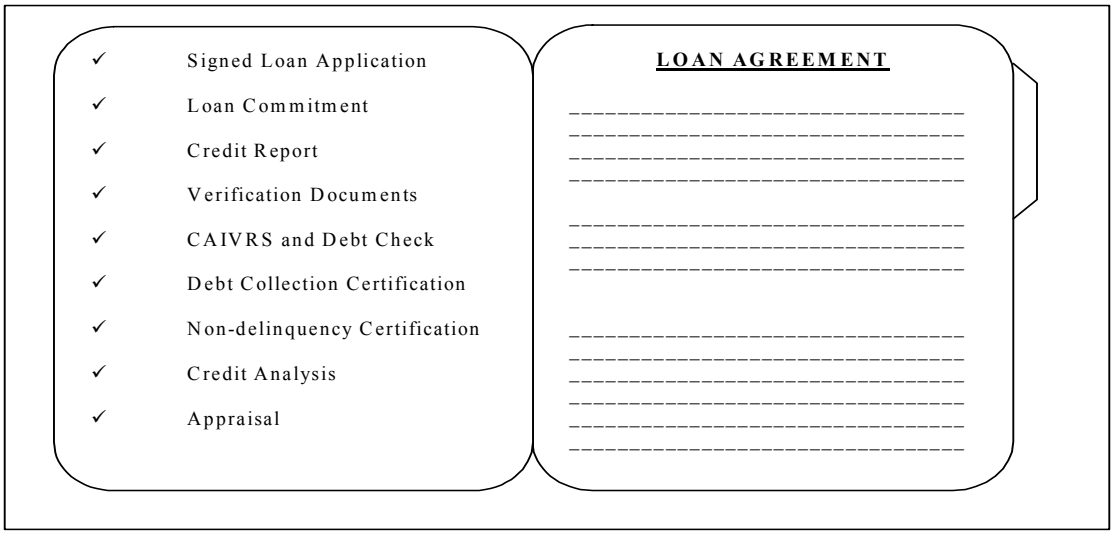
Processing of contractor agreements and grant applications shall be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government. Processing should continue only when the debtor satisfactorily resolves the debt(s) (e.g., pays in full or negotiates a new repayment plan).

Agencies shall obtain and use credit reports to verify the information provided by contractors and grant applicants, assess financial condition, and ascertain other financial agreements, if any, between the applicant and the Federal Government. The agency should also check the "List of Contractors Indebted to the United States" (Army Hold-Up List), published by the Defense Finance and Accounting Service as part of its contractor eligibility evaluation and verification process.

When an applicant is listed as debarred or suspended in the "List of Parties Excluded from Federal Procurement or Non-procurement Programs," the agency will not make an award except as authorized under agency regulations implementing Executive Order 12549 or FAR 9.4.

Credit Extension Documentation

Credit Extension Documentation



Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan closing documents, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing of the loan, pursuing collection of delinquent debt, and, in the case of guaranteed loans, processing claim payments.

At loan origination, the agency or lender will start building the loan file with the following documents, as applicable:

- original signed loan application including the certification by the borrower of non-delinquency of Federal debts; certification by the borrower that he/she sought private sector financing and was denied or a copy of the application form for private sector financing with the letter denying the loan; and certification by the borrower of the accuracy of the information provided on the loan application;

- supporting papers including credit approval documentation (credit report(s) and agency analysis of credit information, along with records of subsequent approval action); and an appraisal of the property along with supporting documentation;

- statement that the borrower has not been suspended, debarred, or voluntarily excluded from procurement or non-procurement dealings with the Federal Government;

- signed certificate that the borrower was informed of the Federal Government's debt collection policies and procedures;

- financial and market analyses for commercial loans;

- copies of all related audits for previous five (5) years for commercial loans;

- insurance documents;

- copy of the loan commitment and the terms and conditions of the loan, including a complete payment schedule for principal and interest;

- original copy of the accepted loan commitment signed by the applicant(s);

- all original internal review documents required for financial and legal findings (all letters, memoranda, legal opinions and requisitions for disbursement concerning negotiations and closure of the loan, including summary of written, telephone, and electronic mail contacts between lending officials and applicant);

- evidence of necessary public record filings securing loan collateral including current Uniform Commercial Code filings and searches; and

- list of scheduled reports required by the agency, including financial statements from the borrower.

Lenders and agencies should use a manual or automated checklist to ensure that they have fully documented their credit extension activities. (See **Appendix 2**). While much of this information may be contained in an automated system, lenders and agencies may still need to maintain all original documentation to support possible future legal action.

Questions regarding this chapter can be directed to the Agency Enterprise Solutions Division, Federal Finance, Financial Management Service at 202-874-6875.

Servicing Government Loans

Accurate and complete documentation is critical to providing proper servicing of debt, pursuing collection of delinquent debt, and in the case of guaranteed loans, processing claim payments. Once credit has been extended or a financial obligation to repay an administrative debt established, an agency becomes responsible for servicing or controlling the account. This Chapter describes Federal loan and debt servicing requirements as described in Office of Management and Budget (OMB) Circular No. A-129 "Policies for Federal Credit Programs and Non-Tax Receivables," which may be found online at: *www.whitehouse.gov/omb or www.fms.treas.gov*.

The Federal Government can efficiently meet its servicing responsibilities and reduce its costs in several ways. First, under loan guarantee programs, credit servicing provided by private sector lenders tends to be more efficient and result in lower portfolio management costs than direct servicing by Federal agencies. Second, under certain conditions, an agency may find it advantageous to sell loans or other debts, thus allowing the agency to shift staff resources from servicing to mission critical functions. Finally, an agency may contract with a private sector firm for all or some of its servicing activities, as best meets the agency's needs.

Basic servicing activities include:

- billing the debtor;
- processing and crediting payments;
- monitoring the account;
- documenting servicing action;
- timely responding to borrower inquiries;
- providing agency management with regular aggregate reports on receivables; and
- providing central regulatory agencies with required receivables and debt collection reports.

Billing the Debtor

An agency shall ensure that invoices are routinely sent to borrowers/debtors and that efficient mechanisms are in place to collect and record payments. Where appropriate, borrowers should be encouraged to use agency systems established by the Department of the Treasury (Treasury) which collect payments electronically, such as pre-authorized debits, credit cards, and electronic payments via the Internet (see, for example, *www.Pay.gov*). The billing cycle established by a repayment agreement should be the same as that used by private lending institutions for equivalent types of debts, generally monthly. The billing cycle will contain all of the regular mechanisms needed to bill debtors, collect and apply payments to appropriate accounts, and document account activity.

For housing and other long-term real estate loans, an agency or its lender/servicer should establish, at the time of loan origination, escrow accounts to process tax and insurance deposits. Agency servicing systems must process tax and insurance payments through escrow accounts.

For installment loans, the agency or its lender/servicer should initiate the billing process upon the first regular payment due from the debtor. In the case of administrative debt, the agency should initiate the billing process when it determines that the debt exits, e.g., the debtor owes a fine or penalty or has received an overpayment.

The initial billing notice or invoice *for an administrative debt* should include:

- the amount of the debt;
- the basis of the indebtedness;
- the opportunities available to the debtor to dispute the debt, obtain copies of documents related to the debt, and enter into a repayment agreement acceptable to the agency if the debtor is unable to pay the debt in full;

- the date on which payment is due, usually 30 days after the date of the billing. The billing notice should also indicate the agency's policies with respect to the assessment of interest, administrative costs, and penalties, and that if payment is not received on or before the due date, the agency will begin assessing such charges as stated;

- the steps the agency will take to enforce collection, such as reporting a debt to a credit bureau; referring the debt to Treasury for collection actions, including offset; referral to a private collection agency; administrative wage garnishment; and litigation (see Chapter 6, Delinquent Debt Collection). The agency cannot threaten to take collection action it is not authorized or does not intend to take;

- if not previously provided by the debtor, the request that the debtor provide his/her/its taxpayer identification number, either through the submission of a Form W-9, "Request for Taxpayer Identification Number and Certification" available through the Internal Revenue Service website at *www.irs.gov/formspubs*, or on any payment or returned correspondence if legally authorized to do so; and

- the name, phone number, and address of an individual to contact within the agency. It is important for a debtor to be able to contact a person knowledgeable about the agency's billing and collection policies and practices and who can respond promptly to the debtor's concerns.

Failure of a debtor to respond to the billing notice or indicate a desire to negotiate a reasonable repayment agreement or compromise should lead the agency to renew the demand for payment and proceed into the full collection process described in Chapter 6, Delinquent Debt Collection.

Reporting Account Information to Credit Reporting Agencies

An agency or its lender/servicer must be able to identify and report *non-delinquent* and *delinquent* debts to credit reporting agencies (also known as "credit bureaus") in accordance with the requirements of 31 U.S.C. 3711(e), OMB Circular No. A-129, and the "Guide to the Federal Credit Bureau Program" published by the Treasury's Financial Management Service (FMS). Copies of the statute, OMB Circular, and guide are available on FMS's web site at *www.fms.treas.gov*.

- **Credit extension by lenders**. Under the Debt Collection Improvement Act of 1996 (DCIA), an agency must, as a condition for insuring or guaranteeing any loan, financing, or other extension of credit under any law to a person, require that the lender provide information relating to the extension of credit to credit bureaus. Credit extension reporting provides a true picture of the borrower's outstanding obligations with respect to Federal direct and indirect loan assistance.

- **Federal agency debts**. OMB Circular No. A-129 **requires** agencies to report to credit bureaus all non-tax, non-tariff commercial accounts (current and delinquent). In addition, the DCIA requires agencies to report all delinquent non-tax, non-tariff consumer accounts. Agencies may report current consumer debts to credit bureaus as well and are encouraged to do so. The reporting of current debts (in addition to any delinquencies) provides a truer picture of a borrower's outstanding indebtedness while simultaneously reflecting accounts that the borrower has maintained in good standing.

There is no minimum dollar threshold below which debts cannot be reported, i.e., accounts for as low as $5 may be reported to a credit bureau. For detailed information on credit bureau reporting, including information concerning the required agency procedures for reporting delinquent consumer debts, agencies should refer to FMS's "Guide to the Federal Credit Bureau Program."

Account Monitoring

An agency or its lender/servicer is responsible for monitoring each of its accounts. As a primary means for monitoring account activity for administrative debts in particular, the billing system should enable the agency to "flag" or "mark" overdue payments for special attention. With overdue payments, the agency should contact the debtor by telephone or letter, in accordance with its collection procedures and strategies.

A loan classification (or risk rating) system is designed to assist an agency in monitoring and assessing loan performance. Such a system allows the agency to mark for special monitoring those loans which have been identified as potentially or actually weak. Any loan classification system established by the agency should be the same as, or comparable to, the system established by the Comptroller of the Currency.

Systematic monitoring of individual accounts provides an agency with a mechanism for:

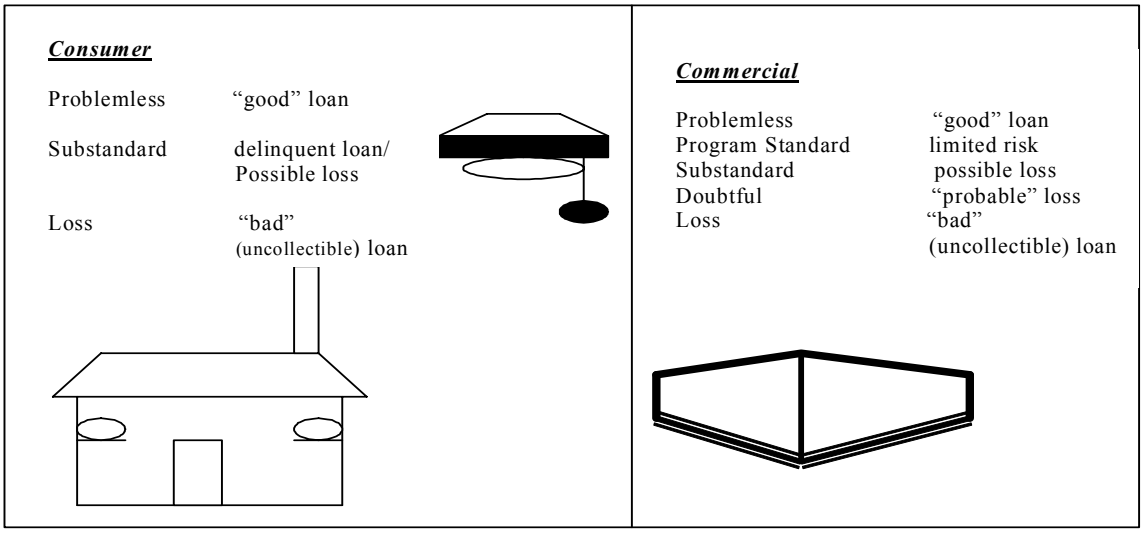
- identifying and correcting potential problems before accounts go into default;
- evaluating the overall quality of its portfolio; and
- identifying trends, such as deficiencies in account documentation.

Loan Classification

When using a loan classification system, the agency will reassess and reclassify each loan in its portfolio annually. It should periodically examine all accounts within each classification to ensure that they meet the standards for that classification. It should further ensure that each classification accurately reflects the agency's historical experience with accounts in that program area.

The following factors should be evaluated in classifying an account:

- the debtor's ability to manage an income-generating activity (particularly relevant for some types of commercial loans);
- the debtor's financial position and history, including employment history and financial responsibility;
- the type of business and ability to generate profits (for commercial entities only);
- the structure of the loan and its purpose; and
- the condition and adequacy of the loan's collateral.



Consumer Loan Classification

An agency will use a three-tiered classification system for consumer accounts. Substandard and loss categories are adverse classifications with respect to potential or actual loss to the Federal Government. The classifications are:

- **Problemless** - a loan on which payments are consistent with the terms of the agreement. Thus, it does not pose an abnormal credit risk to the Federal Government.

- **Substandard** - a loan which is 90 to 119 days delinquent. If the deficiencies are not corrected, there is a distinct possibility the Federal Government will sustain some loss.

- **Loss** - a loan which is 120 days or more delinquent. This class of loan is judged uncollectible and of such little value that continuing to record it as a loan receivable is not warranted even though partial recovery may be possible in the future.

Agencies should consider using the following more stringent criteria when classifying single family housing loans:

- **Problemless** - a loan which is less than or equal to 30 days delinquent;

- **Substandard** - a loan which is 31 to 90 days delinquent; and

- **Loss** - a loan which is more than 90 days delinquent.

The reason for using more stringent criteria for single family housing loans is because the amount of the monthly mortgage payment must be considered when determining the risk of these loans. The size of typical mortgage payment is usually about 25 to 30 percent of the household's disposable income. When a borrower becomes delinquent by more than 30 days, the likelihood of full repayment under the original loan terms decreases significantly; the agency may wish to move such loans into the substandard category earlier than other types of loans.

Commercial Loan Classification

Commercial loans will be classified using the categories defined below. Substandard, doubtful, and loss categories are deemed adverse classifications with respect to potential or actual loss to the Federal Government.

- **Problemless** - a loan which is performing as expected. Payments are current; the borrower is in general compliance with the terms of the loan; and projected receipts and expenses show that repayment is very likely. The loan does not pose an abnormal credit risk to the Federal Government.

- **Program Standard** - the loan does not presently expose the Federal Government to a sufficient degree of risk to warrant an adverse classification; however, it poses sufficient credit risk to deserve more attention than a problemless loan. Included in this category are loans with inadequate collateral, inadequate written agreements, or other deficiencies indicating deviations from prudent lending practices which expose the Federal Government to a higher than normal credit risk.

- **Substandard** - a loan in which the borrower's paying capacity and/or the collateral pledged, if any, jeopardizes payment of the debt in full. If the deficiencies are not corrected, there is a distinct possibility the Federal Government will sustain some loss.

- **Doubtful** - a loan in which liquidation of an asset(s) for full value is improbable and the possibility of loss, based on currently known facts, is highly probable. However, certain conditions exist that may positively affect the asset(s) and increase the possibility of recovery.

- **Loss** - a loan that is uncollectible and of such little value that continuing to record it as a loan receivable is not warranted even though partial recovery may be possible in the future.

The classification of commercial loans involves a more detailed analysis than that for consumer loans since commercial loans have different characteristics such as:

- unstable repayment due to heavy impact of economic factors;
- potential for large dollar loans; and
- shorter repayment periods, with larger monthly payments.

In making a loan classification decision, there are a number of significant factors which should be considered when evaluating the potential viability of a business:

- cash flow and budget projections;
- past income performance; and
- future economic conditions.

Delinquency, however, remains a key indicator when classifying a commercial loan. (See **Appendix 3** for a list of early warning signs of potential problems.)

Allowance Accounts

An agency shall recognize and record its projected debt losses by setting up allowance accounts, such as a “loan loss reserves” account. Separate accounts should be established for accounts and loans receivable. The agency should establish the amounts in the allowance accounts based on any one of the following:

- **Portfolio condition and composition**. For loan portfolios, the aggregate totals of all loans classified in the "loss" category and a percentage of those considered to be in the "doubtful" and "substandard" categories should be placed in the allowance account. The agency should determine what proportion of its "doubtful" and "substandard" loans can be reasonably projected as a loss.

For administrative debt, the agency should consider the type of debt (e.g., fines, fees, penalties, etc.) and its experiences with collecting a given type of debt, such as the likelihood of the courts enforcing repayment of punitive charges.

- **Historical experience with losses**. Using past account records, the agency should determine the number and percentage of its accounts that can reasonably be considered uncollectible.

- **Actual write-offs taken in the preceding year or groups of years.**

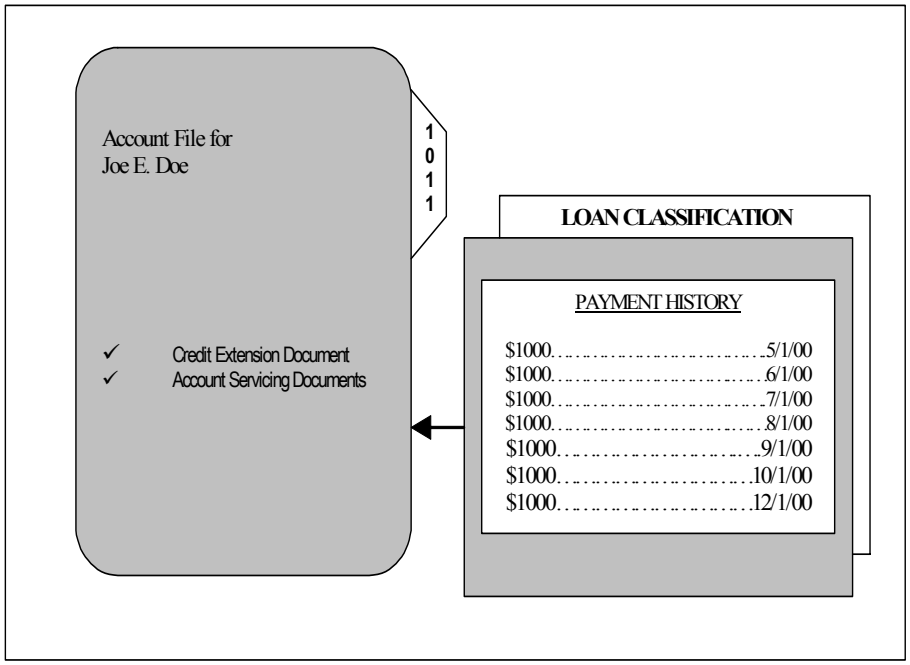
By accurately estimating its potential losses and putting that amount in its allowance accounts, an agency is recognizing that it is unlikely to effect recovery on a portion of its portfolio and that the estimated uncollectible amount constitutes a "bad debt" expense to the Government. The agency must subsequently recognize amounts it deems uncollectible as write-offs against the allowance account.

Servicing Documentation

To monitor its accounts successfully, the agency needs to maintain and update, in each account file, all information pertaining to an account. During the account servicing phase, the agency or lender/servicer servicing a loan account should simply build upon the documentation generated during credit extension.

The agency which is servicing an administrative debt begins its process of documenting account activity in the account servicing phase. It is, therefore, critical that the agency document any contact with the debtor since such contacts may be needed to support the legitimacy or legality of the debt.

Account Servicing Documentation



Information to be incorporated into the account file should include:

- the basis for the creation or establishment of the debt, including any loan documents; or, for administrative debt, assessment of a fine or penalty, a copy of the invoice that was overpaid, the supporting payment schedule, and/or any other documentation that would substantiate and support the debt;

- payment history and schedules, including delinquencies and defaults and subsequent deferrals, rescheduling, or refinancing, if any;

- loan classification or risk rating, if any;

- documentation of each contact between the servicing official and borrower/debtor including demand letters; and

- reports submitted to the agency for monitoring the account, such as financial statements for commercial loans.

Agencies should maintain the originals of any documents generated which indicate that the debtor was aware of the loan or debt obligation, such as the loan commitment or repayment agreement, since such documents may be required in any future actions involving litigation to enforce collection. The agency may use an automated system to maintain the account and create the account history and documentation as the account ages (see **Appendix 2** for servicing checklist).

Contract Servicing

Depending upon the size of the portfolio and the cost of automating its functions, it may be cost effective for an agency to have a cross-servicing agreement with another Federal agency or contract out its account servicing functions. If the agency contracts out its account servicing, it is also responsible for developing standards consistent with its needs and with the reporting requirements of OMB and FMS.

Each agency should establish penalties for any contractor that fails to conduct operations in accordance with the established standards. For example, the agency can require a contractor to absorb any delinquencies caused by negligent servicing.

The agency must ensure that the contractor fully documents all servicing undertaken and require the contractor to promptly communicate information on delinquent accounts so that the agency may initiate action. The agency must establish a means to move and store the servicing information for delinquent accounts into its debt collection activities.

Treasury Report on Receivables

Federal agencies are required to regularly provide information concerning their non-tax receivables and delinquent debts to FMS for inclusion in the "Treasury Report on Receivables" (TROR). See 31 U.S.C. 3719.

The TROR is the Treasury's only comprehensive means for periodically collecting data on the status and condition of the Federal Government's non-tax debt portfolio. The information contained in the report is disseminated to Congress, OMB, agency Chief Financial Officers, the Federal Credit Policy Working Group, other officials and representatives of Federal and state organizations, private sector organizations, and the public.

The TROR serves as a management report which informs Federal decision-makers of the ***gross book value*** of the debts held by the Federal Government and the actions taken to enforce collection of the Government's receivables. Thus, the debt amounts listed in an agency's receivables report are not necessarily identical to the amounts reported on an agency's financial statements, which are presented in accordance with Credit Reform guidance, i.e., using net present value. Agencies are, however, required to reconcile their TROR reporting with the receivables data reported on their financial statements.

To assist agencies in properly reporting receivable and debt information to FMS, FMS has published an "Instructional Workbook for Preparing the Treasury Report on Receivables." The workbook and contact information are available on FMS's website at *www.fms.treas.gov/debt*.

For further information on this chapter, please contact the Agency Enterprise Solutions Division, Federal Finance, at 202-874-6875. For information on the TROR, please contact the Agency Liaison and Reporting Division, Debt Management Services, at 202-874-6660.

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Managing Risks in Guaranteed Loan Programs

An agency that extends credit through a guaranteed loan program must take appropriate steps to minimize the risk of loss to the Federal Government. This goal can be efficiently achieved by monitoring the approved lenders and servicers, rather than monitoring the credit extension and servicing actions taken on each guaranteed loan. Accordingly, an agency should focus its efforts on assuring that only qualified lenders and servicers take actions on federally guaranteed loans, and that these qualified lenders and servicers continue to adhere to agency rules and standards concerning credit extension and loan servicing. The key components of a successfully managed guaranteed loan program are:

- **lender eligibility**, including lender participation criteria, continuing review of a lender's eligibility to participate in the agency's guaranteed loan programs, decertification of a lender that fails to meet an agency's standards, and use of loan servicers;

- **lender agreements,** including terms of lender participation agreements, performance standards, reporting requirements, and terms applicable to loan servicers;

- **lender and servicer reviews,** including requirements for on-site reviews by the agency on a regular basis (annually or biennially, depending on volume and performance); and

- **corrective actions,** including actions to be taken when a lender or servicer is not in compliance with program requirements.

Agencies responsible for the management of guaranteed lending programs must comply with the applicable provisions of the Office of Management and Budget (OMB) Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." These provisions are set out in detail below. The OMB Circular No. A-129 is available in its entirety on line at *www.whitehouse.gov/omb or www.fms.treas.gov.*

Lender Eligibility

Participation Criteria. Federal credit granting agencies shall establish and publish in the ***Federal Register*** specific eligibility criteria for **lender participation** in Federal guaranteed loan programs. These criteria should include:

- requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;
- qualification requirements for principal officers and staff of the lender;
- fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as loss payee, where appropriate, for new or non-regulated lenders with questionable performance under Federal guarantee programs; and
- financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.

Review of Lender Eligibility. Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations or other required reviews, such as renewal of a lender agreement ("Lender Agreements," see below). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

Fees. When authorized and appropriate for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

Decertification. Agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

- significant and/or continuing non-conformance with agency standards; and/or
- failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility for Federal guaranteed loan programs.

Loan Servicers. Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the Federal credit granting agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

Lender Agreements

Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards and other applicable requirements of OMB Circular No. A-129.

Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender eligibility for continued participation in the program.

General Participation Requirements

Lender participation requirements include:

- requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see Lender Eligibility, Participation Criteria, above);

- agency and lender responsibilities for sharing the risk of loan defaults (see Chapter 2, Budget and Legislative Policy for Credit Programs, Financial Standards) and, where feasible;

- maximum delinquency, default and claims rates for lenders, taking into account individual program characteristics.

Performance Standards

Agencies should include in their lender agreements due diligence requirements for originating, servicing, and collecting loans. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

Reporting Requirements

Agencies should require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance and satisfy OMB, the Department of the Treasury, and other reporting requirements. Examples of the data which agencies must maintain include:

- **activity indicators.** The number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of risk; number and amount of guaranteed loans made during the reporting period; and number and amount of the guaranteed loans terminated during the period; and

- **status indicators.** A schedule showing the number and amount of past due loans by age of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information on a quarterly basis (or other reporting period based on the level of lending and payment activity).

Loan Servicers

Lender agreements must specify that loan servicers meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell loans except to qualified servicers.

Lender and Servicer Reviews

To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews on a biennual basis, except as noted below. Agencies should summarize review findings in written reports with recommended corrective actions and submit them to agency review boards. (See Chapter 1 - Introduction, Responsibilities of Departments and Agencies.)

Agencies should conduct annual on-site reviews of all lenders and servicers with substantial loan volume or whose:

- financial performance measures indicate a deterioration in their guaranteed loan portfolio;
- portfolio has a high level of defaults for guaranteed loans less than one year old;
- overall default rates rise above acceptable levels; and/or
- poor performance results in monetary penalties imposed on the lender or servicer or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of required corrective actions.

Reviews should be conducted by guarantor agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize the use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been "pooled."

Corrective Actions

If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliance, agencies and the lender or servicer should agree on corrective actions. For more serious and frequent offenses, agencies should establish penalties. Penalties may include loss of guarantees, reprimands, probation, suspension and decertification.

For further guidance or information, agencies should contact the Agency Enterprise Solutions Division at 202-874-6875.

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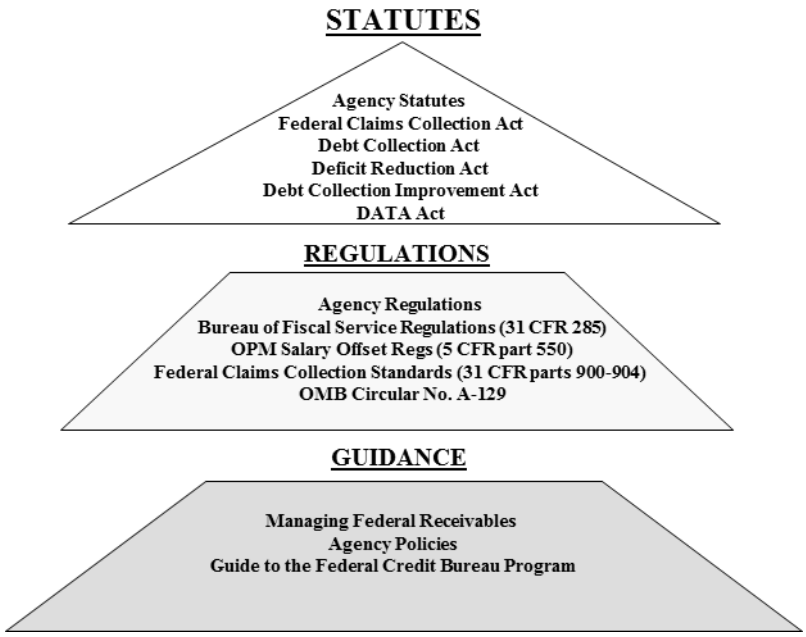
Overview

Agencies should have fair but aggressive programs to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each program should include a debt collection strategy, consistent with governmentwide and agency requirements, to restore the delinquent debts to current status or, if unsuccessful, maximize collection on the agency's accounts. The strategy should further promote the resolution of delinquencies as quickly as possible, since the ability of an agency to collect its delinquent debts will generally decrease as the debts become older. The strategy should take into account that debts within the jurisdiction of the bankruptcy courts are subject to the provisions of the United States Bankruptcy Code (see page 6-57). When a debtor has filed for bankruptcy protection, legal counsel should be consulted prior to continuing any collection activities, including those described in this Chapter.

This Chapter describes the collection techniques and tools available to assist agencies in collecting delinquent debts, and supplements the debt collection requirements contained in statutes and regulations. In this Chapter, a Federal agency that is owed a debt is sometimes referred to as a “creditor agency.”

Debt Collection Rules and Guidance Hierarchy



This Chapter is divided into three parts:

Part I, Managing Delinquencies, provides information on debt collection strategies and principles;

Part II, Debt Collection Tools and Programs, discusses delinquent debt collection tools, such as cross-servicing (transfer of debts to Bureau of the Fiscal Service (Fiscal Service) for collection), offset, administrative wage garnishment, collateral liquidation, and litigation; and

Part III, Miscellaneous Topics, describes several techniques an agency uses to support the debt collection process.

This Chapter applies to debts owed to the United States, including loans, fines, penalties, overpayments, and fees, but does not apply to the collection of Federal tax debts, debts owed by Federal agencies, or debts owed by foreign countries. Debts based in whole or in part on conduct in violation of the antitrust laws or 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 must be referred to the Department of Justice (DOJ) for action. At its discretion, DOJ may return the debt to the agency for handling in accordance with the procedures described in this Chapter.

The policies and procedures detailed in this Chapter do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person. The failure of an agency to comply with any of the provisions in this Chapter shall not be available to any debtor as a defense, except as otherwise allowed by law.

Part I – Managing Delinquencies

Background

Delinquency Defined. A debt becomes delinquent when:

- payment is not made by the due date or the end of the "grace period" as established in a loan or repayment agreement, in the case of a debt being paid in installments. *The date of delinquency is the payment due date.*

  Example: Borrower's loan payment is due January 1. The loan agreement allows a grace period of 15 days, meaning that the lending agency will not assess late charges or declare the loan delinquent if the payment due on January 1 is made before January 16. If Borrower makes his or her payment before January 16, the loan is not delinquent. However, if Borrower fails to make a payment by January 16, then the loan is delinquent and the *date of delinquency is January 1* (the payment due date).

- payment is not made by the due date specified in the initial billing notice, in the case of administrative debts such as fines, fees, penalties, and overpayments. The due date is usually 30 days after the agency mailed the notice. *The date of delinquency is the date the agency mailed or delivered the billing notice.*

  Example*:* Agency discovers that duplicate payments were made to beneficiary and seeks to recover the overpayment. On March 1, the Agency mails a notice to beneficiary informing him about the overpayment. The notice states that payment must be made by March 31 to avoid assessment of late charges and enforced collection action. If beneficiary pays the amount requested before March 31, the debt is not delinquent. However, if beneficiary fails to pay by March 31, then the debt is delinquent, and the *date of delinquency is March 1* (the date of the initial notice about the debt).

Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act of 1996 (DCIA) provided Federal agencies with a variety of delinquent debt collection tools. The DCIA:

centralized delinquent debt collection at the Department of the Treasury (Treasury), requiring Treasury to pursue delinquent debts that are not actively being collected by Federal creditor agencies, a program known as "cross- servicing";
established a centralized offset process at Treasury, known as the "Treasury Offset Program"; authorized Treasury to manage a governmentwide, performance-based private collection agency contract for referral of delinquent debts for collection;

- requires Federal agencies to report delinquent consumer debts to credit bureaus;

- permits Federal agencies to administratively garnish the wages of non-Federal employees; and

- requires credit-granting agencies to bar debtors from receiving Federal direct, guaranteed, or insured loans until their delinquent debts owed to the United States are resolved.

Debt Collection Statutes. A list of the Federal statutes applicable to governmentwide debt collection is found at **Appendix 4**.

Governmentwide Debt Collection Regulations. The following regulations apply to governmentwide debt collection:

- The *Federal Claims Collection Standards* (FCCS) are the governmentwide debt collection standards published jointly by Treasury and DOJ in Title 31 of the Code of Federal Regulations (CFR), Parts 900 through 904 (31 CFR Parts 900 – 904);

- The *debt collection regulations issued by Treasury's Fiscal Service* at 31 CFR Part 285 govern Treasury's cross-servicing procedures; Treasury's centralized offset program, including administrative, tax refund, and salary offset programs; administrative wage garnishment; and, the

barring of delinquent debtors from receiving Federal loans and loan guaranties; and

- *Salary offset regulations* published by the Office of Personnel Management at 5 CFR Part 550.

- The Office of Management and Budget (OMB) has issued OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables."

- The Treasury Financial Manual Chapter I TFM 4-4000, "Debt Management Services Collection of Delinquent Nontax Debt."

Governmentwide Debt Collection Guidance. *Fiscal Service* has issued this document and other debt collection guidance, such as the "Guide to the Federal Credit Bureau Program" and the "Treatise on Federal Nontax Debt Collection Law."

Debt collection statutes, regulations, and guidance are found at the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_dca.htm.* Agency and program-specific statutes, regulations, and policies are not covered in this Chapter, but they also govern the debt collection programs of a specific agency. Agency personnel should contact agency counsel for information about agency-specific laws and requirements.

Key Debt Collection Principles

Federal agency personnel who collect debts for the government should understand the following key principles:

Agency Regulations. Regulations are rules and procedures governing an agency's programs or administrative processes. In many cases, an agency is required to publish rules and procedures in the *Federal Register*. After publication in the *Federal Register*, regulations are codified in the *Code of Federal Regulations* (CFR). *Federal Register* and CFR documents may be accessed online at *www.gpoaccess.gov/fr/index.html*.The governmentwide regulations mentioned above (Part I, Background) provide general rules and standards for a Federal agency to follow when using various debt

collection tools. **Each agency must promulgate its own debt collection regulations**. An agency should adopt the governmentwide debt collection rules and standards for its own programs, when appropriate. Additionally, an agency's rules and standards should cover any additional debt collection tools the agency intends to use. Agency counsel should be consulted to determine when an agency's rules and procedures must be published in the *Federal Register*.

Program Goals and Debt Collection. Delinquent debts arise from various Federal Government programs and actions. For some types of debts, the government's interests may be best served by resolving debts in a way that achieves an important goal of a specific program. For example, it may be in the government's best interest to lower a debtor's monthly payments to allow a debtor to remain in his or her own home, keep a business, or to recover from a disaster. An agency may agree to reduce fines and penalties in exchange for the correction of the health and safety violations that triggered the debt. Perhaps it is in the government's interest to compromise a medical profession debt if the debtor completes a service agreement that would allow the medical needs of an underserved community to be met. An agency should determine early in the debt collection process (normally, in the first 60 days) whether a debtor is willing and able to work with the agency to achieve the important government objective associated with the debt. If not, the agency's primary objective should be to maximize the collection of the debt and minimize potential losses.

Due Process. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty or property without due process of law.... " In the context of Federal debt collection, the constitutional right of "due process" requires an agency to provide debtors with *notice* of, and the *opportunity to dispute*, a debt or intended debt collection action.

- **Notice** must include the amount and type of debt owed, and the actions to be taken by an agency to collect the debt, such as adding interest and late charges, offset or garnishment, foreclosure of collateral property, and credit bureau reporting. **Opportunity to dispute** the debt or the adverse collection action to be taken includes, at a minimum, an opportunity for the debtor to challenge (1) the existence of all or part of the debt, and/or (2) whether the agency has met

the statutory or regulatory prerequisites for using the collection action mentioned in the notice.

The minimum "due process" required is generally established by the statutes that authorize the use of a specific debt collection tool or by implementing regulations. As the chart below indicates, the notices and opportunities to be provided to the debtor are not uniform for all debt collection actions and tools. Additionally, an agency, through its regulations and procedures, can require administrative processes in excess of the minimum due process standards (that is, processes that are more beneficial to the debtor).

Minimum Due Process Requirements

Debt Collection Tool	Notice	Opportunity to Dispute
Non-centralized administrative offset	Prior to offset, no specific time frame	Review with an agency official
Salary offset (non-centralized)	30 days prior to offset	Hearing with hearing official not under the control of the agency
Tax refund offset	60 days prior to offset	Review with an agency official
Treasury Offset Program (TOP) (centralized offset includes administrative, salary & tax refund offset)	60 days prior to submitting the debt to TOP	Review and/or hearing, as appropriate
Administrative wage garnishment	30 days prior to garnishment	Hearing with agency official or any qualified individual
Credit bureau reporting	60 days prior to report to consumer credit bureau	Review with an agency official

Additional details on due process requirements are discussed later in this Chapter.

Privacy Protections. Many of the debt collection tools discussed in this Chapter require disclosure of personal information concerning debtors to individuals and entities outside the creditor agency. For example, disclosures of information about debtors might be made to Fiscal Service for offset or cross-servicing, to private collection agencies, to credit bureaus, to employers to effectuate wage

garnishment, and/or to DOJ for litigation or concurrence in the agency's termination of collection action.

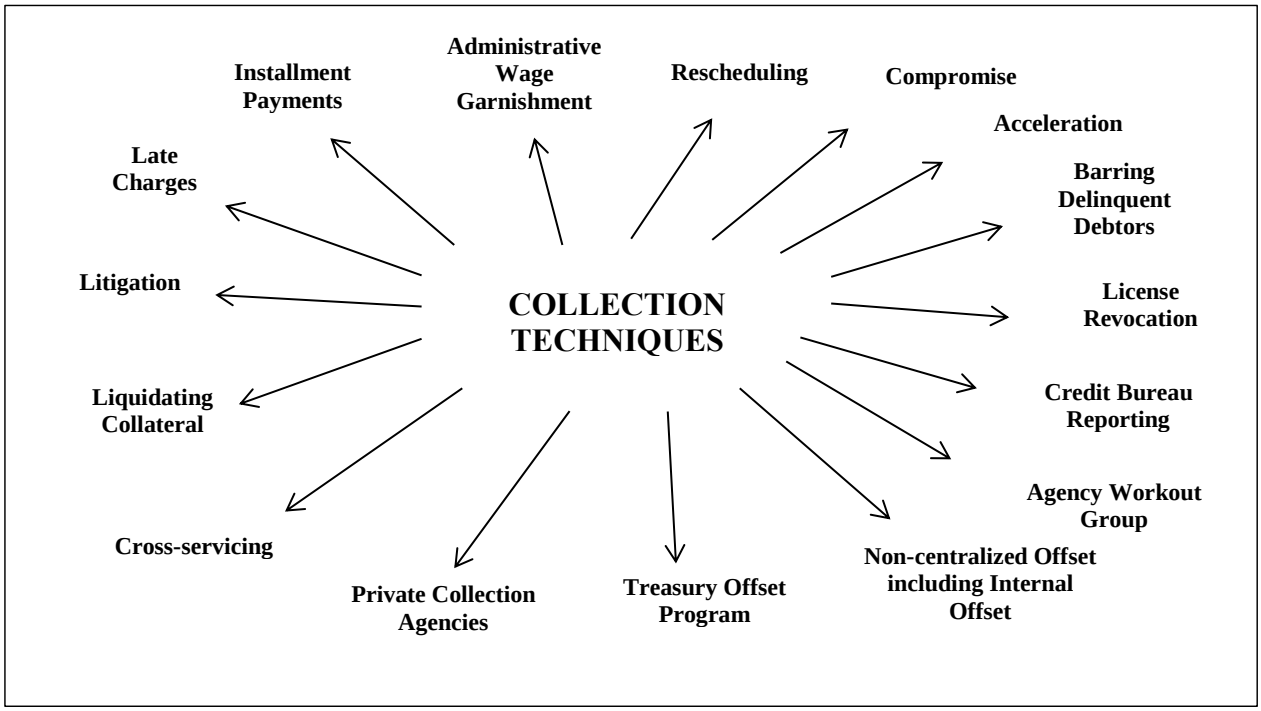
The Privacy Act of 1974 provides certain protections for individuals whose information is contained in records maintained by the Federal Government. Among other things, an agency may not improperly disclose information about individuals whose records are maintained in a "system of records" (a group of records where information about an individual can be accessed by name or personal identifier, such as a taxpayer identification number). An agency is required to publish notices in the *Federal Register* to identify its systems of records and to describe permissible disclosures, known as "routine uses," for those records.

When implementing its debt collection strategy, an agency should review its debtor records and consult with agency counsel to determine if:

- the records are a "system of records" as defined in the Privacy Act;
- a system of records notice has been published in the Federal Register and updated, where necessary; and
- the routine uses listed in the system of records or other legal authorities permit disclosures necessary for all appropriate debt collection tools and to prevent and identify improper payments or awards to delinquent debtors.

Within governmentwide rules and standards and an agency's own statutory authority, an agency has some flexibility in determining what collection techniques and tools to use and in what order. The best mix of tools for collecting delinquent debts at one agency may vary from that of another agency. However, <u>all</u> agencies must comply with Federal laws that <u>require</u> the use of certain debt collection tools, such as cross-servicing, offset, and credit bureau reporting.

Determining the Appropriate Collection Technique to Use



Key factors to consider when determining the technique or tool to use include:

- whether the agency is required by law to use the debt collection tool;
- the size and age of the debt;
- the type of debt, particularly whether commercial or consumer;
- the availability of the debt collection tool. For example, the Treasury Offset Program is not available until the agency knows the debtor's taxpayer indentification number (TIN);
- the requirements for use of the debt collection tool, such as minimum dollar thresholds;

- whether one tool can be used concurrently with another tool, such as private collection agencies and the Treasury Offset Program;

- the time and resources required to use the collection tool; the feasibility of using each tool, including any legal or contractual constraints; and

- the cost of each tool relative to the size of the debt. Costs include administrative costs, as well as fees charged by a private collection agency, Fiscal Service, or DOJ. The agency should weigh costs against the probability of collecting the debt.

Establishing a Collection Strategy

A collection strategy is an organized plan of action incorporating the various collection tools to be used by an agency to recover debt. Each agency should establish and implement effective collection strategies that suit the agency's programs and needs. Collection strategies must meet all statutory requirements. A collection strategy will facilitate debt collection by providing a systematic, uniform method for collecting accounts.

An agency should first seek to collect delinquent debts in one lump sum. If a debt cannot be collected in a lump sum, an agency should next attempt to collect the full amount in installment payments within a reasonable time (generally, less than three years). Finally, if a debt cannot be collected in full in a lump sum or through installments, an agency should consider partial collection of the debt through a compromise agreement.

Debt collection strategies will be based on the decisions made by an agency in determining what tool or technique to use at different points in the debt collection cycle. An agency's strategies will take into account that debts over 180 days delinquent must be referred to Fiscal Service for cross-servicing and offset. If an agency relies on Fiscal Service to submit debts for administrative offset on the agency's behalf, the agency must transfer the debts to Fiscal Service no later than 120 days delinquent. An agency should periodically (e.g., every three to five years) evaluate the soundness

of its strategies and collection activity. Samples of collection strategies are contained in **Appendix 5**.

Collection Action Documentation

During the debt collection phase of the credit cycle, the agency will build upon the documentation created during its credit extension and account servicing activities. It is essential that the agency continue to document all agency contacts with a debtor and actions taken to enforce collection in order to protect the government's interests. Documentation will also be critical if the agency decides to pursue litigation and for subsequent agency decisions to write-off and ultimately close-out a debt. An agency's automated systems may be used to document contacts with the debtor and other debt collection activities so long as the manner in which the information is retained is sufficient for evidentiary purposes in a court or administrative proceeding. See **Appendix 6** for a list of collection activities that should be documented.

An agency should also consider using digital imaging as a way to maintain copies of debt collection documentation. Digital imaging allows an agency to electronically maintain copies of documentation in various formats.

Agency Workout Groups

Agency workout groups are established for the sole purpose of resolving troubled debts, primarily loans. As such, agency workout groups should have the authority to decide on appropriate actions necessary to maximize debt recovery, including rescheduling debt. Strategies developed by workout groups should be case specific; however, the workout group should establish policies which outline options for handling different debt problems. The agency may want to establish a workout group if the volume and amount of its debts are large enough to warrant a special "problem account" department or if extraordinary effort or special expertise is required to enforce recovery. A workout group consists of loan officers, legal staff, and accounting personnel. Team members should have working knowledge of and abilities in the following areas:

- credit management and debt collection;
- business law;

- accounting;
- agency policies and procedures;
- liquidation proceedings;
- collateral appraisal;
- communication and interpersonal skills; and
- management policies and procedures.

Contact With the Debtor

Contact with the debtor is critical because contact:

- provides the debtor with notification of the existence of the debt and the amount of the debt if the debtor is otherwise unaware (for example, a beneficiary receives a benefit payment for more than the amount statutorily authorized, or a person is liable to the Federal Government for property damage but the amount of damage has not been determined);
- provides the debtor with the opportunity to repay the debt in full, or, if the debtor cannot pay the debt in full, to work out a satisfactory repayment arrangement with the agency;
- provides the debtor with information on the agency's policies regarding accrual of interest, penalties, and administrative costs;
- if in writing, can provide evidence of due process compliance when the letter advises the debtor of the agency's intent to use certain debt collection tools, as well as any rights the debtor may exercise to avoid the use of the debt collection tools;
- provides a means of responding to debtors who exercise due process rights; and

- for some programs, provides the opportunity to resolve the debt by meeting a specific program objective or goal (such as a medical professional complying with an agreement to practice in an underserved area, or an employer correcting a health and safety violation).

An agency must provide appropriate guidelines and training to its employees whose duties include contacting debtors. While Federal agencies are not subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1681 *et seq*., the FDCPA provides valuable guidance on appropriate practices in communicating with debtors and can be used as a source in developing an agency's guidelines. See **Appendix 7** for a sample list of appropriate practices.

It is critical for an agency to take action on a delinquent debt immediately to prevent the delinquency from becoming more serious. Acting on the delinquency quickly will greatly enhance the probability that the delinquency can be "cured" or the debt fully collected. Within 20 days after the payment due date or at the end of any grace period contractually established, the agency should contact the debtor, by letter or phone, in an attempt to resolve the non-payment. The agency should utilize personal contact with the debtor when such practice has proven to be effective. It is critical that all contact with the debtor be documented in the account files.

In the case of an administrative debt (for example, a fine, fee, penalty, overpayment, or other non-loan type of debt), the agency should have covered most of the items listed below in its initial billing notice, but may find it effective to contact the debtor to inform the debtor of the delinquency, remind the debtor of the agency's policies and procedures for collecting a delinquency, renew the request for payment, and attempt to resolve the delinquency. Although form letters are useful and can be dispatched quickly, the agency may find that a personalized letter or a phone call is more effective in emphasizing the seriousness of a delinquency, especially for those debtors who are routinely delinquent.

If the delinquency is not resolved after the initial contact with the debtor, the agency must notify the debtor of the debt's delinquent status through a demand letter or dunning notice. ***One demand letter sent no later than 30 days after delinquency should be***

sufficient. Except in rare circumstances, the agency should not send any more than two demand letters, no more than 30 days apart, as established in its debt collection strategy. The agency should ***terminate the process of sending demand letters at any time that it determines that the letters are no longer serving any useful purpose***. Any contacts beyond the first demand letter should be tailored to the circumstances of the debt, i.e., the size, type, and age of the debt, and the debtor's response to the initial contact. Each succeeding demand for payment must be progressively stronger and firmer in tone.

When not already covered in a prior invoice or letter, the demand for payment, which should be sent no later than 30 days after the date of delinquency, must include:

- the status of the debt as overdue;
- the amount owed;
- the basis of the indebtedness;
- policies on assessing interest, penalties, and administrative costs, and the applicable rates and amounts, especially if not provided in a loan agreement;the agency's intention to use various collection tools to collect the debt, including referral of the debt to Fiscal Service for collection (known as "cross-servicing"), offset, private collection agencies, administrative wage garnishment, and litigation. The agency should not threaten to take a collection action it is not authorized or does not intend to take;
- opportunities for the debtor to review the debt records, contest the debt and provide evidence to support the contentions, and enter into a reasonable repayment agreement;
- the need for the debtor to make immediate payment or contact the agency within a specified period of time from the date of the demand letter in order to avoid enforced collection; and

- the name, phone number, and address of an individual to contact within the agency to resolve the delinquency. It is extremely important for a debtor to be able to contact a person who is knowledgeable about the agency's debt collection policies and practices and who can respond to the debtor's questions and concerns.

In developing its demand letter procedures, an agency must consider that, for debts that will be referred to Fiscal Service for cross-servicing, the information listed in the Demand Letter Checklist found at **Appendix 8** must be sent to the debtor *at least 60 days prior to referral*.

If possible, the agency should respond to any communication from the debtor within 30 days. The agency should develop clear policies and procedures on how to respond to a debtor's request for copies of records related to the debt, consideration for a voluntary repayment agreement, or a review or hearing on the debt.

Assessing Interest, Penalties and Administrative Costs

The Debt Collection Act of 1982, as amended (codified at 31 U.S.C. § 3717), requires agencies, unless expressly prohibited or restricted by statute or contract, to assess three separate and distinct types of late charges on all delinquent debts, including debts owed by state and local governments. Late charges are categorized as interest, penalties, and administrative costs.

(1) **Interest**, sometimes referred to as **additional interest,** compensates the government for the loss of use of funds when the debt is not paid timely and accrues from the date of the delinquency. At a minimum, the interest rate will be set at the same rate as Treasury's Current Value of Funds Rate (prescribed and published annually by the Secretary of the Treasury in the *Federal Register* and available on the Fiscal Service website at *http://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm* for the period in which the debt became delinquent. The rate is published annually, but is subject to quarterly revisions if the annual average changes more than 2%. The agency may assess a higher rate if necessary to protect the government's interests.

The rate of interest remains fixed for the duration of the delinquency. The agency may not compound the interest or assess interest on administrative costs and penalties.

(2) **Penalties** discourage delinquencies and encourage early payment of the delinquent debt in full. As set by statute, the penalty to be assessed to a delinquent debt is an amount not to exceed 6% per year. An agency should not charge a penalty of less than 6% without a compelling reason. Accruing from the date of delinquency, the penalty charge is assessed on *any portion* of a debt that is outstanding for more than 90 days, including any interest and administrative costs.

(3) **Administrative costs** cover the costs associated with collecting a debt from the date of the delinquency. The agency will set the amount at either the actual costs incurred for the individual debt or the average cost incurred at similar stages of delinquency for similar types of debt. Costs may be assessed as a percentage of the amount collected.

Administrative costs should include the staffing and resources costs incurred to recover delinquent debts and other costs associated with using various collection tools to enforce recovery, including, but not limited to, the costs of obtaining a credit report and collection fees charged by Fiscal Service, DOJ and private collection agencies. To the extent allowed by law, an agency should add to the debt as administrative costs all fees charged by Fiscal Service, DOJ, private collection agencies and other entities that collect debt for creditor agencies.

The agency will continue assessing these late charges at the rates established by the agency until final payment is received, unless debt collection activity is suspended or terminated, the debt is compromised, the late charges are waived, or the late charges are altered as the result of a court judgment.

If a debtor defaults on an agreement to repay the delinquent debt, the agency should add all late charges to the principal amount. The

agency should start anew to accrue late charges, at the rate in effect at the time of default, on the new principal amount.

Waiver of Interest, Penalties, and Administrative Costs. The agency is required to waive *interest* and *administrative costs* on a debt paid within 30 days of the date of delinquency. The agency has discretion to waive interest, penalties, and administrative costs in accordance with its regulations, either (1) pursuant to a compromise or settlement agreement, or (2) when collection of these charges is against equity and good conscience or is not in the best interests of the United States. For example, a waiver may be appropriate when an agency cannot conduct a hearing within the statutorily required time frame (e.g., 60 days for salary offset). A waiver may be in whole or in part for each separate type of charge.

COLA Alternative to Assessment of Late Charges. In limited circumstances, an agency may increase an administrative debt by the cost of living adjustment (COLA) in lieu of charging interest, penalties, and administrative costs. The COLA alternative can be used only when: (1) the debt is an administrative debt (e.g., a fine, penalty, fee or overpayment), not a loan or debt arising from a loan guaranty; and (2) assessment of late charges is not cost effective or technically feasible, and a complete waiver of late charges is not supportable. Before using the COLA alternative, an agency should determine if charging interest alone and waiving penalties and administrative costs could accomplish the same objective as using the COLA. Agencies should ensure that new debt collection systems are developed with the capabilities to assess late charges in accordance with the requirements noted above, rather than using the COLA alternative.

The COLA 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 using the COLA alternative shall be computed annually as of the date the COLA is published during each calendar year.

Each agency must publish regulations establishing agency policy regarding the accrual and waiver of interest, penalties and

administrative costs, including the circumstances under which these charges will not be imposed when collection action is suspended because of an appeal or other reason. An agency must inform debtors of its policies prior to accruing interest and other charges, either through incorporating the policies in a loan agreement or through inclusion of appropriate language in the initial demand letter.

Installment Payments

Whenever possible, an agency should try to collect an overdue debt in a single lump sum. In the event that the debtor claims financial inability to repay the debt in a single lump sum, the agency may consider collecting the overdue debt in installments. Before using certain collection remedies, such as offset and administrative wage garnishment, an agency must provide a delinquent debtor with the opportunity to enter into a reasonable repayment agreement. See Demand Letter Checklist at **Appendix 8**.

Prior to entering into an installment agreement, an agency should obtain a financial statement or credit report to verify the debtor's claim of inability to repay in a lump sum. See **Appendix 9** for a sample financial statement. Additionally, an agency should enter into such agreements only when there is evidence the debtor has (1) a willingness to abide by the terms of the agreement, including the repayment schedule; and (2) an ability to make the agreed upon payments. When determining the debtor's ability to pay, an agency should consider the following factors:

- age and health of the debtor;
- present and potential income inheritance prospects;
- possibility of hidden assets or fraudulent transfers;
- assets/income available through enforced collection; and
- reasonable and necessary living expenses for the debtor and the debtor's dependents.

An agency may wish to consult the Collection Financial Standards used by the Internal Revenue Service to determine reasonable amounts that an individual or family needs for living expenses. The Collection Financial Standards may be found at *www.irs.gov*.

The installment agreement should provide for as large an initial lump sum payment as the debtor can afford. While payments normally should be sufficient in size and frequency to liquidate the debt in three years or less, a greater amount of time may be appropriate based on the size of the debt and the debtor's ability to repay. The agency should seriously consider requiring the debtor to use pre-authorized debit to make the required installment payments. The agency may also require the debtor to post new or additional collateral to secure the outstanding balance of the account, especially in cases where the debtor's willingness to abide by the terms of the agreement is questionable, or where the amount of time to liquidate the account exceeds three years.

The installment agreement will be a legally enforceable written agreement in which all the terms and conditions of the installment arrangement, including those governing the assessment of financing interest and late charges, are stated. The interest rate to be charged on installment agreements of one year or less is the Current Value of Funds Rate in effect at the time of the agreement; for installment agreements of more than one year, the rate is the rate for a Treasury security of comparable length. If a debtor has defaulted under a previous repayment agreement, late charges that accrued but were not collected under the defaulted agreement must be added to the principal under the new agreement. The written agreement should provide for the *acceleration of the debt* (declaring the full amount of the debt due and payable) in the event that the debtor defaults. Where the term for payment of installments exceeds one year, an agency should consider including a clause that allows the agency to re-evaluate the amount of the installment payment on a periodic basis, with the goal of increasing the installment amount or requesting an additional lump sum payment, in order to collect the debt sooner.

Acceleration

Acceleration of a debt occurs when an agency calls the full amount of the debt due and payable. When a debt is accelerated, the agency demands that the debtor pay the entire debt (both the delinquent and non-delinquent portions of the debt), and considers the total amount of the debt delinquent. The agency should delineate circumstances in which acceleration is appropriate and develop procedures to incorporate acceleration into its debt collection activities. For example, acceleration is particularly appropriate when a debtor has failed to repay a debt in accordance with an installment agreement.

Rescheduling

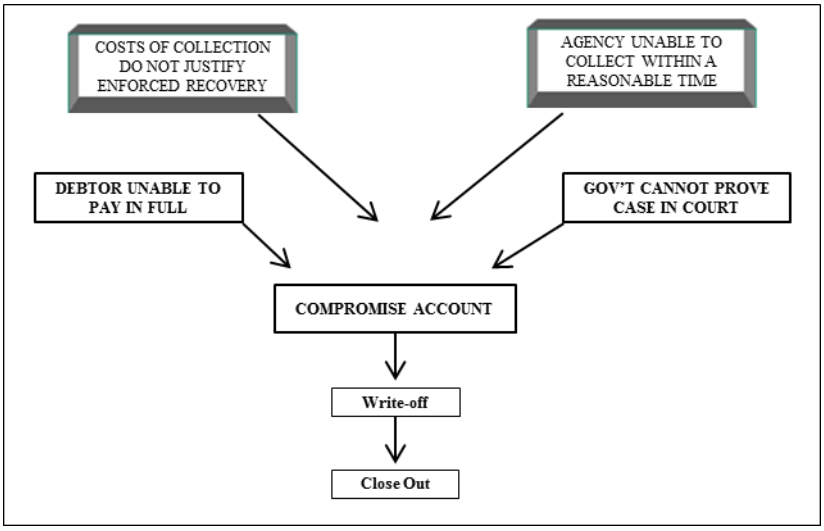
Rescheduling signifies a change in the existing terms of a loan. An agency should consider rescheduling a debt when it has determined that the rescheduling is in the government's interests and that recovery of all or a portion of the debt is reasonably assured.

As with installment payments, before rescheduling a debt, the agency should reassess the debtor's financial position and ability to repay the debt if rescheduled. The agency should also determine if it should require the debtor to use pre-authorized debit to make payment. As with any repayment arrangement, the terms and conditions of the rescheduling, including the acceleration clause, must be in writing and signed by the debtor. The agency should discourage informal workout arrangements with debtors.

Each agency should establish uniform policies, procedures and criteria for rescheduling and other types of workouts for each program area. Its policies and procedures should provide for the recognition of gains and losses on rescheduled accounts in accordance with the provisions of OMB guidance and changes in subsidy amounts as required under the Federal Credit Reform Act.

Compromise

An agency compromises a debt whenever it accepts less than the full amount of the outstanding debt in full satisfaction of the entire amount.



A compromise may be considered (but is not required) when one or more of the following criteria apply:

1. **the debtor is unable to pay the debt within a reasonable time period**, as verified through credit reports or other financial statements (see sample financial statement in **Appendix 9**);

2. **the agency is unable to enforce collection within a reasonable time period**. This may be the case when the agency cannot determine the amount it may realize if it forces the liquidation of available collateral;

3. **the cost of collection does not justify enforced collection of the full amount**. An agency may compromise statutory penalties, forfeitures, and claims established as an aid to enforcement and to compel compliance, if the agency's policies in terms of deterrence and securing compliance will be adequately served. Conversely, an agency may determine that enforced collection is justified regardless of the cost in

order to ensure compliance with the agency's policies or programs; or

4. **there is real doubt concerning the government's ability to prove its case in court**. In this situation, the agency may be in dispute with the debtor over the amount or have serious concerns related to the agency's ability to legally prove its case in court.

Using the Claims Collection Litigation Report, CCLR, an agency must refer compromise proposals where the principal amount of the debt exceeds $100,000 (or such larger amount as may be determined by the Attorney General) to DOJ for its concurrence in the compromise. The CCLR instructions can be found at:
http://www.justice.gov/sites/default/files/jmd/pages/attachments/2014/12/12/cclr_instructions.pdf
and the form at:
http://www.justice.gov/sites/default/files/jmd/legacy/2014/05/26/cclr-form-fillable.pdf.

DOJ has delegated to Fiscal Service, the authority to compromise a debt with a principal amount of $500,000 or less when the debt is being serviced by Fiscal Service in its Cross-Servicing Program. It is not necessary for the agency to refer proposals for compromise that do not meet the agency requirements for compromise and that the agency does not, therefore, intend or want to accept.

Compromise agreements should be in writing and signed by the debtor and the agency, whenever feasible. The agency should discourage the use of installment agreements to pay compromises. If, however, an agency does accept an installment agreement, the agreement must provide that, in the event of default, the full amount of the debt (less any amounts paid) will be reinstated and immediately due and payable. To further protect its position, the agency may also ask the debtor to pledge collateral to secure the debt.

Where two or more persons are jointly and severally liable on that same delinquent debt, an agency should ensure that a compromise with one debtor does not inadvertently release the agency's claim against the remaining debtor(s). The amount of a compromise with one debtor shall not be considered a precedent or binding in

determining what the appropriate compromise amount and terms might be with other co-debtors.

The agency needs to clearly indicate to the debtor that the compromise agreement applies to the amount of the debt and that the agency is not authorized to release the debtor from any other liabilities owed to the United States, including tax liability which may be incurred on the compromised amount. Depending on the type and amount of debt being compromised, the agency may be required to report the difference between the full amount of the debt and the amount paid by the debtor in a compromise agreement to IRS as potential income on Form 1099-C. See Chapter 7, Termination of Collection Action, Write-off and Close-out/ Cancellation of Indebtedness, for information on Form 1099-C reporting.

Taking Action Against Co-borrowers/Guarantors

An agency should take action to recover a debt from secondary debtors (co-borrowers or guarantors) when it becomes apparent that the primary debtor cannot or will not repay a debt. The agency should employ the same debt collection techniques and tools in pursuing secondary debtors as it uses for primary debtors. To successfully pursue secondary debtors, the agency must have obtained sufficient identifying information, including taxpayer identifying numbers, on all co-borrowers and guarantors. It is not necessary to allocate the amount of the debt among the secondary debtors in proportion to any investment or pursuant to any agreement or court order in a case to which the agency is not a party (for example, a partnership agreement or divorce judgment). Enforced collection should be taken against each debtor for the full amount of the debt, unless otherwise prohibited. In certain cases where a primary debtor has filed for bankruptcy protection, an agency may be precluded from pursuing the non-bankrupt secondary debtor. Whenever a debtor has filed for bankruptcy protection, an agency should consult with counsel to determine whether a bankruptcy stay is in effect and must be lifted before proceeding with collection action against a secondary debtor.

Application of Payments

Except as otherwise contractually provided, payments made by a debtor towards a delinquent debt are applied to the outstanding balance of the debt in the following order:

1. penalties;
2. administrative costs;
3. additional interest;
4. financing interest; and
5. principal.

If the debt is being collected by Fiscal Service through cross-servicing or TOP, or if a private collection agency is collecting the payment for an agency, each payment will first be applied to the amount of the contingency fee due Fiscal Service or the private collection agency. The rest of the payment would then be applied as indicated, to liquidate in full penalties, other administrative costs, interest, and principal. Other than the application of payment of the aforementioned fees, the agency may alter this order of payment if it determines that such a change is in the government's interests.

Part II – Debt Collection Tools and Programs

One of the major purposes of the DCIA is to "maximize collections of delinquent debts owed to the government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools." An agency is required to aggressively collect all debts arising out of the agency's activities. If a debtor fails to pay or otherwise resolve a delinquent debt, an agency must react quickly to determine the appropriate debt collection tools to be used to enforce collection. An agency may use more than one of the available tools at the same time in order to maximize its recovery on a bad debt. This part explains how to use the various debt collection tools and programs.

Transfer of Debts to Fiscal Service for Collection - Cross-Servicing. The DCIA requires that related debt collection activities be consolidated within the government, to the extent possible, to minimize the government's delinquent debt collection costs. One way that the government's delinquent debt collection operations have been consolidated is through the Cross-Servicing Program operated by Fiscal Service. Once an agency refers its delinquent debts to the Cross-Servicing Program, Fiscal Service then uses a variety of collection tools to collect the debt. Information on Fiscal Service's Cross-Servicing Program is available on the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/dms/xservg/debt_crosserv.htm* or by calling the Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725. Fiscal Service will provide an overview of the debt collection services available to an agency and will assist the agency in taking the steps necessary to participate in the Cross-Servicing Program.

Debt Referral Requirements. An agency should send its delinquent debts to Fiscal Service as early as possible in the debt collection cycle. See **Appendix 5** for sample debt collection strategies. If a debtor has not paid the debt, entered into a repayment arrangement, or otherwise resolved the debt within 60 days after the agency's last *demand letter*, the agency should refer the debt to Fiscal Service. The last demand letter, together with prior notices sent to the debtor, must include all of the items described in the Demand Letter Checklist (see **Appendix 8**). An agency could refer its debts to Fiscal Service as early as 61 days

after the delinquency date assuming that the appropriate demand letter was sent to the debtor on the delinquency date and that all other due process pre-requisites have been met.

As required by the DCIA, an agency must refer any eligible debt more than 180 days delinquent to Fiscal Service for cross-servicing. At least 60 days before a debt is submitted to Fiscal Service, an agency must have sent to the debtor one or more notices with the information in the Demand Letter Checklist in **Appendix 8**. Therefore, to meet the statutory debt referral requirement, an agency must send the due process letter to the debtor as soon as possible, preferably no later than 60 days delinquent.

The Digital Accountability and Transparency Act amended the DCIA to require agencies to notify Fiscal Service of all debts delinquent 120 days or more for purposes of administrative offset. If an agency relies on Fiscal Service to submit debts for administrative offset on the agency's behalf, the agency must transfer the debts to Fiscal Service no later than 120 days delinquent.

A debt is eligible for referral to Fiscal Service for cross-servicing if the debt is:

- past due;
- legally enforceable;
- owed by an individual or entity (including a state or local government) other than a Federal agency; and
- $25 or more (including interest, penalties and administrative costs).

A debt is considered *legally enforceable* for purposes of referral to Fiscal Service if there has been a final agency determination that the debt is due and there are no legal bars to one or more of the collection actions to be taken by Fiscal Service, as described beginning on page 6-28.

Exceptions to Referral Requirements. A debt is not eligible for referral to Fiscal Service for cross-servicing if the debt is:

- not past due or legally enforceable;
- owed by a debtor who has died;
- owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in a bankruptcy proceeding;
- owed by a Federal agency;
- the subject of an administrative appeal, until the appeal is concluded and the amount of the debt is fixed; or
- less than $25 (including interest, penalties and administrative costs).

An agency is not required to refer a debt to Fiscal Service for cross-servicing if the debt is:

- delinquent for 180 days or less, unless the agency relies on Fiscal Service to submit debts for administrative offset; in which case, the debt must be referred no later than 120 days delinquent (however, an agency may send such debts to Fiscal Service if they are otherwise eligible for referral);
- in litigation, that is, the debt has either been referred to DOJ for litigation, or is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy and post-judgment matters;
- in foreclosure, that is, the debt is secured by collateral that is being foreclosed, either through a court proceeding or non-judicially (see page 6-55 for information on liquidating collateral)
- scheduled for sale within one year under an asset sales program approved by OMB;
- at a private collection agency with the approval of Fiscal Service;

- at a Treasury-designated debt collection center;
- expected to be collected from payments issued to the debtor by the creditor agency within three years of the date of delinquency (commonly referred to as "internal offset");
- less than $100 and the agency is unable to obtain the debtor's taxpayer identifying number; or
- otherwise exempt from the statutory referral requirement by law or official action of Treasury.

Requirements for Agency Participation in Cross-Servicing. Chapter 4000 of the Treasury Financial Manual, Volume I, entitled "Debt Management Servcies Collection of Delinquent Nontax Debt," describes the requirements for agency participation in the Cross-Servicing Program and is available on the Fiscal Service website at *http://tfm.fiscal.treasury.gov/v1/p4/c400.html*.

Agency personnel should contact the Cross-Servicing Agency Liaison assigned to assist their agency or the Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725 for questions related to agency debts that have been referred to Cross-Servicing.

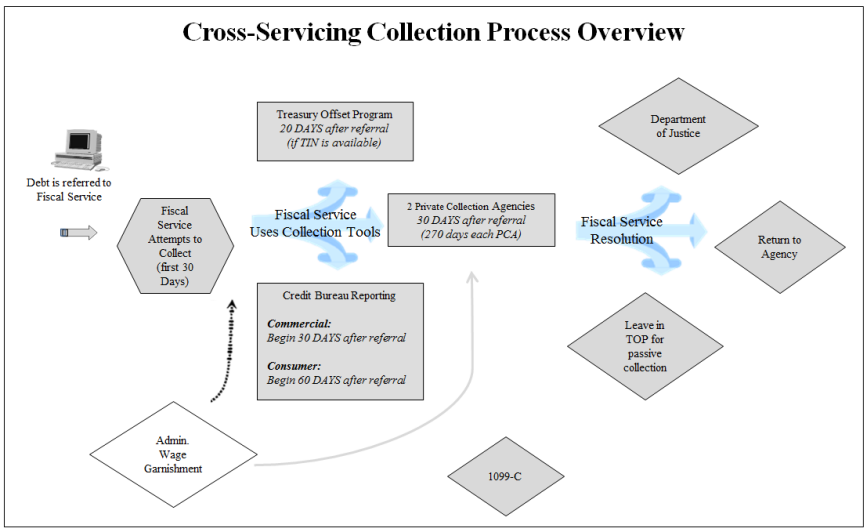
An agency must provide the debtor with proper due process before submitting a debt to Fiscal Service for cross-servicing. This means that, at a minimum, the agency has sent the debtor one or more demand letters with the information contained in the Demand Letter Checklist at **Appendix 8**, and has provided the debtor with the opportunity to dispute or challenge the debt. For each debt submitted to Fiscal Service for cross-servicing, an agency is required to certify that the debt is eligible for cross-servicing and all pre-requisites to collection have been met.

NOTE: Once a debt is referred to Fiscal Service, the agency must stop its own collection activity related to the referred debt. Any payments received by an agency for a debt that has been referred to Fiscal Service must be reported to Fiscal Service as a *payment* (not as an adjustment to the debt balance) to allow Fiscal Service to properly assess its fees.

Debt Collection Actions at Fiscal Service . When a debt is referred to cross-servicing for collection, the debt remains a debt owed to the referring agency and the referring agency shall continue to maintain all the official records, including accounting records, pertaining to the debt.

Cross-Servicing Programs require agencies to complete a profile for each distinct program under which a debt may arise. The profile identifies points of contacts and defines how the agency's debt portfolio will be serviced. It also specifies any unique laws that apply to an agency's debts, Debts referred to Fiscal Service are subject to the following actions, as appropriate:

- Treasury demand letter within five business days of referral;
- telephone calls between debtors and Fiscal Service personnel and repayment negotiations;
- submission of debt to the Treasury Offset Program (TOP) within 20 days of referral if the debtor's taxpayer identification number (TIN) is available. The debt remains in TOP until the debt is returned to the agency (see page 6-34 for a description of TOP);
- credit bureau reporting;
- referral to at least one private collection agency. In most cases, the debt is referred to a second agency if the first one is unable to resolve the debt;
- administrative wage garnishment, if the debtor is employed by an entity other than a Federal agency;
- referral to DOJ for litigation; and
- unpaid debt is reported to the Internal Revenue Service as potential income to the debtor on Form 1099-C.



If a debtor offers to compromise a debt or enter into a repayment agreement, Fiscal Service decides whether such offer is acceptable based on the FCCS and the parameters set by the creditor agency, i.e., the terms under which Fiscal Service may compromise an agency's debts or enter into repayment agreements. An agency must respond timely, as referenced in the TFM Chapter 1TFM 4-4000 to Fiscal Service's request for approval of any compromise or repayment offers to ensure that valid offers are promptly acted upon by the government.

While the debt is in the Cross-Servicing Program, Fiscal Service maintains debt balance information, collects the funds paid by the debtor, and returns the funds to the creditor agency for proper deposit and accounting. The creditor agency must maintain its original debtor records and remains responsible for any and all financial reporting associated with the debt. The creditor agency is responsible for the accuracy of the debt information submitted to Fiscal Service, and must provide updates and corrections of debtor information on a regular basis. Among other things, the creditor agency must immediately notify Fiscal Service when it learns that a debtor referred to Fiscal Service has filed for bankruptcy protection.

Agency personnel should contact the Fiscal Service liaison assigned to assist their agency or Fiscal Service's Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725 for questions related to agency debts that have been referred to cross-servicing.

Cross-Servicing Fees. Fiscal Service charges fees to cover its costs for collections through cross-servicing. The fee is a percentage of all collections received from the debtor after the debt is referred for cross-servicing. Fees are collected from amounts recovered or billed to the creditor agency. The creditor agency should add this fee to the debt as an administrative cost to the extent allowed by law.

Administrative Offset (Including the Treasury Offset Program)

Administrative offset occurs when the government withholds or intercepts monies due to, or held by the government for, a person to collect amounts owed to the government. Offsets may occur against tax refund payments, salary payments, military and civilian retirement pay, contractor payments, grant payments, tax overpayments, benefit payments, travel reimbursements and other Federal and state payments.

An agency may offset a debtor's payments using two methods – *centralized offset* via the Treasury Offset Program (TOP) operated by Fiscal Service and *non-centralized offset*, that is, ad hoc offset on a case-by-case basis. An agency should use TOP to effectuate offset except in certain limited circumstances as explained on page 6-41.

Centralized Offset Through TOP

In 1996, the DCIA required agencies to submit eligible delinquent debts to Fiscal Service for administrative offset once the debt was delinquent 180 days or more. In 2014, the Digital Accountability and Transparency Act amended the DCIA to require agencies to notify Fiscal Service of all debts for administrative offset at 120 days delinquent.

Agencies are encouraged to submit delinquent debts to TOP as early as 60 days after the required demand letter is sent to the debtor. (See the Demand Letter Checklist at **Appendix 8.**) For an agency that refers its debts to Fiscal Service's Cross-Servicing Program, Fiscal Service will submit the referred debts to TOP on behalf of the referring agency.

The information in this Chapter about TOP applies only to the offset of Federal and state payments to collect delinquent non-tax debts owed to the United States. The collection through TOP of Federal tax debts and state debts, such as delinquent child support and state income tax debts, is not discussed in this Guide.

How TOP Works

TOP allows agencies to submit debts to one centralized location for offset of all eligible Federal and state payments. Creditor agencies submit information about delinquent debts to Fiscal Service, which maintains the information in its delinquent debtor database. Federal payment agencies prepare and certify payment vouchers to Fiscal Service and other Federal disbursing agencies (such as the Department of Defense (DOD) or the United States Postal Service (USPS)). The payment vouchers contain information about the payment, including the name and taxpayer identification number (TIN) of the recipient. Before an eligible Federal payment is disbursed to a payee, Fiscal Service compares the payment information with debtor information in Fiscal Service's delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing agency offsets the payment, in whole or part, to satisfy the debt, to the extent allowed by law.
In addition to offsetting eligible Federal payments, Fiscal Service has entered into reciprocal agreements with states, whereby states agree to offset certain payments to payees who owe delinquent nontax debts to the United States. In return, TOP offsets federal vendor and other non-tax payments to payees who owe delinquent debts to state agencies.

Fiscal Service notifies the debtor, the creditor agency, and the payment agency when an offset occurs. The debtor is instructed to contact the creditor agency to resolve any issues related to the offset. An agency should respond promptly to a debtor's questions related to TOP collections.

Fiscal Service transmits amounts collected through offset to the appropriate creditor agencies after deducting the fees that Fiscal Service charges the creditor agencies to cover the cost of conducting the offset through TOP. The creditor agency should add such fees to the amount of debt to the extent allowed by law. Fiscal Service maintains information about a delinquent debt in the

TOP delinquent debtor database and continues to offset eligible Federal payments until the debt is paid in full or the creditor agency suspends or ceases debt collection or offset activity for the debt.

Debts Eligible for TOP. A debt is eligible for referral to TOP if the debt is delinquent and legally enforceable. A debt is considered *legally enforceable* for TOP purposes if there has been a final agency determination that the debt is due and there are no legal bars to collection through the offset of Federal payments.

Exceptions to Referral Requirements. A debt is not eligible for referral to TOP if the debt is:

- owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in a bankruptcy proceeding;
- owed by a Federal agency;
- the subject of an administrative appeal, until the appeal is concluded and the amount of the debt is fixed;
- less than $25 (including interest, penalties and administrative costs); or

An agency should not refer directly to TOP those debts that have been referred to Fiscal Service or another Treasury-designated debt collection center for cross-servicing, or to DOJ for litigation. Fiscal Service, debt collection centers, and DOJ are responsible for submitting these referred debts to TOP on behalf of the creditor agency. Debts that are not referred to Fiscal Service for cross-servicing may be eligible for TOP. If an agency does not submit its debts to Fiscal Service for cross- servicing, agency personnel may contact Fiscal Service's Treasury Offset Program Division at (202) 874-6810 for information on how an agency submits debts directly to TOP.

An agency should carefully review its portfolio of debts that are not sent to Fiscal Service for cross-servicing and submit all TOP-eligible debts for offset. Agency personnel should contact their agency's legal counsel for questions regarding whether a debt is eligible for referral to TOP.

Due Process Requirements. Before submitting a debt to TOP, an agency must provide due process to the debtor(s) owing the debt. If not already completed through the demand letter process, an agency must send notice to the debtor, at the debtor's most current address known to the agency, at least 60 days in advance of referring the account to TOP. For information on how to obtain a current address, see "Locating the Debtor" on page 6-71.

The Demand Letter Checklist at **Appendix 8** includes the information that must be sent to the debtor prior to submitting a debt to TOP. For each debt submitted to Fiscal Service for TOP, an agency is required to certify that the debt is eligible for TOP and all pre-requisites to collection through offset have been met.

Types of Payments Eligible for Offset Under TOP. All Federal payments may be offset under TOP except as prohibited by law or exempted by action of Treasury. This includes payments disbursed by Fiscal Service, DOD, USPS, and other government disbursing agencies. The following types of Federal payments are eligible for offset under TOP:

- Internal Revenue Service tax refunds;
- retirement payments issued by the Office of Personnel Management (OPM);
- vendor payments;
- Federal salary payments;
- travel advances and reimbursements;
- certain Federal benefit payments, such as Social Security retirement and disability payments;
- grant payments; and
- active military and military retirement payments.

For some types of payments, the government may not offset the entire payment. Limitations apply to OPM retirement payments

(25%); Federal salary payments (15% of disposable pay); and social security, railroad retirement, and black lung benefit payments (15%). In addition, a debtor's social security, railroad retirement, or black lung benefit payment may not be reduced to less than $750 per month after offset. These limitations apply to offset only. When a debtor's payment is subject to reduction via other legal processes to collect debts, such as tax levy or garnishment, the debtor's payment could be reduced by more than the limitation described here.

In addition, Fiscal Service has entered into reciprocal agreements with states that agree to offset certain payments to payees who owe delinquent nontax debts to the United States. The amount of the offset is dependent on the state's rules.

Payments Exempt from Offset Under TOP. Federal law prohibits the offset of certain types of Federal payments. Additionally, Treasury has granted requests by Federal payment agencies to exempt from TOP other types of payments. A complete list of payments that are exempt from offset under TOP is available on the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_manuals.htm#topexempt*.

Special Provisions for Certain Recurring Payments. For certain types of Federal recurring payments, such as monthly retirement or social security benefit payments, TOP sends the debtor at least one warning notice before the offset occurs. The debtor is advised to contact the creditor agency to resolve the debt or to discuss alternatives to offset. An agency should be prepared to respond promptly to a debtor's request to discuss alternatives to offset, especially in those cases where the debtor presents evidence of financial hardship.

Offset of Federal Salary Payments Under TOP. Before Federal salary payments may be offset, the agency must send to the Federal employee/debtor, at least 30 days in advance, notice in writing of the intent of the agency to collect the debt by offsetting the debtor's salary payments. The written notice must provide opportunities for the debtor to (1) inspect the relevant records, (2) enter into a written repayment agreement, and (3) to have an administrative hearing concerning the existence and amount of the debt and/or terms of the

repayment schedule. Additionally, if the debtor requests a hearing, the hearing official must be someone who is not under the control of the creditor agency.

An agency may opt to temporarily exclude a debt from Federal salary offset if the agency has not completed the special due process pre-requisites for Federal employees. If, through TOP, the agency learns that the debtor is a Federal employee, the agency must provide the necessary due process immediately in order to certify the debt as eligible for Federal salary offset through TOP as soon as possible.

TOP offsets of Federal salary payments are limited to 15% of a debtor's disposable pay (as defined in 5 CFR Part 550.1103). For judgment debts, travel advance recoveries, and other debts that may be collected by offsetting more than 15% of a debtor's Federal salary, the creditor agency must initiate non-centralized administrative offset, discussed below, by directly contacting the debtor's employing Federal agency.

TOP Fees: Fiscal Service charges fees to cover its costs for collections through TOP. The fee is set annually and is collected from amounts offset. The creditor agency should add this fee to the debt as an administrative cost to the extent allowed by law.

Computer Matching and Privacy Protection Act of 1988. The Computer Matching and Privacy Protection Act of 1988 regulates certain matching activities of the Federal government where the intent of the match is to take an adverse action against an individual. The Act does not apply to tax refund offsets. In addition, the Act's requirements to enter into matching agreements and to provide post-match notice and verification to the debtor have been waived for debts properly certified to TOP for offset purposes.

Non-Centralized Administrative Offset

In cases where offset through TOP is not available or appropriate, an agency may request that another agency offset a Federal payment to satisfy a debt. This type of *ad hoc* case-by-case offset is known as "non-centralized administrative offset." Another type of non-centralized administrative offset occurs when the payment agency is the same as the creditor agency, referred to as "internal offset."

Non-centralized offset can be used for internal offset, or when the payment to be offset is not processed through TOP or the creditor agency is unable to meet the 60-day notice requirement for debt submission to TOP (see Due Process Requirements, on page 6-36 but is otherwise able to comply with the due process pre- requisites for offset (see "Minimum Due Process Requirements" on page 6-8). Agencies should be aware that some payment types that have been exempted from TOP by Treasury may be eligible for non-centralized offset.

In order to use non-centralized offset, an agency must identify the payment that can be offset and the agency responsible for making the payment. Financial statements and copies of tax returns submitted by the debtor or credit reports may be a source of information about any relationship(s) between the debtor and other Federal agencies, which may help identify payments available for offset. For example, the creditor agency may learn that the debtor receives regular grant payments (that are not processed through TOP) from another agency. If the payment agency is not the same as the creditor agency, then the creditor agency should contact the payment agency directly and request the offset. Prior to requesting the offset, the creditor agency must certify to the payment agency that all due process pre-requisites have been met except as otherwise allowed by law. This means that the creditor agency has sent the debtor advance notice of the nature and amount of the debt to be collected and its intent to administratively offset payments to collect the debt. In addition, the notice must give the debtor the opportunity to:

- make voluntary repayment;
- inspect and copy records related to the debt;
- request a review of the debt; and
- enter into a repayment agreement.

Prior notice and an opportunity for a review may be omitted, as authorized under an agency's regulations, in cases when the agency first learns of the existence of a debt owed by a debtor when there is insufficient time before payment would otherwise be made to provide notice and opportunity to the debtor. When omitted prior to

offset, the agency shall give the debtor notice and an opportunity for review as soon as practicable. The agency is required to promptly refund any money ultimately found not to have been owed to the agency.

Another method of identifying payments available for offset is to conduct computer matches (outside of TOP) to determine if there is a payment available for offset. Before conducting such matches, an agency should consult with its legal counsel to determine if the computer matches contemplated are subject to the requirements of the Computer Matching and Privacy Protection Act.

When evaluating the feasibility of pursuing non-centralized administrative offset, an agency may also take into consideration a debtor's financial condition and whether offsetting the payment would create significant financial hardship for the debtor and his/her family. The payment agency should honor the request of the creditor agency for offset or, at a minimum, put a hold on funds if feasible.

Types of Non-Centralized Administrative Offset

Examples of circumstances for which non-centralized offset would be appropriate include internal offset and the offset of contractor payments when the creditor agency is the same as the payment agency; collection of travel advances and training expenses through a Federal employee's pay, retirement or other amounts due; offset of future retirement pay; and offset of Federal salary pay when offset is not available through TOP.

Internal Offsets. An internal offset occurs where an agency that is owed a delinquent debt is also making one or more payments to its debtor and the agency determines that the payments can be offset to collect the debt. Internal offsets are most effective when the creditor agency routinely offsets its own payments made to its own debtors early in the collection process. An agency should incorporate internal offset in its debt collection strategy and provide notice of intent to collect the debt by offset at the earliest possible time.

Contractor Payments. An agency cannot offset a contract payment if the contract is being disputed under the Contract Disputes Act (CDA) or Federal Acquisition Regulations (FAR).

Once the dispute is settled under the CDA or FAR, then offset can be initiated against any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contract payments to a contractor involved in a CDA adjudication. Recoupment is a special type of administrative offset, where, within the terms of a given contractual relationship, the agency can offset amounts it is owed against payments due the contractor for services rendered.

Collection of Travel Advances and Training Expenses from Federal Employees. An agency should follow administrative offset notification requirements when attempting the collection of delinquent travel advances and training expenses -- not those associated with Federal employee salary offset. Once these notification procedures have been followed, the agency has the authority to withhold all or part of an employee/debtor's salary, retirement benefits, or any other amounts due the employee, including lump sum payments, to recover amounts owed. There are no statutory or regulatory limitations on the amount that can be withheld or offset. The agency should, in fact, withhold or offset as much as necessary to fully liquidate or satisfy the amount of the debt.

Retirement Pay. Generally, administrative offset against a debtor's current civilian retirement pay [whether Civil Service Retirement Fund (CSRS) or the Federal Employees Retirement System (FERS)] is conducted through TOP. If the agency knows that the debtor will be receiving a retirement payment that is not available for offset under TOP, the agency must notify the Office of Personnel Management (OPM) of its intention to use its administrative offset authority to collect on the delinquent debt. OPM will respond by "flagging" the account and will initiate offset when the debtor requests retirement pay or the release of the retirement funds (if the debtor is departing Federal service), regardless of the age of the debt itself. If the request for offset is outstanding for more than one year at the time the debtor files for retirement or requests the funds, then OPM will contact the agency to determine if the debt is still outstanding and the offset still valid, allowing enough time for the agency to contact the debtor to try to resolve the debt. In the case of lump sum payments, OPM will offset up to 100% of the payment amount; if an annuity payment is involved and the debt is too large to collect in one offset, OPM will offset the dollar amount or

percentage requested by the agency, up to 50% of the amount of the payment. Agencies should use SF 2805, "Request for Recovery of a Debt Due the United States," in making requests to OPM for these types of offsets (see CSRS and FERS Handbook, Chapter 4 - Debt Collection, available at *www.opm.gov*).

For offset against military retirement pay, the agency must contact each military service's finance and accounting center.

Federal Employee Salary Offset. Federal employee salary offset should be conducted through TOP, except in three circumstances: (1) where the debtor is employed at the creditor agency, (2) salary offset cannot be accomplished through TOP because the debtor's salary payments are not processed through TOP, or (3) the amount of offset can legally exceed 15% of the employee/debtor's disposable pay. Only in these limited circumstances should an agency use non-centralized offset of the debtor's Federal salary to recover delinquent debts owed by current Federal employees. The agency must comply with the provisions of the Privacy Act, as amended, and OMB guidelines on implementing the Privacy Act, as well as the salary offset regulations issued by OPM.

If the agency does not know if the debtor is a Federal employee or does not participate in TOP, the agency can identify delinquent debtors who are Federal employees by matching its delinquent debtor files with current and retired employee files of OPM, the DOD's Manpower Data Center (DMDC), the USPS, or other control sources. Once a debtor is identified on such a file, the agency must:

- provide due process notification to the debtor and request voluntary repayment of the debt;
- if the debt is still unresolved, contact the agency employing the debtor to arrange a salary offset, and certify the debt as being delinquent; or
- contact OPM or the DOD for offset against retirement pay.

Under the following circumstances, the agency does not need to provide a Federal employee with notice and an opportunity for a hearing prior to offset of Federal pay:

- any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

- a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and amount of the adjustment and point of contact for such adjustment; or

- any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

As with administrative offset cases, an agency must honor the request of another agency to arrange for a salary offset. As much as 15% of the debtor's disposable pay can be collected each pay period through offset until the full amount of the debt is repaid. If the agency has obtained a judgment against the employee, it may request the employing agency to offset up to 25% of the debtor's disposable salary and no hearings are required. However, in the case of military employees, even if a judgment has been obtained, the amount of the offset cannot exceed 15%. *At no time can the employing agency unilaterally change or adjust the amount being withheld, without the consent of the creditor agency.* The employing agency must remit the amount offset within each pay period; it cannot accumulate offset amounts until the entire debt is collected.

Reporting Delinquent Debts to Credit Bureaus

Reporting delinquent debts to credit bureaus is an essential part of an agency's debt collection efforts. The DCIA requires Federal agencies to report to credit bureaus information on all delinquent

Federal consumer debts. Federal agencies have been required, as a matter of policy, to report all delinquent commercial debts since September 1983. This requirement is incorporated into OMB Circular No. A-129 and the FCCS.

Specific requirements that govern the reporting of consumer and commercial debts to credit bureaus are set forth in the "Guide to the Federal Credit Bureau Program," issued by Fiscal Service and available on the Fiscal Service website at http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/fedcreditbureauguide.pdf. An agency should review the guide for detailed information on reporting current and delinquent debts to credit bureaus. The guide provides information on topics such as:

- distinction between the reporting of consumer and commercial debts;
- legal requirements;
- handling disputed information;
- agreements known as Memoranda of Understanding (MOUs) with credit bureaus;
- reporting formats for debts, including the use of Metro 2 format and frequency of reporting;
- credit bureau reporting on consumer debts when the debts change from "current" to "delinquent" status; and
- reporting of debts being collected by Fiscal Service through cross- servicing.

NOTE: An agency that elects to use expedited referral to cross-servicing, i.e., referral of debts within 60 days of the date of delinquency, does not need to report its debts to credit bureaus because Fiscal Service will report the debts on the agency's behalf. See **Appendix 5** for a debt collection strategy that includes expedited referral to Fiscal Service.

The Demand Letter Checklist at **Appendix 8** includes the information that must be sent to the debtor prior to reporting a consumer debt to a credit bureau.

Private Collection Agencies

In its efforts to recover a delinquent debt, an agency may use the services of private collection agencies (PCAs). As mandated by the DCIA, Fiscal Service maintains a list of PCAs eligible for referral of debts from Fiscal Service. In order to minimize the government's collections costs and avoid duplication of efforts, an agency should, whenever possible, refer debts to Fiscal Service for cross-servicing in order to obtain the services of a PCA. Fiscal Service monitors the performance of its PCAs in accordance with the terms of a task order for PCA services under a contract administered through a General Services Administration (GSA) Federal Supply Schedule (FSS). The terms of the task order reward better performing PCAs (based on collections and debt resolutions) with additional referrals and bonus monies.

Debts that are referred to Fiscal Service for cross-servicing will be referred to a PCA on Fiscal Service's list. When using PCAs on Fiscal Service's list, funds collected by the PCAs are remitted to the creditor agency by Fiscal Service with supporting detailed debt information. Under the terms of the Fiscal Service task order, PCAs charge fees, which are paid out of amounts collected. The creditor agency retains the final authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer accounts to DOJ for litigation. Agencies are strongly encouraged to delegate this authority to Fiscal Service, as appropriate. Fiscal Service provides guidance and standards for PCAs to follow when negotiating acceptable repayment plans and compromise agreements with debtors based on creditor agency parameters provided to Fiscal Service.

An agency may refer debt that is less than 180 days delinquent to a PCA pursuant to a contract between the creditor agency and the contractor, as authorized by law. Further, in some cases, a creditor agency may not be able to use the services of PCAs through Fiscal Service because such services are materially insufficient to collect the agency's debts. For example, if an agency has unique debt

collection tools, the agency may justify establishing its own contract with PCAs for assistance in utilizing those tools. A creditor agency that independently contracts for PCA services should use GSA's FSS contract to obtain collection services. An agency should ensure that the following terms are required under any PCA contract:

- The contract should allow the agency to contract with a number of PCAs who receive referrals based on performance, unless this is not cost-effective or not in the best interest of the government.

- The referral period for sending debts to any single PCA should not exceed 180 days and must not interfere with the statutory requirement to refer debts to Fiscal Service for cross- servicing unless the debts are exempt from such requirement. Unless exempt, an agency should consider that all debts at a PCA that are not subject to an acceptable repayment arrangement must be referred to Fiscal Service for cross- servicing no later than 30 days after the debt is eligible for referral (generally at 180 days delinquent or less, unless the agency relies on Fiscal Service to submit debts for administrative offset, in which case, the debt must be referred no later than 120 days).

- The contract must include provisions to clearly indicate that the collection efforts of PCAs are governed by the Privacy Act and Federal and state laws related to debt collection practices, including, but not limited to, the Fair Debt Collection Practices Act and the FCCS (as applicable to the agency).

- The contract should include controls to ensure that debtors are treated fairly, such as periodic monitoring of contractor performance, investigation and resolution of complaints, and a requirement that the PCA submit to periodic audits of its work.

- The agency must retain the final authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer accounts to DOJ for litigation (it should be clear that the PCA is not authorized to retain

legal counsel to represent the United States in any litigation).

- The agency should establish procedures to monitor the performance of the PCAs it uses and develop an information tracking system to account for cases referred.

Administrative Wage Garnishment

In the absence of extenuating circumstances, if a debtor is employed, the debtor should be repaying his or her debt to the government. The DCIA (as codified at 31 U.S.C. § 3720D) authorizes an agency to collect a delinquent debt by administrative garnishment of the pay of a delinquent debtor who is employed by any organization, business, state or local government, or other entity other than a Federal agency. See pages 6-38 and 6-42 for procedures on how to offset the salary of a Federal employee to collect a debt. Fiscal Service has issued regulations governing the administrative wage garnishment process (see 31 CFR 285.11).

Administrative wage garnishment is a process whereby a Federal agency issues a wage garnishment order to a delinquent debtor's non-Federal employer. No court order is required. The employer withholds amounts from the employee's wages in compliance with the order and pays those amounts to the Federal creditor agency to which the employee owes a debt.

Requirements for Agency Use of Administrative Wage Garnishment. Generally, an agency should use the services of Fiscal Service, through its Cross-Servicing Program, to implement administrative wage garnishment proceedings. An agency may, however, implement administrative wage garnishment directly if the agency has the appropriate procedures in place.

Before using administrative wage garnishment, an agency must do the following:

- adopt hearing procedures as described in, or consistent with, the procedures described in Fiscal Service's wage garnishment regulations; and

- authorize Fiscal Service to implement administrative wage garnishment for the agency through the Cross-Servicing Program.

Notice Requirements. For debts referred to Fiscal Service for cross- servicing, Fiscal Service or its PCA will send to a debtor, on behalf of the creditor agency, proper notice of the government's intent to collect a debt through deductions of his or her pay. Otherwise, at least 30 days before issuing a wage garnishment order, an agency must send written notice to the debtor, at the debtor's most current address known to the agency, informing the debtor of:

- the nature and amount of the debt;
- the intent of the agency to collect the debt through deductions of pay; and
- an explanation of the debtor's rights.

The debtor's rights include an opportunity to:

- inspect and copy the agency's records pertaining to the debt;
- enter into a repayment agreement acceptable to the agency; and
- receive a hearing concerning the existence or amount of the debt and the terms of the repayment schedule.

Hearing Requirements. An agency's procedures for administrative wage garnishment hearings must, at a minimum, provide for the following:

- If a request for a hearing is received within 15 business days following the mailing of the written notice to the debtor, a hearing must be held prior to the issuance of a wage garnishment order. If a request for a hearing is received after 15 business days, a hearing must still be held; however,

the garnishment order may be issued before the hearing is concluded;

- The hearing official may be any qualified person, as determined by the creditor agency, who will maintain an official summary record of the hearing. There is no requirement that the hearing official be an administrative law judge or someone outside the agency;

- Oral hearings are not required unless the matter cannot be resolved based on written evidence; and

- A final written decision on the hearing must be issued within 60 days of the date of receipt of the request. If a wage garnishment order has been issued and a final decision has not been issued by the 61st day, the agency must notify the employer to suspend collection on that order. An agency may begin collecting on that garnishment order again only after a final written decision in the agency's favor is mailed to the debtor.

Administrative Wage Garnishment Form (SF-329). An authorized agency official issues an administrative wage garnishment order using a standard form known as Administrative Wage Garnishment Form SF-329, which may be obtained through Fiscal Service's web site at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_forms.htm*. The form consists of the following four parts:

- Letter to Employer & Important Notice to Employer (SF-329A) which is sent to the employer with the garnishment order to explain why a garnishment order is being issued;

- Wage Garnishment Order (SF-329B) which describes the terms of the garnishment and the amount the employer must garnish;

- Wage Garnishment Worksheet (SF-329C) which assists the employer in calculating the amount to be garnished; and

- Employer Certification (SF-329D) which is completed and returned to the agency by the employer with information related to the garnishment.

After the wage garnishment order is completed and signed by an authorized agency official, all four parts of form SF-329 should be sent to the debtor's employer. For debts referred to Fiscal Service for cross- servicing, Fiscal Service will sign the wage garnishment order on behalf of the creditor agency. Fiscal Service or its private collection contractor will then send the order to the employer and monitor the employer's compliance with the order.

Amount of Garnishment. Generally, an agency may garnish up to 15% of a debtor's disposable pay. "Disposable pay" is the debtor's net pay after deductions for taxes and health insurance premiums as described in the Wage Garnishment Worksheet (SF-329C). For example, if the gross amount paid to an employee is $500 per week, and taxes and insurance deductions total $150 per week, the employee's disposable pay is $350, and the amount of the garnishment should not exceed $52.50 (15% of $350). The employer is responsible for calculating the amount of the garnishment, and may use the Wage Garnishment Worksheet to calculate the amount available for garnishment. Below is an example of how the amount of garnishment would be calculated using the Wage Garnishment Worksheet (see the following page).

WAGE GARNISHMENT WORKSHEET

Pay Period Frequency (Select One):

☐ Weekly or less ☐ Every other week ☐ Two times per month ☐ Monthly ☐ Other (Specify:_____)

DISPOSABLE PAY COMPUTATION

1.	Gross Amount paid to Employee		500.00
2.	Amount Withheld:		
	a. Federal Income tax	75.00	
	b. F.I.C.A. (Social Security)	20.00	
	c. Medicare	5.00	
	d. State tax (including income tax, unemployment, disability)	20.00	
	e. City/Local tax		
	f. Health insurance premiums	30.00	
	g. Involuntary retirement or pension plan payments		
3.	Total allowable deductions [Add lines a - g]		150.00
4.	**DISPOSABLE PAY** [Subtract line 3 from line 1]		350.00

WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

5.	25% of Disposable Pay [Multiply line 4 by .25]	
6.	Total Amounts Withheld Under **Other Wage Withholding** Orders with Priority. See section 2(b) of the Order.	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(b)(1) of the Order by line 4. (The percentage from section 2(b)(1) of the Order may not exceed 15%). Example: If the percentage from section 2(b)(1) of the Order is 15%, multiply .15 by line 4.	52.50
9.	Amount equivalent to 30 times the Fed. min. wage ($7.25) If the employee is paid — Line 9 is Weekly or less — 217.50 Every other week — 435.00 If the employee is paid — Line 9 is 2x per month — 471.45 Monthly — 942.50	217.50
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	132.50
11.	**WAGE GARNISHMENT AMOUNT** Line 7, 8, or 10, whichever amount is the smallest	52.50

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An agency may issue multiple garnishment orders for the same debtor, but the total may not exceed 15% of the debtor's disposable pay.

Limitations on Amount of Garnishment. If a debtor owes multiple debts and the debtor's pay is already subject to other garnishments, the total amount garnished, including other garnishment orders, may not exceed 25% of the debtor's disposable pay. For example, if the pay of the debtor in the example above was subject to a prior withholding order of 15%, then the amount available for garnishment would be limited to $35 (10% of the debtor's disposable pay). An example of how this would be calculated within the Wage Garnishment Worksheet is detailed below.

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WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

5.	25% of Disposable Pay [Multiply line 4 by .25]	87.50
6.	Total Amounts Withheld Under Other Wage Withholding Orders with Priority. See section 2(b) of the Order.	52.50
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	35.00

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The amount to be garnished may be limited further if withholding 15% of the debtor's disposable pay would reduce the debtor's pay to an amount less than $217.50 per week (30 times the minimum wage of $7.25 per hour). For example, if the disposable pay of a debtor is $220.00 per week, deduction of 15% ($33) would leave the debtor with $187 per week. Since the debtor's pay cannot be reduced to less than $217.50 per week, the garnishment amount would be limited to the amount by which the debtor's pay exceed the minimum, or $2.50. This would be calculated on the Wage Garnishment Worksheet as follows:

4.			220.00

****

9.	Amount equivalent to 30 times the Fed. min. wage ($7.25) If the employee is paid / Line 9 is Weekly or less / 217.50 Every other week / 435.00 If the employee is paid / Line 9 is 2x per month / 471.45 Monthly / 942.50	217.50
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	2.50
11.	**WAGE GARNISHMENT AMOUNT** Line 7, 8, or 10, whichever amount is the smallest	2.50

Assuming wage garnishment is cost-effective and available, this highly effective collection tool should be used whenever an employed debtor fails to meet his or her obligations to the government.

Financial Hardship. At any time during the garnishment process, a debtor may ask the creditor agency for a review of the amount being garnished based on a claim of financial hardship due to materially changed circumstances. If an agency finds that a debtor has properly documented financial hardship, the agency should downwardly adjust the amount of garnishment, or terminate or suspend collection through administrative wage garnishment, as appropriate.

Eligibility for Administrative Wage Garnishment. An agency may not garnish a debtor's wages if:

- The debtor earns less than 30 times the Federal minimum wage. Based on a minimum wage of $7.25 per hour, the wages of a debtor who earns less than $217.50 per week are not eligible for garnishment. Information about a debtor's wages may not be available until after the garnishment order is served on the employer. The employer would inform the agency that the debtor earns less than the minimum required for garnishment;

- The debtor is in a repayment agreement with the agency and is meeting his or her obligations under the agreement; or

- The agency knows that the debtor has not been working in his or her current job for at least 12 months and the debtor was involuntarily separated from his or her prior job. The debtor is required to inform the agency that he or she is ineligible for wage garnishment based on this requirement.

Termination of the Wage Garnishment Order. The agency must terminate the wage garnishment order when:

- the debt is paid in full, or otherwise resolved through compromise or other agreement with the agency;
- the debtor files for bankruptcy and the automatic stay is in effect, or the agency learns that the debt has been discharged in bankruptcy;
- the agency, a hearing official, judge or other appropriate adjudicator determines that the debt is not valid; or
- the agency otherwise determines that the wage garnishment order should be terminated due to the debtor's financial hardship or other appropriate reason.

The agency must send a letter or use Form 329E, Notice of Termination of Wage Garnishment, to inform the employer that the garnishment is terminated and that all withholdings from the employee's pay should stop.

Liquidating Collateral

For a secured debt, an agency should take action to liquidate the collateral, in accordance, with its specific statutory authority, when it becomes apparent that a debtor will not or cannot repay the amount owed and collateral liquidation is the best method for protecting the government's financial interests. The agency must ensure that the account was properly serviced prior to deciding to proceed with foreclosure or voluntary conveyance of the property; that is, the debtor was provided reasonable opportunity to cure the delinquency, including forbearance and rescheduling, in accordance with agency-specific statutes and regulations.

As a general rule, an agency should avoid taking title to the collateral property as part of its liquidation strategy; rather, an agency's goal should be to force a sale of the collateral to a third party so that the sales proceeds may be applied to the debt. However, if taking title to the collateral property would result in a better collection result or would further an agency's program purpose(s), the agency may seek to secure title to a collateralized property through voluntary conveyance by the debtor or enforced foreclosure proceedings, as it determines best in any given situation.

If an agency obtains title to a property, the agency is responsible for maintaining and insuring the property from the time it assumes title to the property until final property disposition. Each agency should establish procedures for the acquisition, management, and disposition of property acquired as a result of direct or guaranteed loan defaults.

If the amount of the debt is not fully satisfied by either the voluntary conveyance of the collateral or its liquidation, then the agency may decide to obtain a deficiency judgment or otherwise continue to pursue collection on the unrecovered portion of the debt, using the appropriate collection techniques, such as cross- servicing. Under certain circumstances, the agency may alternatively consider a debt "compromised" for the market value of the collateral, and report the unrecovered amount to the IRS as potential income to the debtor on Form 1099-C if required by IRS (see Chapter 7, Termination of Collection Action, Write-off and Close-out/Cancellation of Indebtedness). It is an agency's responsibility to liquidate any collateral, when appropriate, prior to referral of the debt to Fiscal Service for cross-servicing.

Bankruptcy

Generally, when a debtor files for bankruptcy protection, an agency is prohibited from pursuing further collection action while the bankruptcy is pending because of the *automatic stay.* An agency or individual found to have violated the automatic stay could be held in contempt by the bankruptcy court. The automatic stay is effective as of the date of the filing of a bankruptcy. In most cases, an agency will not be able to recover funds from a debtor in bankruptcy. However, there are cases in which funds may be available in the debtor's estate to pay some of the debtor's debts. Therefore, it is important for an agency to file a **Proof of Claim** form when allowed to do so by the bankruptcy court in order to ensure that the agency will receive its share of any proceeds available to pay creditors from the bankruptcy estate. The appropriate Proof of Claim form may be found at *www.uscourts.gov/bankform.*

An agency should determine whether other steps must be taken in a bankruptcy matter to protect the agency's position and to comply with the law. An agency probably will have to return funds inadvertently collected while the automatic stay is in effect, but agency counsel should be consulted for specific legal advice. In some cases, an agency may ask the bankruptcy court for "relief from the automatic stay," that is, permission to pursue collection. An agency must obtain relief from the automatic stay to pursue collection on all types of debts, including "non-dischargeable debts," that is, those debts that survive bankruptcy. An agency must also seek relief from the automatic stay in order to retain funds upon which the agency places a temporary freeze. See "Litigation" below for information on how to refer a matter to DOJ, which is responsible for legal representation of agencies before U.S. Bankruptcy Courts.

The debtor is released, or **discharged**, from having to repay most types of debts after the bankruptcy process is completed, unless the bankruptcy case is dismissed. In certain types of bankruptcy cases, however, the debtor is obligated to pay creditors according to the provisions of a bankruptcy plan before being discharged. In most cases, after a debtor is discharged in bankruptcy, an agency is forever precluded from pursuing collecting on most types of debts incurred

by the debtor prior to filing for bankruptcy protection. Agency personnel should consult with agency counsel to determine whether the debtor's debts are dischargeable in bankruptcy, whether the agency should take any action to protect its right to recover funds from a debtor in bankruptcy, and for other information concerning bankruptcy laws and procedures.

Litigation

Unless an agency has specific statutory authority to litigate its own debts, it must refer debts to DOJ for litigation, including bankruptcy litigation. Debts for which the principal amount is $1,000,000 or less must be referred through DOJ's Nationwide Central Intake Facility (NCIF):

DOJ/NCIF
Attn: Case Processing
1110 Bonifant Street, Suite 220
Silver Spring, MD 20910-3358.

The NCIF tracks, by agency, the number and dollar value of referred debts, their age at referral, and case rejection rates. The NCIF will acknowledge receipt of debts referred by the agencies, route the debts to the appropriate U.S. Attorney or private counsel for litigation, and provide the referring agency with contact information for the office receiving the referral. The NCIF will return incomplete referrals with a letter specifying the reason for the declination. Debts greater than $1,000,000 should be referred directly to the Civil Division at DOJ:

U.S. Department of Justice
Civil Division
Attn: Corporate/Financial
Litigation Branch
P.O. Box 875
Ben Franklin Station
Washington, DC 20044

The agency must make every effort to refer a debt within one year of the date of delinquency, and only in limited circumstances should the agency delay referral to a time when less than one year remains on the applicable statute of limitations for litigation. Fiscal Service will refer to DOJ for litigation, debts that have been referred to Fiscal Service for cross-servicing, when appropriate. When referring a debt to DOJ for litigation, an agency must provide a fully completed Claims Collection Litigation Report (CCLR). The CCLR instructions can be found at:
http://www.justice.gov/sites/default/files/jmd/pages/attachments/2014/12/12/cclr_instructions.pdf
and the form at:
http://www.justice.gov/sites/default/files/jmd/legacy/2014/05/26/cclr-form-fillable.pdf.

The CCLR should include the following:

- **Copies, not originals, of the relevant account information**. Originals may be requested by DOJ at a later date so the agency must be prepared to produce them promptly;

- **A fully completed Certificate of Indebtedness, submitted as part of the CCLR package**. The Certificate of Indebtedness must be an original document, not a copy, and must be signed by an authorized official of the agency;

- **A checklist or report of prior collection actions taken.** If the agency has not taken an appropriate collection action, then the checklist or report must explain why;

- **The current address of the debtor**. This may be obtained through various types of research (see page 6-71); and

- **Credit data for the debtor**. The data must have been obtained within the past 6 months and can be in any of the following formats:

  - A credit report. The credit report may be obtained through GSA's Federal Supply Schedule for Business Information Services (see page 6-71);

- an investigative report stating the debtor's assets, liabilities, income, and expenses;

- an individual's financial statement indicating assets, liabilities, income, and expenses. This statement must be signed by the debtor and certified as correct under penalty of perjury; and/or

- an audited balance sheet for a corporate debtor.

Credit data may be omitted only if

- the referring agency

  - has a surety bond sufficient in amount to satisfy the full amount of the debt;

  - seeks liquidation of the collateral by means of judicial foreclosure, but does not intend to obtain a deficiency judgment;

  - can document that the debtor is in receivership or bankruptcy; or

  - wants DOJ to obtain a judgment against a debtor and return the case to the agency for lien enforcement;

- the value of collateral in a forced sale is sufficient to satisfy the full amount of the debt. If the agency has any doubt whether the value of the collateral covers the outstanding amount of the debt, including all late charges assessed, then it must provide credit data;

- the outstanding amount of the debt is fully covered by insurance and the agency can provide all pertinent information, including name and address, on the insurer; and/or

- the debt is owed by an entity for which credit data are unavailable. For example: the debt is owed by a State Government.

The agency must provide the equivalent of the above information when transmitting accounts through an automated system. **The failure to provide adequate information, as called for in the CCLR, may result in the return of the case from DOJ**. You may contact DOJ to discuss the information available if you are unsure whether it meets these standards.

Further agency collection actions must cease at the point an account is referred for litigation. DOJ will submit an agency's eligible debts to TOP on behalf of the creditor agency. The agency should not do so once the account is referred for litigation.

Fraud/False Claims. In case of fraud, the account should be referred immediately to the Fraud Section of the Civil Division at DOJ for action. It is the responsibility of the party who first learns of the fraud to notify DOJ so that such cases can be acted on promptly. If DOJ advises the agency that it does not intend to pursue fraud or False Claims Act litigation, the agency should pursue collection of the debt just as it would any other debt.

Statute of Limitations. Federal law limits the time period within which an agency may file a lawsuit to collect a debt. If the "statute of limitations" has expired, the agency is barred from initiating litigation to collect its debt; however, other debt collection tools, such as administrative offset and referral to a private collection agency, may be available. Generally, a lawsuit to collect a debt based on a contract must be initiated within *six years* after the date of delinquency (see page 6-4 for the definition of the "date of delinquency"). A lawsuit for money damages based on property damage or personal injury caused by the debtor must be initiated within *three years* after the date of the damage or injury. Other statutes of limitations may apply to a particular type of debt being collected. Therefore, referrals to DOJ for collection through litigation or for termination of collection action should be made timely, that is, at least one year before the applicable statute of limitations expires. Also, it is extremely important that agency personnel consult with agency counsel to determine the statute of limitations applicable to the debts being collected by the agency.

Further, agency counsel should be consulted to determine whether the statute of limitations has been extended in a particular case

based on the debtor's written acknowledgement of the debt, a voluntary payment made by the debtor, the debtor having fled the country, the fact that the agency did not know and reasonably could not have known about its claim when it first accrued, or some other reason that allows the time period to be extended.

Potentially Ineligible Referrals. The agency should not refer a debt for litigation if:

- the debt, exclusive of interest, penalties, and administrative costs, is less than $2,500. However, debts less than $2,500 may be referred if, after consultation with DOJ, the agency determines that -
  - litigation to collect small claims is important to ensure compliance with the agency's policies or programs,
  - the debt is being referred solely for the purpose of securing a judgment against the debtor, or
  - the debtor has the clear ability to pay the debt and the government effectively can enforce payment;
- the statute of limitations for initiating litigation has expired. However, the debt may be referred if there is a possibility that the time to sue has been extended or legislation has been enacted abolishing or waiving the statutes of limitations as a defense to suits to collect its debts;
- the debt has been written-off/closed-out and collection action terminated;
- it is unlikely that litigation will result in full or partial recovery of the amount owed;
- all available assets have been liquidated and the debtor is unemployed, unless the agency believes that the debtor's financial situation will substantially improve and the statute of limitations is about to expire;

- the current address of debtor cannot be provided, except in rare circumstances where, after consultation with DOJ, an agency deems it advisable to commence litigation to preserve the agency's claim;

- the documentation necessary to prove that the debtor is liable for the debt or otherwise support the litigation effort cannot be provided; or

- the estimated costs of pursuing litigation will probably exceed the amount recoverable. In this case, the agency should consider terminating collection action and writing off the debt. Only when it is critical to an agency's enforcement efforts and is in the government's best interests should litigation be pursued regardless of cost. If the agency wishes to pursue enforced collection action for these reasons, then the checklist or report must explain why.

Pre-Referral Requirements. The agency may elect to refer a delinquent debt to DOJ for litigation before referring the debt to Fiscal Service's Cross-Servicing Program or pursuing other administrative debt collection activities. This may be desirable, for example, if the debtor refuses to pay in response to the agency's demand letter and the debtor owes a large debt, or an important enforcement principle is at stake. At a minimum, before referring a debt to DOJ for litigation, an agency must send a final demand letter to the debtor. See Demand Letter Checklist at **Appendix 8** for a list of the information that should be sent to the debtor before referring the debt to DOJ for litigation. The letter should be tailored to the specific case when a debt is being referred to DOJ prior to referral to Fiscal Service for cross-servicing and/or offset.

Post-Referral Activities. Upon referral by an agency and acceptance by DOJ, the U.S. Attorney's office will try to initiate suit within 45 days of receipt of the case. The U.S. Attorney's office will notify the agency when a complaint is filed and when a judgment is entered, and provide the post-judgment interest rate for the debt as well as any other information necessary for the agency to properly update its account and maintain an accurate balance. Interest is compounded on post-judgment debts. DOJ must notify the agency when it closes its case. If DOJ closes the case and returns the debt to the agency for surveillance (*i.e.*, monitoring), the

agency should write-off the debt and characterize it as "currently not collectible."

If DOJ advises that the debt is uncollectible, the agency should write-off and "close-out" the debt, and if appropriate, report the uncollectible debt to the IRS as potential income to the debtor on IRS Form 1099-C. See Chapter 7, Termination of Collection Action, Write-off and Close-out/Cancellation of Indebtedness; and OMB Circular No. A-129 for an explanation of "currently not collectible" and "close-out." If the U.S. Attorney's office has filed a judicial lien for the debt, the agency must submit a request to that office to release the lien at the time the agency closes out the debt. In consultation with DOJ, the agency should establish a tracking system to account for cases referred to and returned from DOJ since the agency remains responsible for monitoring account activity. DOJ will assess a 3% administrative fee on amounts collected while the case is at DOJ. The agency should pass this cost along to the debtor whenever possible. See **Appendix 10** for more information on assessing and accounting for the DOJ fee.

In consultation with DOJ and the U.S. Bankruptcy Courts, the agency will establish bankruptcy notification procedures to ensure the lien position of the Federal Government is protected. DOJ is responsible for the legal representation of agencies before U.S. Bankruptcy Courts. Notice of a bankruptcy filing should be sent by the bankruptcy court to both the creditor agency and to the U.S. Attorney's office in the district where the bankruptcy is filed. In order to assure that the government's proof of claim can be filed with the bankruptcy court, the agency's procedures must ensure that the notice of bankruptcy is sent to the appropriate contact within the agency, and that there is consultation where necessary with the U. S. Attorney's office. This will allow the review of bankruptcy plans to ensure secured property is recovered for the Federal Government.

Barring Delinquent Debtors from Obtaining Federal Loans, Guaranties and Loan Insurance

As required by the DCIA, a delinquent debtor is ineligible for Federal financial assistance until the delinquency that triggers the bar is resolved. Federal financial assistance includes any Federal loan (other than a disaster loan), loan insurance, or loan guaranty. This eligibility requirement applies to all Federal loan programs

even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, and may be waived only by the head of an agency, or if properly delegated, the Chief Financial Officer or Deputy Chief Financial Officer.

It is extremely important for creditor agencies to properly report delinquent debt to appropriate databases so that lending agencies may enforce the DCIA loan bar against persons who owe debts to the government. Delinquent debt databases accessed by lending agencies as part of loan origination processes include credit bureaus, the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), and the TOP delinquent debtor database (parts of which are made available to lending agencies and their lenders through a program known as "Do Not Pay"). More information about CAIVRS can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/93-17ml.txt.*

More information on the Do Not Pay database can be found at *http://donotpay.treas.gov/Resources.htm.*

Delinquent Status. A debt is considered to be in "delinquent status" for purposes of the DCIA loan eligibility requirement if the debt has not been paid by the payment due date or by the end of any grace period. A debt is not in delinquent status for purposes of the DCIA requirement if:

- the debtor has been released from any obligation to repay the debt or there has been an adjudication or determination that the debtor does not have to pay the debt;
- the debtor is the subject of, or has been discharged in, a bankruptcy proceeding, including if the debtor is current on any court authorized repayment plan; or
- the existence of the debt is the subject of an administrative appeal that has been filed on a timely basis.

A debt may be considered "delinquent" for other purposes, such as making a claim in a bankruptcy proceeding, even though the debt is not in "delinquent status" for purposes of the DCIA loan eligibility requirement.

Delinquency Resolution. A delinquent debtor may be eligible for loan assistance once the delinquent debt is resolved in accordance with regulations issued by Fiscal Service at 31 CFR 285.13. A creditor agency should respond promptly to debtors who seek to resolve their debts in order to become eligible for Federal loan assistance. For purposes of the DCIA loan eligibility requirement, a debt is resolved only if the person:

- pays or otherwise satisfies the delinquent debt in full;
- pays the amount of a compromise reached with the creditor agency;
- cures the delinquency (that is, brings the loan or agreement current) under terms acceptable to the creditor agency; or
- enters into a repayment agreement under terms acceptable to the creditor agency.

A debt is not resolved if:

- collection action is suspended or terminated;
- the debt is written off on the agency's accounting records; or
- the debt has been reported to the Internal Revenue Service as a discharge of indebtedness ("closed-out").

Revoking/Suspending Licenses or Eligibility

An agency, in accordance with its policies and procedures, should consider suspending or revoking Federal licenses (e.g., pilot licenses, concession licenses, etc.) or the eligibility of debtors who willfully fail to pay forfeitures, penalties, or other debts. This may include suspending guaranteed lenders from participation in guaranteed loan programs or not allowing a company to bid on a contract, if the organization is itself delinquent on a government debt. In cases where the creditor agency has no other relationship with the debtor, it may be able to implement a suspension or revocation through an agreement with another agency which does.

An agency may also enter into agreements with state agencies to withhold or revoke state-issued licenses, such as for doctors or attorneys, to the extent allowed by law. The agency should consider taking such actions, particularly for prolonged or repeated failures to repay a debt.

In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits or privileges, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code.

Part III – Miscellaneous Topics

Purchasing Credit Reports and Locating the Debtor

An agency may need to obtain additional information about the debtor to:

- locate the debtor;
- determine the debtor's ability to repay the debt in full and assess the likelihood that the debtor will do so;
- evaluate compromise offers;
- determine a reasonable installment payment plan;
- decide whether to reschedule an account;
- verify information provided by the debtor in support of requests for compromise, repayment in installments, or rescheduling;
- determine if an opportunity for administrative offset or suspending/revoking licenses exists; and
- support litigation.

Credit Reports. There are two types of credit reports available, consumer and commercial. A consumer credit report contains credit information about an individual person. The DCIA expressly authorizes a Federal agency to obtain a consumer report on any person who is liable for a debt being collected or compromised by the agency, or for which an agency is terminating collection action. A Federal agency may also obtain a commercial credit report, which contains credit information for a business entity.

Consumer Credit Report. A typical consumer credit report includes an individual's name, possible aliases, current and previous addresses, social security number, year of birth, current and previous employer information, and if applicable, spouse's name. A consumer credit report will list credit accounts with banks, retailers, credit card issuers and other lenders. For each credit account the report will list the type of loan (revolving credit, student loan, mortgage, etc.). The report will also include the date the account was opened, the credit limit or loan amounts, account balances, any co-borrowers responsible for paying the account, and the pattern of payment made by the consumer over the previous two years (noting the timeliness of payments). The consumer credit report includes public record information such as Federal, state and county court records related to bankruptcies, tax liens or monetary judgments. In some states child support payments are reported.

Commercial Credit Report. A commercial credit report includes general information about a business such as the business name, current address and telephone number, if available. The report may name the principal officers involved in the business, their titles and addresses.

A commercial credit report will provide trade payment history, including the business' credit capacity, credit rating, high credit, worth, payment history, and trends for payment. The report also will provide financial data on the business, and provide commercial and/or banking relationships, if this information is available. The commercial credit report, like the consumer credit report, includes public record information such as state and county court records related to bankruptcies, tax liens or monetary judgments.

The commercial credit report also contains information pertaining to Uniform Commercial Code (UCC) filings. UCC filings are done at the state or county level, and indicate when a business has pledged personal property assets as collateral (such as inventory and machinery & equipment) to secure credit or debts owed by the business.

Reviewing Credit Report and Other Financial Information. An agency should obtain credit reports to verify or determine a debtor's employment, income, assets, and credit history. To the extent possible, an agency should also request financial statements, copies of tax returns, and other supplementary data sources from the debtor. When using a credit report and other supplementary data sources to determine the debtor's ability to pay or whether to pursue the enforced collection of the debt, the agency should review and evaluate the information on the credit report or other financial data in terms of the following questions:

- **Does the debtor have other delinquent accounts?** If the sole delinquency is a Federal debt it may indicate that the debtor is giving priority to paying other creditors first. The debtor may be able to restructure payment to other creditors to secure payment in full of the outstanding Federal debt.

- **Does the debtor own any assets that are available to repay the debt, such as equity in real property, a second car or a boat?** If the debtor has sufficient equity in real property or other assets, the debtor may be able to secure a loan against an asset to pay his or her debt in full. Non-essential assets such as a boat could be liquidated to pay the debt in full or to reduce the balance.

- **Is the debtor employed? If so, by whom?** If employed by another Federal agency, then the creditor agency could pursue collection through salary offset. If privately employed, collection may be obtained through an administrative wage garnishment.

- **Are there any current accounts that may soon be paid in full?** The money earmarked for payment of these accounts should be taken into consideration when determining the debtor's ability to make payments in installments.

- **Does the debtor have too much debt?** It may reflect the debtor's inability to handle the debt incurred and must be viewed as a potential for the filing of bankruptcy, jeopardizing the collection of the delinquency. Conversely, it may indicate the debtor has access to hidden income or

assets to pay debt in excess of the debtor's apparent ability to pay.

- **Has the debtor declared bankruptcy?** The type and timing of the bankruptcy filing could, in effect, force the agency to stop or suspend all efforts to collect.

Credit reports, as well as other services (such as locating the debtor) are available through GSA's Federal Supply Schedule for Business Information Services (Special Item Number 520-16). Each agency needs to identify the types of reports that will best suit its needs in a given situation and order the reports accordingly. The costs of purchasing a credit report, or obtaining other services, to assist an agency in collecting a debt should be passed along to the debtor as part of the agency's administrative costs. See **Appendix 1** for a key to reading credit reports.

Locating the Debtor. If an agency cannot locate a debtor, the tools described below may be used to locate the debtor and/or the debtor's assets. When contacting third parties to obtain information about a debtor, an agency should ensure that such contacts are in compliance with the Privacy Act and other Federal laws. An agency should review its procedures with agency counsel to ensure that any disclosures of information to a third party, as may be necessary to identify a debtor about whom an agency seeks information, do not violate Privacy Act requirements.

Depending on the circumstances and the information desired, the following tools may assist the agency in locating the debtor.

GSA's Federal Supply Schedule for Business Information Services (Special Item Number 520-16). Contractors on GSA's schedule are available to supply debtor location services.

Internet Resources. The Internet is a resource for obtaining information at no cost to the requestor. Information sources generally available include telephone directories and address locator services.

Internal Revenue Service. The Internal Revenue Service (IRS) will provide mailing addresses of taxpayers to a Federal agency collecting debt. Agencies that wish to participate in a computer matching program with IRS to obtain mailing addresses of debtors in batches of 100 or more should contact:

IRS Office of Governmental Liaison
Taxpayer Address Request (TAR) Program Manager
1111 Constitution Avenue, NW
CL:GLD:GL Room 1611 IR
Washington, DC 20224
Facsimile Number: (202) 622-3041

For a detailed description of computer matching and applicable agency requirements, refer to the Privacy Act of 1974, as amended, which may be found at *www.usdoj.gov/foia/privstat.html*.

Agencies that wish to obtain mailing addresses from IRS for individual debtors should contact the local disclosure officer in the IRS office in the State where the agency is located. You can access your local IRS office information from *www.irs.gov*.

Contact with the TAR Manager must include the following:

- Description of your agency's purpose for requesting the information and how your agency will use the taxpayers' addresses;
- The Internal Revenue Code section which permits your agency to request address information from the IRS (generally 26 U.S.C. § 6103(m) for debt collection purposes);
- The approximate number of annual requests for addresses you anticipate will be made; and
- Name, title, address, phone and fax number of the person responsible for administering and maintaining this program if/when your agency begins computer matching.

Note: Participation in computer matching requires the agency to provide IRS with the taxpayers' social security numbers and names.

The IRS advises that taxpayer information, such as name and social security number, should not be sent by fax.

An agency should review IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, for requirements on how the IRS information must be safeguarded.

For debts being collected through TOP, Fiscal Service will assist agencies in requesting taxpayer mailing address information from the IRS. For information on how to obtain the addresses for debts in TOP, an agency should contact Fiscal Service's Treasury Offset Division at (202) 874-6810.

Post Office Trace. A letter on agency letterhead, sent to the United States Postmaster located at the debtor's last known post office, can be used to validate an address or obtain an updated address if a forwarding address was provided. A letter format is available at 39 CFR 265.6.

Department of Motor Vehicles. The Department of Motor Vehicles may provide a current home address for the debtor and a list of any vehicles registered to the debtor. The identity of the vehicle lien holder may be provided if there is an outstanding lien. The lien holder may be able to provide information to locate the debtor or his/her assets.

Place of Employment. If the debtor's employer is known, the employer may provide information about a debtor, such as a current address and telephone number.

Automated Collection Services

Automated collection services provide an agency with a means to:

- immediately contact a delinquent debtor by telephone after a payment due date has passed without payment;
- set collection priorities;
- document contacts with a debtor and/or the results of any collection actions taken;
- generate management reports; and
- track an individual collector's performance.

Automated collection services that are commercially available can be adapted to meet individual agency or program needs. They can be designed to provide an automated dialing capability and to require a minimum of human intervention. An agency with a large volume of debt should evaluate the feasibility of using automated collection services to facilitate debt collection.

Overview

An agency has the affirmative responsibility to try to collect delinquent debts that are owed to the agency, or referred to the agency for collection. However, at some point in the collection process it may become evident that a debt is "uncollectible," and it may be appropriate to **terminate collection action, and/or write-off the debt.**

An agency fulfills its affirmative responsibility to try to collect delinquent debts by engaging in "active collection." "Active collection" means that the debt is being collected through the use of all appropriate debt collection remedies, including, but not limited to, demand letters, credit bureau reporting, offset, garnishment, foreclosure, litigation, and referral to the Department of the Treasury's (Treasury) Bureau of Fiscal Service (Fiscal Service) for collection (known as cross-servicing). See Chapter 6, Delinquent Debt Collection.

Termination of collection action occurs when "it appears [to an agency] that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered." See 31 U.S.C. § 3711(a)(3). **Termination of collection action** is a decision to cease **active collection** action on a debt, in accordance with criteria set out in the Federal Claims Collection Standards, because such action is not economically worthwhile or is otherwise inappropriate. **Suspension of collection action** occurs when an agency decides to temporarily cease collection action.

Once an agency terminates collection action, it may pursue passive collection activities to try to collect the debt. "Passive collection" means that the debt is no longer being actively collected; that is, the debt remains secured by a judgment lien or other lien interest, has not been removed from the Treasury Offset Program (TOP) or is otherwise being collected by offset, and/or is scheduled for future sale.

Except for agencies with independent statutory authority to terminate collection activity on its own debts, Department of Justice

(DOJ) concurrence is required before an agency terminates or suspends **active collection** on a debt over $100,000 (principal only). DOJ has delegated to Fiscal Service the authority to approve termination of collection action on a debt with a principal amount of $500,000 or less when the debt is being serviced by Fiscal Service in its Cross-Servicing Program.

Write-off of a debt is an accounting action that results in reporting the debt/receivable as having no value on the agency's financial and management reports. The agency does not need DOJ approval to write-off a debt since the agency is only adjusting its accounting records. Generally, write-off is mandatory for debts delinquent more than two years, unless documented and justified to the Office of Management and Budget (OMB) in consultation with Treasury. However, in those cases where material collections can be documented to occur after two years, debt cannot be written off until the estimated collections become immaterial. See OMB Circular No. A-129, Section V.5.

Currently Not Collectible (CNC) and close-out are classifications for writing-off the debt that indicate whether or not the agency will continue debt collection actions after write-off. See OMB Circular No. A-129, Section V.5. At the time of write-off, an agency should classify the debt as CNC when it intends to continue cost effective debt collection action. An agency **closes out** a debt when it determines that further debt collection actions are prohibited (for example, a debtor is released from liability in bankruptcy) or the agency does not plan to take **any** future actions (either active or passive) to try to collect the debt.

When a debt is classified as closed-out, an agency must determine if the amount due on the debt should be reported to the Internal Revenue Service (IRS) as potential income to the debtor under Section 6050P of the Internal Revenue Code (26 U.S.C. § 6050P). An agency reports such debts to the IRS using IRS Form 1099-C.

The program decision to terminate collection action and the accounting decision to write-off a debt often coincide. For example, an agency that refers debts to Fiscal Service for cross-

servicing normally should take concurrent actions to terminate collection action, write-off the debt and classify it as CNC when:

- the agency is notified by Fiscal Service that active collection action is no longer being taken through cross-servicing; and
- the debt will remain in TOP.

Similarly, an agency should terminate collection action, write-off the debt, and classify it as close-out when the debt is discharged in bankruptcy, and there are no other debtors from whom collection can be sought. **However, agencies should be aware that the determinations to terminate collection action and to write-off a debt are made for different reasons, and where appropriate and consistent with the agency's debt collection strategy for a particular class of debts, may be made at different times.**

The following charts provide some basic information concerning termination of collection action, write-off, and the classification of debts as CNC and close-out.

Debt Collection Process Action

	Description	Authority	Timing	Comment
TERMINATION/ SUSPENSION OF COLLECTION ACTION	Termination: Agency stops all **active** debt collection action; may continue **passive** collection action. Suspension: Agency is likely to resume **active** collection action at a future time.	31 USC 3711(a)(3); 31 CFR Part 903	Not tied to write-off, but must occur before close-out.	Agency decision to terminate/suspend must comply with Federal Claims Collection Standards (31 CFR Part 903). DOJ concurrence required for debts over $100,000.

Accounting Action

	Description	Authority	Timing	Comment
WRITE-OFF	Agency reports debt as having no value on financial and management reports.	OMB Circular No. A-129	Usually no later than 2 years after debt delinquency; not tied to termination or suspension.	At time of write-off, agency must classify the debt as CNC or close-out.
CURRENTLY NOT COLLECTIBLE (CNC)	A classification after write-off when the agency has determined that debt collection efforts should continue.	OMB Circular No. A-129	Can only occur at the time the debt is written-off.	CNC classification does not affect agencies' statutory and regulatory responsibilities to pursue debt collection.
CLOSE-OUT	A classification after write-off when the agency has determined that no further active or passive debt collection action will be taken.	OMB Circular No. A-129	Must occur after write-off and termination of collection action; can occur after CNC classification, if debt was initially classified as CNC at time of write-off.	Agency will not take any collection action after closeout; if required by Internal Revenue Code and regulations, agency must report closed-out debt to IRS on Form 1099-C as potential income to the debtor.

Termination of Collection Action Criteria

An agency should terminate active collection when one or more of the following criteria apply:

1. **The agency is unable to collect any substantial amount through its own efforts or through the efforts of others**. The following items detail factors an agency should consider in determining the likelihood of recovering a substantial amount of a debt:

   - **the results of previous collection action taken by the agency**. A good indication that the debt is uncollectible is the return of a debt by a private collection agency or from Fiscal Service's Cross-Servicing Program without collection and with the

recommendation for write-off, or the inability of DOJ to collect on a judgment.

- **the present and future financial condition of the debtor, taking such factors into account as assets and liabilities (as verified by a credit bureau report or a current financial statement), employment history and potential for future earnings, and inheritance prospects**. See Chapter 6, Delinquent Debt Collection, Installment Payments, page 6-20. In some circumstances, the debtor's future financial prospects may warrant suspension rather than termination of collection action. See page 7-10 of this Chapter.

- **the debtor's age and health, including disability status**. If the debtor is deceased, the agency should file a claim against the debtor's estate for liquidation of the debt at the time the estate is settled and all assets disposed.

- **the assets available for liquidation, including the possibility that assets were fraudulently transferred or concealed to avoid liquidation**. Agency personnel should consult with agency counsel regarding fraudulent transfers or concealments.

- **any state law restriction that applies, in the absence of Federal law, to collections taken within a state's borders**. Where a debtor is employed in a state that prohibits wage garnishment, an agency should consider the use of administrative wage garnishment under the Debt Collection Improvement Act of 1996 (DCIA), which authorizes wage garnishment notwithstanding state law. See Chapter 6, Delinquent Debt Collection.

2. **The agency is unable to locate the debtor.** The agency should attempt to locate the debtor using available sources

as described in Chapter 6, Delinquent Debt Collection, pages 6-71 through 6-73.

3. **Costs of collection are anticipated to exceed the amount recoverable.** An agency should not spend more to recover a debt than what is owed, unless a significant enforcement principle is at stake. For example, an agency should not spend $200 to collect a $100 debt. The agency's collection strategy should dictate what is reasonable in determining the costs and benefits of continuing enforced collection efforts. The items below contain factors the agency should consider when balancing the costs of collection against probable recoveries.

- **The amount of any fees associated with using a particular collection tool**. For most collection tools, such as Fiscal Service's Cross-Servicing Program, TOP, and private collection agencies, the agency will not pay a fee unless there are collections. In many cases, the agency may recover fees by adding these costs to the debt.

- **Agency expenses associated with the time and resources required to prepare and follow-up on a debt**. Costs may be minimal when most of the expenses are associated with operating an automated system for tracking account activity.

- **The agency's "success" rates for the available debt collection tools**. If a given tool has not been used successfully to collect a particular type of debt, then it may not be appropriate for the agency to require the use of that tool prior to termination, unless use of the tool is mandated by law.

- **The probability that the agency will be able to recover its collection costs.**

- **The need to pursue collection when a significant enforcement principle is at stake**.

4. **The debt is legally without merit or enforcement of the debt is barred by applicable statute of limitations.** A debt that is legally without merit is one that was never owed in the first place and should not have been classified as a debt. For example, a court determines that the agency's interpretation of a statute was incorrect and should not have resulted in a receivable to the agency. For purposes of receivables reporting on the Treasury Report on Receivables Due from the Public, the agency would "reclassify" the amount.

   An agency should not terminate debt collection activity based solely on the expiration of the statute of limitations for initiation of a lawsuit. An agency should consider the availability of other debt collection remedies that may not yet be time-barred, such as offset and administrative wage garnishment. For information on statute of limitations, see Chapter 6, Delinquent Debt Collection, page 6-61.

5. **The debt cannot be substantiated.** The agency does not or cannot produce the evidence, witnesses, or supporting documentation necessary to validate the debt and was not able to obtain a voluntary repayment of the debt. For example, the debtor signed a repayment agreement, but the agency cannot locate it in its files, has no record that the debtor ever agreed that the debt was owed, and the debtor refuses to repay or compromise the debt.

6. **The debt against the debtor has been discharged in bankruptcy.** The filing of a petition for bankruptcy is a clear sign that the debtor is either unable or unwilling to repay his/her debts; this by itself often justifies termination of collection action. All collection activity outside the bankruptcy process must cease upon the debtor's filing of a bankruptcy petition, except as allowed by law or by the bankruptcy court. The agency can, concurrently with terminating active collection, take action to protect its

interests by filing a proof of claim with the bankruptcy court. However, an agency may determine that monies to repay the debt are available through the bankruptcy process. An agency should consult with its agency counsel to determine this. See Chapter 6, Delinquent Debt Collection, page 6-57. For example, the agency may be able to pursue collection on payments provided under a bankruptcy reorganization plan, or may be able to obtain the court's permission to continue a foreclosure action.

In general, an agency shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount, where there are no other debtors or guarantors from whom collection may be sought. However, if payments to the agency are provided for under a plan of reorganization, an agency may continue collection activity regarding those payments, subject to the provisions of the Bankruptcy Code. Offset and recoupment rights may survive discharge of the debtor in bankruptcy and under some circumstances, debts also may survive discharge. Agency personnel should seek legal advice from the agency's counsel to determine whether the agency's debts have survived a debtor's discharge.

Exception to Termination of Collection Activity. When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, agencies may refer debts for further collection action, including litigation, even though termination of collection activity may otherwise be appropriate. Before terminating collection activity, the agency should have pursued all appropriate means of collection and 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 the agency from retaining a record of the debt for purposes of:

- selling the debt, if, in consultation with or at the request of the agency, the Secretary of the Treasury determines that such a sale is in the best interest of the United States;

- 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;
- offsetting against future income or assets not available at the time of termination of collection activity; or
- screening future government loan applicants for prior indebtedness.

Agency procedures should require that terminating collection action of progressively higher dollar amounts be authorized by progressively higher-level agency officials. These procedures should also require that the signatures of all agency officials participating or concurring in each termination of collection action decision be obtained before the action is taken.

DOJ Concurrence for Terminating Collection Action

Each agency determines when it will terminate collection action on its debts in accordance with governmentwide policy, its own regulations, authorities, and debt collection strategy. Each agency is authorized to terminate active collection on debts with principal amounts of $100,000 or less. An agency may terminate active collection on debts with principal amounts in excess of $100,000 only with the concurrence of DOJ, unless the agency has its own statutory authority for terminating collection action. If the principal amount of the debt is $500,000 or less, and the debt has been serviced by Fiscal Service in its Cross-Servicing Program, Fiscal Service may approve the termination of collection action.

If DOJ concurrence is necessary, an agency should make every effort to request such concurrence at least one year before the expiration of the applicable statute of limitations for collection litigation. DOJ concurrence is requested by submitting a completed Claims Collection Litigation Report to the Department of Justice, Civil Division, Commercial Litigation Branch, 1100 L Street NW, Room 10057,

Washington, D.C., 20530. The Claims Collection Litigation Report instructions can be found at:
http://www.justice.gov/sites/default/files/jmd/pages/attachments/2014/12/12/cclr_instructions.pdf.
and the form at:
http://www.justice.gov/sites/default/files/jmd/legacy/2014/05/26/cclr-form-fillable.pdf.

As a practical matter, the agency does not need to request concurrence from DOJ for termination of collection action if:

- the agency referred the debt to DOJ for litigation and DOJ returned the debt to the agency;
- DOJ determined that litigation is not appropriate and returned the debt to the agency;
- the debt has been discharged or terminated in bankruptcy;
- the statute of limitations for initiating litigation has expired; or
- the agency determines that the debt is legally without merit or cannot be substantiated.

The agency should establish:

- a method to track and follow up on the debts referred to DOJ for its concurrence with termination of collection action; and
- procedures to ensure that proper action will be taken based on the agency's decision to terminate collection, with DOJ concurrence. Such action may include passive collection, write-off, and/or cancellation of indebtedness.

Suspension of Collection Action

An agency may determine that certain circumstances warrant suspending, rather than terminating, collection action. When collection efforts are suspended, the agency, in effect, decides to defer its attempts to enforce collection, for a period of time specified in its regulations and/or collection strategy. During a period of suspension, passive collection action may continue when appropriate.

Collection action should be suspended only when the agency has reason to believe that the suspension will enhance the chances of recovery, or, at minimum, will not endanger the recovery of the debt. Such would be the case if the debtor agrees to repay the debt when the debtor's financial condition improves, as would occur if the debtor has been only temporarily laid-off from a permanent job.

The agency should suspend collection action when one or more of the following criteria apply:

1. **The agency cannot locate the debtor at the present time.** The agency should attempt to locate the debtor using available sources as described in Chapter 6, Delinquent Debt Collection, pages 6-71 through 6-73.

2. **The debtor's financial condition is expected to improve.** Suspension would be appropriate if the debtor owns no substantial equity in property and is unable to make payments, but: (a) the debtor's future financial prospects justify retaining the debt and the statute of limitations has not expired or has been tolled; or (b) future collections may be realized through administrative offset; or (c) the debtor has agreed to pay the interest accruing on the debt during the suspension. For example, suspension might be appropriate where the debtor has indicated that he/she is the recipient of a trust fund or inheritance and would be willing to pay interest until receipt of the trust fund or inheritance, at which time the debt would be repaid in full. Suspension may also be appropriate when the agency has evidence that

the collectibility of the debt will improve as the debtor's income potential improves over time (as has been the general case with education loans).

3. **The debtor has requested a waiver or administrative review of the debt.** If the waiver review or administrative review is considered mandatory, and if suspension is mandated by law or regulation pending such review, then the agency must suspend collection action until the review is completed or the waiver granted. Otherwise, the agency may decide on a case-by-case basis whether to suspend collection action for the duration of the review. The agency should not suspend collection when an agency determines that the request for waiver or review is frivolous or was made primarily to delay collection.

4. **The debtor has filed a petition in bankruptcy.** When an agency learns that a bankruptcy petition has been filed with respect to the debtor, in most cases the collection activity on a debt must be suspended unless the agency can clearly establish that the automatic stay has been lifted or is no longer in effect. Agencies should seek legal advice immediately from their legal counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained. In such cases, the agency may then be able to offset such funds to collect on the debt. See also Chapter 6, Delinquent Debt Collection, page 6-57.

The agency's procedures for suspending collection action should:

- distinguish between the definition and treatment of suspended and terminated debts;
- describe the specific circumstances in which suspension is appropriate;
- provide for the review and monitoring of suspended debts on a regular basis;

- require that progressively higher-level agency officials authorize the suspension of progressively higher dollar amounts of debt, with the signature of each agency official participating or concurring in the decision included on the authorizing document;

- provide for obtaining the concurrence of DOJ with the suspension of any debts whose principal amounts exceed $100,000, or from Fiscal Service for debts in cross-servicing whose principal amounts are $500,000 or less; and

- provide for ending the suspension and for either: (1) reinstating active collection on the debt, or (2) terminating collection action on the debt, when circumstances warrant and after review of the specific details at the highest appropriate agency level.

Note that where a statute requires that the agency suspend collection action or when the debtor files for bankruptcy, as a practical matter, the agency does not need DOJ or Fiscal Service concurrence to suspend collection action. In these instances, the agency should seek the review of its agency counsel to assure that suspension of collection action is mandated by law.

Termination and Suspension of Collection Action and Compromise Regarding Fraud Claims

When an agency has a debt arising from fraud, false statements, or misrepresentations by a debtor, the agency must ask DOJ for authority to terminate or suspend collection action, or compromise the debt**, regardless of the amount**. An agency should consult with agency counsel to determine whether action under Title 31, Chapter 38, "Administrative Remedies for False Claims and Statements" (31 U.S.C. §3801 - 3812) is appropriate.

Regarding write-off and reporting discharges of indebtedness to IRS, the same rules apply to fraud debts as apply to generally all other types of debts. DOJ approval is not needed by the agency to

write-off the debt as currently not collectible. Similarly, no further DOJ approval is needed to close-out the debt or report the debt to IRS as potential income to the debtor once the agency is given the authority to terminate collection action on the debt by DOJ.

Write-off

Write-off of a debt should occur when the agency determines that the debt has no value for accounting purposes. As previously indicated in the overview of this chapter, write-off may occur *before, concurrently with* or *after* the agency determines that collection action should be terminated. Generally, write-off is mandatory for debts delinquent more than two years, unless documented and justified to OMB in consultation with Treasury. However, in those cases where material collections can be documented to occur after two years, debt cannot be written off until the estimated collections become immaterial. See OMB Circular No. A-129, Section V.5.

All debt must be reserved for in the allowance account, and all write-offs must be made through the allowance account. Under no circumstances are debts to be written off directly to expense. See OMB Circular No. A-129, Section V.5

Once the agency determines that a debt has no value for accounting purposes, it must determine whether or not collection action on the debt should continue. Specifically, at the time the debt is written-off, the agency must determine whether the debt should be further classified as one of the following:

- **Currently Not Collectible (CNC)**: If the agency determines that cost effective collection efforts should continue after write-off, then the debt will be classified as CNC. Debt collection activities, such as referral to Fiscal Service for collection action for cross-servicing or TOP, should continue.

- **Close-out**: If the agency determines that collection action is legally barred or it is no longer cost effective to pursue collection, the debt should be classified as close-out. In most cases, the closed-out debt must be reported to IRS as potential income to the debtor.

Cost effective collection efforts should continue if an agency determines that continued collection efforts after mandatory write-off have some potential to result in collections. This is especially true if the debt has not yet been referred to Fiscal Service for collection action, as required by the DCIA. See Chapter 6, Delinquent Debt Collection.

In summary, *within two years of the date of delinquency*, the agency should be able to evaluate the likelihood that it will collect on a delinquent debt and either:

- write-off and classify the debt as CNC, which will allow for further collection action;

- write-off and classify the debt as close-out, which means that the agency will cease all debt collection activities on the debt; or

- document and justify why the debt is not being written-off.

If the debt is written-off and classified as CNC, the debt may be reclassified as close-out in the future, when all collection activities pertaining to the debt cease.

The agency does not need DOJ approval to write-off a debt since the agency is only adjusting its accounting records. Except for agencies having independent statutory authority, DOJ concurrence or Fiscal Service concurrence as applicable, is required, however, when an agency suspends or terminates debt collection action on debts over $100,000. See page 7-9 of this Chapter.

Pursuit of Collection After Write-off/CNC

When pursuing collection of a debt after write-off and classification as CNC, an agency should:

- if material to its financial statements, disclose its actions regarding the pursuit of collection on its written-off debts in a note to its financial statements (i.e., the agency should specifically state the amount of written-off debts under collection and whenever possible based upon historical experience, the amount it expects to collect); and
- establish accounting procedures to account for collections on written-off debts (e.g., if the agency receives a one-time payment on a written-off debt, it may restore the amount collected as a receivable at the time of collection or credit the amount to a recovery account; and/or if the payment on a written-off debt is recurring and/or regular, the agency should restore the total amount of the debt as a receivable in both its General and Subsidiary Ledgers and record each collection as if the debt had never been written-off).

Write-Down

Rather than writing-off the entire amount of a collateralized debt, an agency may *write-down* the debt to the collateral's net realizable value. The agency may not write-down non-collateralized debts. The agency must appraise the value of the collateral in relation to the amount of the debt. If the value of the collateral has declined to the point where its liquidation would not satisfy the debt in full and there is no other source for the collection of the debt, then the agency should reduce the amount of the debt to the new appraised value of the collateral. The written down amount should be recognized as a loss. For information on real estate appraisals, see Chapter 3, Credit Extension, page 3-13.

As is true for write-off, the agency does not need DOJ concurrence to write-down a debt since the agency is simply adjusting its

records to more accurately reflect the amount it expects to collect through the liquidation of the collateral.

Close-out Classification and Discharge of Indebtedness/Issuance of Form 1099-C

Close-out Classification. As previously stated, the classification of a debt as close-out occurs when an agency, after determining that additional future collection efforts on a debt are prohibited or would be futile, determines to cease all collection activities on the debt. This action may occur concurrently with the initial write-off of a debt, or at a later date, depending upon the agency's own collection strategy and its determination that no further collection activity is warranted. The determination that a debt should be classified as close-out is different than the determination that collection action should be terminated or suspended. When collection action for a debt is terminated or suspended, there is a determination to cease active collection action on the debt. The agency may still pursue debt collection activities at its discretion, for example, maintaining the debt in TOP. The determination that the debt should be classified as **close-out occurs only after the agency has determined to cease all collection activity on the debt.**

The decision to classify a debt as close-out triggers the need to determine if the debt must be reported to the IRS as potential income to the debtor on Form 1099-C, "Cancellation of Debt." Close-out and Form 1099-C reporting are linked because both actions occur as a result of the agency's decision to cease all collection activity. **Additionally, the two actions are linked because further collection action on the debt is generally prohibited once the agency reports the uncollected amount to the IRS on Form 1099-C as potential income to the debtor**.

Therefore, before making the decision to cease all collection activity and to classify the debt as close-out, an agency must take all appropriate steps to collect the debt, including, as applicable: (1) TOP, (2) non-centralized administrative offset, (3) referral to Fiscal Service, Treasury-designated debt collection centers or private collection contractors, (4) credit bureau reporting, (5)

administrative wage garnishment, (6) litigation, and (7) foreclosure. Typically, once a debt has been through Fiscal Service's cross-servicing process (as described in Chapter 6, Delinquent Debt Collection) and returned to the agency, any remaining balance due will be classified as close-out.

Discharge of Indebtedness. After it is determined that the debt will be classified as close-out, the amount of indebtedness is reported to the IRS as potential income to the debtor via Form 1099-C, "Cancellation of Debt." Under the Internal Revenue Code (26 U.S.C. § 61(a)(12)), income from discharge of indebtedness is defined as "gross income." Section 6050P of the Internal Revenue Code, as amended by the DCIA, requires all Federal agencies and private financial institutions to report certain discharged debts to the IRS. The reporting requirement covers debts owed by individuals, sole proprietorships, partnerships, and corporations. Types of debts include those arising from loan programs, as well as administrative actions such as the assessment of fines, fees, and penalties.

The discussion that follows concerning reporting discharges of indebtedness to IRS contains some of the general rules. For more detailed information, agencies should refer to IRS regulations 26 CFR 1.6050P-l and any other applicable IRS publications and guidance.

Section 6050P(a) of the Internal Revenue Code requires the filing of Form 1099-C for discharges of indebtedness of $600 or more. IRS regulations list eight identifiable events that trigger the reporting requirement. Note that these identifiable events, listed below, generally dovetail with the reasons an agency would cease all collection activity on a debt and classify the debt as close-out.

The following are identifiable events that trigger reporting discharge of indebtedness to IRS on Form 1099-C:

- a discharge of indebtedness under Title 11 of the United States Code (bankruptcy). Note that reporting is required only if the agency knows from information included in its

books and records pertaining to the debt that the debt was incurred for business or investment purposes;

- a cancellation or extinguishment of an indebtedness that makes a debt unenforceable in a receivership, foreclosure, or similar Federal or state court proceeding;

- a cancellation or extinguishment of an indebtedness where a debtor's affirmative statute of limitations defense is upheld and can no longer be challenged by appeal, or a cancellation or extinguishment upon expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding. Note that Federal agencies may still have the ability to collect by offset after the statute of limitations for enforcing a claim in court has expired; no Form 1099-C should be filed if collecting by offset;

- a cancellation or extinguishment of an indebtedness that occurs when the creditor elects foreclosure remedies that by law extinguish or bar the creditor's right to collect the debt;

- a cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

- a discharge of indebtedness pursuant to an agreement between the creditor and the debtor to discharge indebtedness at less than full consideration (a "compromise," see page 7-21 of this Chapter);

- a discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor to discontinue collection activity and discharge the debt; and

- the expiration of the non-payment testing period (generally a rebuttable presumption of this identifiable event occurs when the creditor agency does not receive any payment on a debt for a 36 month lookback period as of December 31).

See 26 CFR § 1.6050P-1(b)(2) for more information on identifiable events.

When reporting a debt to the IRS, the agency is responsible for all of the actions detailed below:

- the agency should capture and provide to the IRS all information required by the statute and IRS regulations, including taxpayer/debtor taxpayer identification number, date of the final debt disposition/discharge, and amount of the debt. To obtain a taxpayer identification number, the agency should request that the debtor complete and return a Form W-9, "Request for Taxpayer Identification Number and Certification" available through the Internal Revenue Service website at *www.irs.gov/formspubs* or other applicable form, to the extent authorized by law. The debtor is obligated to provide this information under the Internal Revenue Code;

- the agency must report the debt after all collection efforts have been exhausted. The agency is not obligated to wait to report a debt until the statute of limitations (SOL) has expired, even though the expiration of the SOL constitutes a reason for the debt to be considered discharged;

- the agency must report amounts of $600 or more, but has the option of reporting amounts less than $600;

- the agency must report the outstanding principal, administrative costs (but not contingency fees), and penalties for non-lending transactions. In the case of lending transactions, only the principal must be reported. In both lending and non-lending transactions, reporting interest is at the discretion of the creditor;

- the agency must report any deficiency judgment once the agency has stopped its attempts to collect on the judgment (note that once the agency determines to file a Form 1099-

C, the agency must officially release any judgment relevant to the debt);

- the agency should not report a debt if it has a lien against the debtor's property, unless it decides to release that lien. The agency must notify and obtain the concurrence of DOJ prior to closing-out a debt with an outstanding lien if the principal amount of the debt is $100,000 or more;

- the agency must provide the debtor with a copy of the Form 1099-C to be filed or a written statement of the impending Form 1099-C report by January 31 of the year following the agency's decision to stop all collection on the debt; and the agency must send the Form 1099-C to the IRS by February 28 of the year following the calendar year in which the identifiable event occurs (March 31 if filed electronically).

Note that IRS regulations provide that reporting is not required for the release of one debtor if the remaining debtors are liable for the full unpaid amount of the debt.

For debts referred to Fiscal Service's Cross-Servicing Program, an agency may request Fiscal Service to report the debt to the IRS on the agency's behalf.

Once a debt is reported to the IRS, the agency can take no further collection action. It may, however, accept voluntary repayments of the debt at any time, without any obligation to notify IRS of a change in the debt. For example, voluntary payments may occur where a delinquent debtor seeks to satisfy the debt and remove the statutory bar from receiving Federal loans or loan guarantees. See Chapter 6, Delinquent Debt Collection, page 6-65. The agency does, however, have an obligation to notify IRS of debts that were reported in error. The agency would handle voluntary payments as it would payments received before classification of the debt as close-out.

Compromise of Debts

When an agency accepts less than full payment—or in other words "compromises" the debt—it may have to follow the requirements for termination, write-off, and close-out for the portion of the debt released/discharged. When compromising, the agency must determine whether the proposed compromise meets appropriate standards. See Chapter 6, Delinquent Debt Collection, page 6-23.

In compromising a debt, the agency must: (a) get approval from DOJ to compromise the debt when the principal balance of the debt before compromise exceeds $100,000, or, if the debt is $500,000 or less and the debt is in Fiscal Service's Cross-Servicing Program, get approval from Fiscal Service unless the agency has independent statutory authority to compromise the debt; (b) write-off as closeout the amount of the debt forgiven by compromise; and (c) report the discharged amount to the IRS on Form 1099-C, assuming the requirements of IRS regulations are otherwise met. For example, if an agency agrees to accept anything less than the full amount owed for a $300,000 debt because the debtor claims an inability to pay, the agency must seek DOJ approval for such compromise. If DOJ decides not to seek enforcement and approves the compromise, then the amount discharged should be written-off as close-out and reported to the IRS on Form 1099-C.

If, however, an agency determines that part of the debt is not owed, then the agency does not need to seek DOJ approval to terminate collection or compromise such amounts, and the filing of a Form 1099-C is not required. For example, if a debtor argues that the amount of the debt should be $150,000, instead of $300,000, based on the debtor's records, and the agency accepts the debtor's analysis, then the amount may be adjusted without seeking DOJ approval or filing a Form 1099-C. In addition, the agency should make an adjustment to the total receivables on the "Treasury Report on Receivables Due From the Public" to account for the lesser amount owed, rather than report the amount of the reduction as a write-off.

Interim Guidance

An updated Chapter on loan portfolio/asset sales will be forthcoming from the Office of Management and Budget (OMB) and Treasury's Office of Domestic Finance. In the interim, agencies should consult the most recent versions of OMB Circular No. A-11, "Preparation, Submission, and Execution of the Budget" and OMB Circular No. A-129 - "Policies for Federal Credit Programs and Non-Tax Receivables." These documents are available at:

http://www.whitehouse.gov/omb/circulars

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Account Status Codes

Information on commercial accounts should be obtained by contacting the respective commercial credit reporting agency. The account status codes best describe whether the account is current or past due. For codes not described here, contact the credit bureau/credit reporting agency from which the report was generated. The following information is contained in the Metro 2 Format for reporting consumer accounts found at *http://www.cdiaonline.org/data.cfm.*

Code	Description
05	Account transferred to another office
11	Current account
13	Paid or closed account/zero balance
61	Account paid in full was a voluntary surrender
62	Account paid in full was a collection account
63	Account paid in full, was a repossession
64	Account paid in full, was a charge-off
65	Account paid in full; A foreclosure was started
71	Account 30-59 days past the due date
78	Account 60-89 days past the due date
80	Account 90-119 days past the due date
82	Account120-149 days past the due date
83	Account 150-179 days past the due date
84	Account 180 or more days past the due date
88	Claim filed with government for insured portion of balance on defaulted loan
89	Deed received in lieu of foreclosure on a defaulted mortgage; there may be a balance due
93	Account assigned to internal or external collections
94	Foreclosure Completed; there may be a balance due

95	Voluntary surrender; there may be a balance due
96	Merchandise was repossessed; there may be a balance due
97	Unpaid balance reported as a loss(charge-off)
DA	Delete entire account (for reasons other than fraud)
DF	Delete an entire account due to confirmed fraud (fraud investigation completed) **NOTE**: In order to maintain the integrity of credit information, it is important that credit grantors not ask for a subsequent deletion of account history unless an actual error was reported. Paid derogatory accounts, such as collections, should be reported as paid; they should not be deleted.

Equal Credit Opportunity Act (ECOA) Codes

The ECOA code defines the relationship of consumer to the accounting compliance with the Equal Credit Opportunity Act.

Code	Description
1	Individual (This consumer has contractual responsibility for this account and is primarily responsible for its payment
2	Joint contractual Liability (This consumer has contractual responsibility for this joint account)
3	Authorized User (This consumer is an authorized user of this account; another consumer has contractual responsibility.)
5	Co-maker or Guarantor (This consumer is the co-maker or guarantor for this account, who becomes liable if the maker defaults.)
7	Maker (This consumer is the maker who is liable for the account, but a co-maker or guarantor is liable if the maker defaults.)
T	Terminated (The association with the account has been terminated by this consumer.)
X	Deceased (This consumer is deceased.)
W	Business/Commercial (This code is used to identify that the company reported in the Name field is contractually liable for this account.)
Z	Delete Consumer (This code is used to delete this consumer from the account.) **NOTE**: Only inaccurately reported consumers should be deleted.

Other Reporting Codes Used

The following codes may also be found on a debtor's credit report:

Code	Description
Reporter Name or processor.	Name of processing company sending the data, i.e, data furnisher
Date Opened	Date the account was originally opened. Retain the original Date Opened regardless of future activity, such as transfer, refinance, lost or stolen card, etc.
Highest Credit or Original Loan Amount	Line of Credit - highest balance ever attained Mortgage - original amount of loan (excluding interest payments) Open - highest balance ever attained Revolving - highest balance ever attained
Terms Duration	Duration of credit extended (usually stated in months or years)
Current Balance Information	Current balance owed on the account as of the Date of Account
Amount Past Due	Total amount of payments that are 30 days or more past due in whole dollars only. This field should include late charges and fees, if applicable.
Original Creditor Name	(long descriptor—k1 segment, original creditor name)
Account Type O=Open, I=Installment	C=Line of Credit, M=Mortgage, R=Revolving,

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Agency:_____

Program:_____

Amount Owed:_____

Date Debt Incurred:_____

The Application

1. Has the application been completed and does it contain:

a) **Identifying Information**:

full name of applicant?	YES	NO
address of applicant?	YES	NO
telephone number of applicant?	YES	NO
taxpayer identification number (TIN)/certification?	YES	NO
full name(s) of all co-borrower(s)?	YES	NO
co-borrower(s)' address?	YES	NO
co-borrower(s)' telephone number?	YES	NO
co-borrower(s)' TIN?	YES	NO

b) **Financial Information**:

amount of annual income and sources?	YES	NO
account numbers of bank accounts?	YES	NO
name(s) and address(es) of employer(s)?	YES	NO
real and personal assets?	YES	NO
names and addresses of creditors?	YES	NO
account numbers of amounts owed?	YES	NO
schedule of payments including frequency?	YES	NO
total amount of outstanding debt?	YES	NO

c) **Information on Collateral**:

location?	YES	NO
estimated value?	YES	NO
description?	YES	NO

d) **Statements/Signatures**:

all required certifications signed and dated?	YES	NO

Screening and Analysis

2.	Has the application been screened against:		
	IRS' delinquent tax files?	YES	NO
	CAIVRS?	YES	NO
	Treasury/Fiscal Service Debt Check Program?	YES	NO
	If no, was a reason given as to why it has not been documented in the files?	YES	NO
3.	Has a credit report been purchased?	YES	NO
	If no, has a reason been documented in the files?	YES	NO
4.	Has the information on the application been confirmed using:		
	credit reports?	YES	NO
	verification of employment and benefits?	YES	NO
	suppliers?	YES	NO
	references?	YES	NO
5.	Has the credit report been used to assist in performing a credit analysis?	YES	NO
6.	Has a credit analysis been performed?	YES	NO
	If not, has a reason been documented in the files?	YES	NO
	Have the results of the credit analysis been documented in the files?	YES	NO

7.	Has the statement/form certifying that the borrower was informed of the Government's debt collection policies (i.e., debt collection certification) been signed and dated by the borrower?	YES	NO
8.	Has the loan been rated?	YES	NO
	If not, has a reason been given and documented in the files?	YES	NO
	Has the documentation supporting the loan rating been maintained?	YES	NO
9.	Has an independent collateral appraisal been obtained?	YES	NO
	Has that appraisal been documented in the files?	YES	NO
10.	Have audited financial statements or income tax returns been used to evaluate the loan?	YES	NO
11.	For a commercial loan, has analysis been conducted on:		
	balance sheet and income statement?	YES	NO
	market share and marketing strategy?	YES	NO
	management ability?	YES	NO
	working capital?	YES	NO
	the strength of competition?	YES	NO
	If not, have reasons been given for specific omissions and have these reasons been documented in the files?	YES	NO
12.	Are the following documents in the file:		
	application?	YES	NO
	credit report?	YES	NO
	verification documents?	YES	NO
	analyses of the application?	YES	NO
	appraisal of collateral?	YES	NO
	legal documents relating to the loan?	YES	NO
	non-delinquency certification (if not contained on application)?	YES	NO
	debt collection certification?	YES	NO
	record that applicant has paid all origination/application fees?	YES	NO
	loan or services agreement with the debtor containing:		
	all applicant identifying information?	YES	NO
	collateral description, location and worth?	YES	NO
	terms of the agreement?	YES	NO

	notification of rights of debtor and Government?	YES	NO
	right to call full amount due and payable upon delinquency/default?	YES	NO
	requirements for maintenance/insurance of collateral?	YES	NO
	provisions for assessment of late charges?	YES	NO
	copies of checks or receipts for payment of loan?	YES	NO
	application or origination fees?	YES	NO

Servicing

13.	Is the following information in the file:		
	identifying information for the borrower and co-borrower(s)?	YES	NO
	amount and nature of the debt?	YES	NO
	status of the account?	YES	NO
	summaries of contacts with the debtor(s)?	YES	NO
14.	If required, has an escrow account been established?	YES	NO
15.	Is there a record of regular billings and payments?	YES	NO
16.	If a new receivable, has the debtor been informed of agency policy on:		
	accrual of all late charges?	YES	NO
	his/her due process rights?	YES	NO
	amount of debt and basis of indebtedness?	YES	NO
	deadline for payment?	YES	NO
	possible collection actions?	YES	NO
	requirement to provide taxpayer identification number?	YES	NO
17.	Is the condition of the collateral regularly determined?	YES	NO
	Are regular reports on the condition of collateral documented?	YES	NO
	Is insurance coverage being maintained on the collateral?	YES	NO
	Is adequacy of the insurance coverage being regularly reassessed and changed as needed?	YES	NO
18.	Has the loan been classified annually?	YES	NO
	If not, has a reason been given and documented in the file?	YES	NO
	Has the basis for the classification been maintained in the file?	YES	NO

19.	Is financial information updated annually, where appropriate?	YES	NO
20.	Has the account information been reported to the appropriate consumer and commercial credit bureaus?	YES	NO
	If the debt has been referred, has the date of initial referral and the names of the credit bureaus to which the debt was referred been indicated in the files?	YES	NO
	If no, has the reason been given and documented?	YES	NO

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Balance Sheet

- Failure to submit financial statements in a timely fashion
- Slowdown in the collection period for receivables
- Deterioration in customer's cash position
- Share increases in dollar amounts or percentage of accounts receivable
- Share increases in dollar amounts or percentage of inventory
- Slowdown in inventory turnover
- Decline in current assets as a percentage of total assets
- Deterioration of the liquidity/working capital position
- Marked changes in mix of trading assets
- Rapidly changing concentrations in fixed assets
- Large increase in reverses
- Concentrations in noncurrent assets, other than fixed assets
- High concentration of assets in intangibles
- Disproportionate increases in current debt
- Substantial increases in long-term debt
- Low equity relative to debt
- Significant changes in the structure of balance sheet
- Presence of debt due to/from officer/shareholders
- Qualified audit
- Change of accountants

Income Statement

- Declining sales/rapidly expanding sales
- Major gap between gross and net sales
- Rising cost percentages/narrowing margins
- Rising sales and falling profits
- Rising levels of bad debt losses
- Disproportionate increases in overhead, relative to sales
- Rising levels of total assets, relative to sales/profits
- Operating losses

Early Financial Warning Signs

Receivables Aging

- Extended average age of receivables
- Changes in credit policies
- Extended terms
- Replacement of accounts receivable with notes receivable
- Concentrations of sales
- Compromise of accounts receivable
- Receivables from affiliated companies

Early Management Warning Signals

- Change in behavior/personal habits of key people
- Marital problems
- Change in attitude toward bank or banker, especially a seeming lack of cooperation
- Failure to perform personal obligations
- Changes in management, ownership, or key personnel
- Illness or death of key personnel
- Inability to meet commitments on schedule
- Recurrence of problems presumed to have been solved
- Inability to plan
- Poor financial reporting and controls
- Fragmented functions
- Venturing into acquisitions, new business, new geographic area, or new product line
- Desire and insistence to take business gambles and undue risk
- Unrealistic pricing of goods and services
- Neglect or discontinuance of profitable standard lines
- Delay in reacting to declining markets or economic conditions
- Lack of visible management succession
- One-person operations showing growth patterns that strain the capacity of the owner to manage and control
- Change in business, economy, or industry
- Labor problems
- Change in the nature of the company's business
- Poor financial records and operating controls
- Inefficient layout of plant and equipment

- Poor use of people
- Loss of key product lines, franchises, distribution rights, or sources of supply
- Loss of one or more major, financially secure customers
- Substantial jumps in size of single orders or contracts that would strain existing productive capacity
- Speculative inventory purchases that are out of line with normal purchasing practices
- Poor maintenance of plant and equipment
- Deferred replacement of outmoded or inefficient equipment
- Evidence of stale inventory, large levels of inventory, or inappropriate mix of inventory

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Key Statutes

5 U.S.C. 552a	Records Maintained on Individuals (Privacy Act)
5 U.S.C. 5514	Installment Deduction for Indebtedness to the United States (Federal Salary Offset)
26 U.S.C. 6050P	Returns Relating to the Cancellation of Indebtedness by Certain Entities
26 U.S.C. 6103	Confidentiality and Disclosure of Returns and Return Information
26 U.S.C. 6402	Authority to Make Credits or Refunds (Tax Refund Offset)
31 U.S.C. 3325	Payment Vouchers
31 U.S.C. 3701	Definitions
31 U.S.C. 3711	Collection and Compromise
31 U.S.C. 3716	Administrative Offset
31 U.S.C. 3717	Interest and Penalty on Claims
31 U.S.C. 3718	Contracts for Collection Services
31 U.S.C. 3719	Reports on Debt Collection Activities
31 U.S.C. 3720A	Reduction of Tax Refund by Amount of Debt
31 U.S.C. 3720B	Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Key Statutes (cont'd.)

31 U.S.C. 3720C	Debt Collection Improvement Account
31 U.S.C. 3720D	Garnishment
31 U.S.C. 3720E	Dissemination of Information Regarding Identity of Delinquent Debtors
31 U.S.C. 7701	Taxpayer Identifying Number

Public Laws

Chief Financial Officers Act of 1990, Public Law 101-576 (31 U.S.C. 901 et seq.)

Computer Matching and Privacy Protection Act of 1988, Public Law 100-503 (5 U.S.C. 552a)

Debt Collection Act of 1982, Public Law 97-365 (5 U.S.C. 5514; 31 U.S.C. 3701 et seq.)

Debt Collection Improvement Act of 1996, Public Law 104-134 (5 U.S.C. 5514; 31 U.S.C. 3701 et seq.)

Deficit Reduction Act of 1984, Public Law 98-369 (26 U.S.C. 6402 and 31 U.S.C. 3720A)

Federal Claims Collection Act of 1966, Public Law 89-508 (31 U.S.C. 3701 et seq.)

Federal Credit Reform Act of 1990, Public Law 101-508 (2 U.S.C. 661 et seq.)

Federal Debt Collection Procedures Act of 1990, Public Law 101-647 (28 U.S.C. 3001 et seq.)

Claims Resolution Act of 2010, Pub.L. 111-291
(Specifically, Title VIII, Subtitle A, Sec. 801/26 U.S.C. 6402(f))
Digital Accountability and Transparency Act of 2013 (DATA Act)

Although Generally Not Applicable to Debt Collection by Federal Employees, the Following Public Laws Provide Useful Information for Government Debt Collectors:

Fair Credit Reporting Act of 1970, Public Law 91-508 (15 U.S.C. 1681 et seq.)

Fair Debt Collection Practices Act of 1977, Public Law 95-109 (15 U.S.C. 1601 et seq.)

Websites Provided in Chapter 6 and Information Referenced in Citations

http://www.fiscal.treasury.gov/fsprograms/fs debt.htm:
http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_dca.htm

- Debt Collection Statutes, Regulations, and Guidance
- Guide to the Federal Credit Bureau Program
- Administrative Wage Garnishment Form SF-329
- Information on Fiscal Service's Cross-servicing
- Program Treasury's Current Value of Funds Rate
- List of Payments That Are Exempt from Offset under TOP
- Treasury Financial Manual

www.gpoaccess.gov/fr.index.html	Federal Register and CFR Documents
www.opm.gov	CSRS and FERS Handbook, Chapter 4 - Debt Collection
www.uscourts.gov/bankform	Bankruptcy Proof of Claim Form
www.irs.gov	Local IRS Office Information Collection Financial Standards
www.usdoj.gov/foia/privstat.htm	Privacy Act of 1974, as amended (includes requirements for computer matching programs.)

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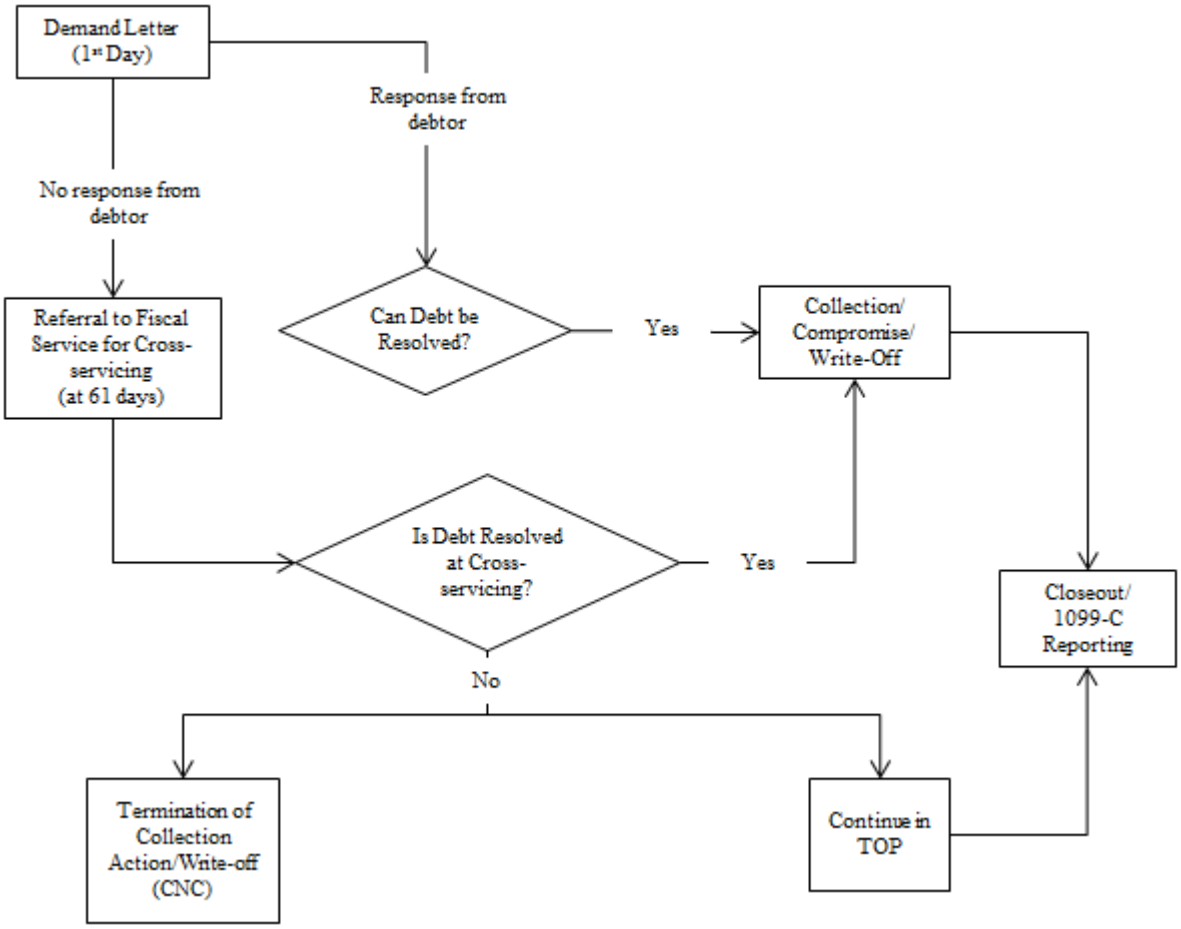
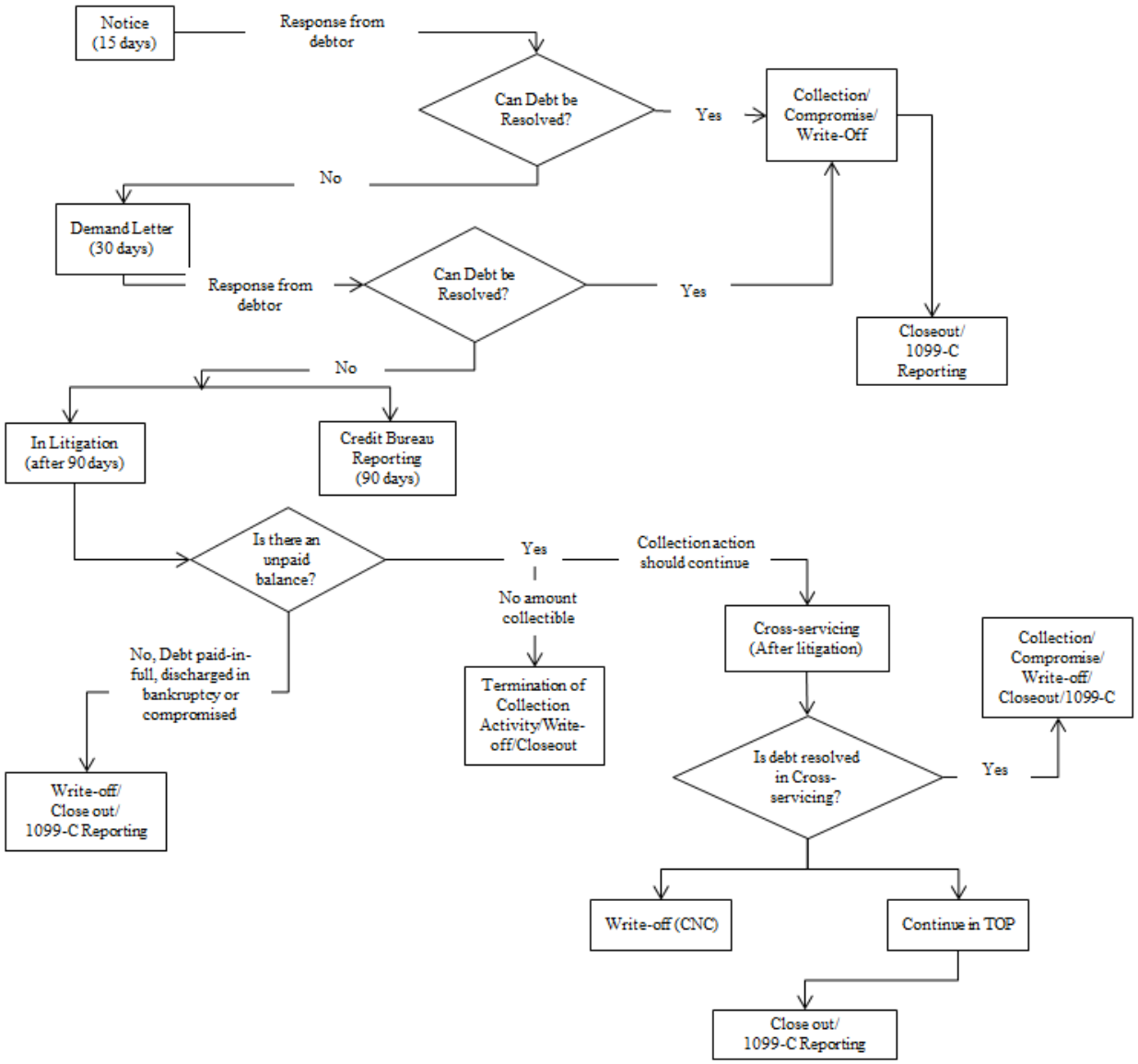
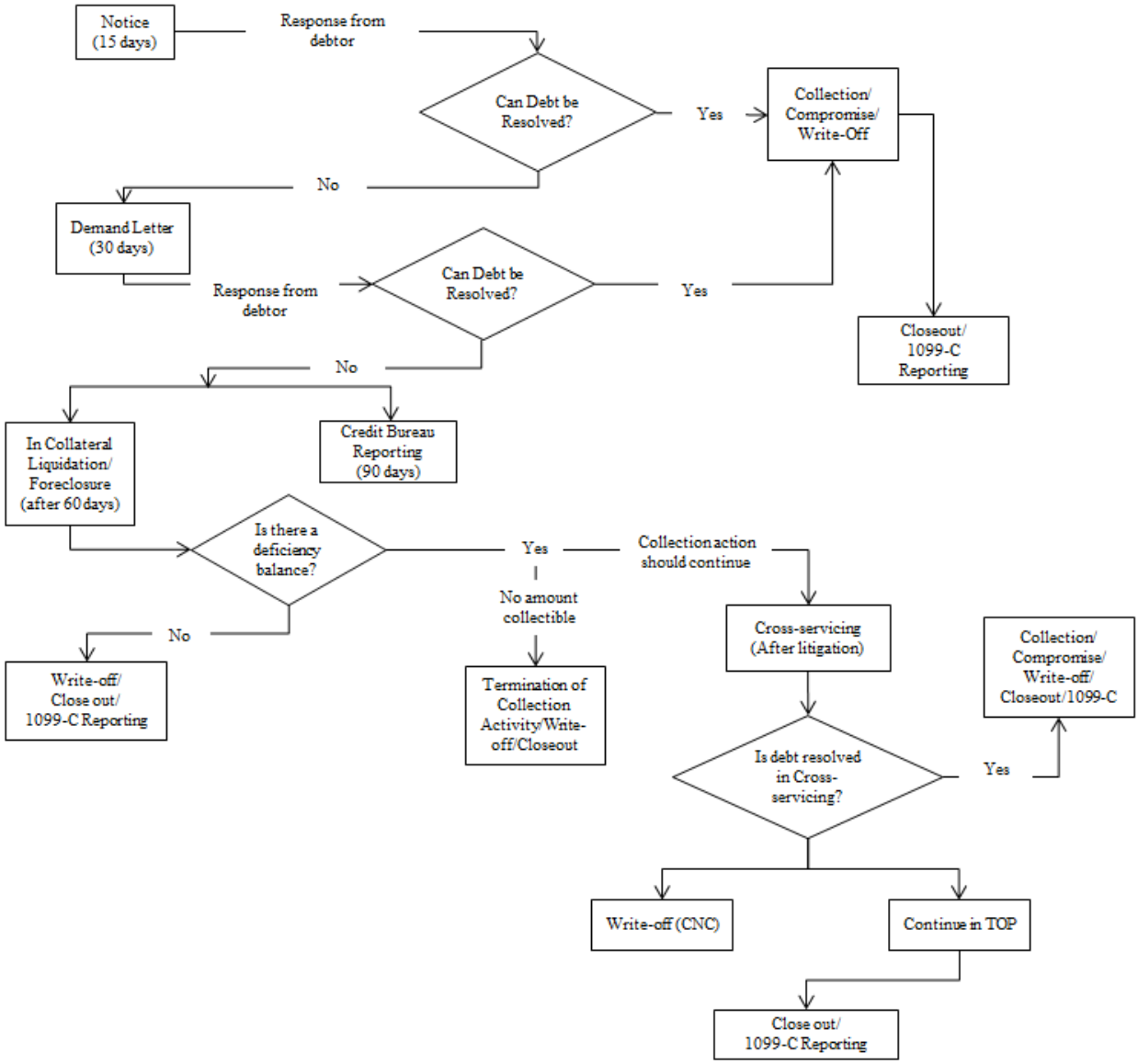
Quick Referral to Cross-Servicing



Debts Sent to Litigation



Collateralized Debts



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Debt Collection/Write-off Checklist for Individual Debtor Files

Agency:_____

Program:_____

Debtor Name:_____Amount Owed:_____

Debtor Taxpayer Identifying Number_____Date Debt Incurred:_____

1.	a.	Has the debtor been contacted?	Yes	No
	b.	Was the contact by telephone and/or letter?	Yes	No
	c.	Number of times debtor has been contacted?	1 2 3 4 5	
	d.	Have any of the calls been documented, with the following information included?		
		Date of calls	Yes	No
		Name of agency representative who called?	Yes	No
		Name of person contacted?	Yes	No
		Notes taken on substance of calls?	Yes	No
		Notes taken on follow-up action of agency?	Yes	No
		Dates recorded of follow-up action taken?	Yes	No
	e.	Number of letters?	1 2 3	
		Are copies of replies in file or stored electronically?	Yes	No
		Are copies of agency responses to debtor's letters or notes on agency follow-up action maintained in the file?	Yes	No
	f.	Are all documents dated?	Yes	No

	g.	Was the debtor informed in writing of agency policy on:		
		accrual of interest?	Yes	No
		penalties?	Yes	No
		administrative costs?	Yes	No
		debtor's rights?	Yes	No
		amount and basis of debt?	Yes	No
		possible collection actions which may be used to collect the debt?	Yes	No
	h.	Was the debt resolved through a:		
		voluntary repayment agreement?	Yes	No
		compromise?	Yes	No
	i.	If such agreement(s) were reached, has the agency documented:		
		terms of the repayment agreement?	Yes	No
		terms of the compromise?	Yes	No
2.	a.	Is interest being assessed on the delinquency?	Yes	No
		If no, is a reason given as to why not?	Yes	No
		If yes, is the rate of interested also indicated in the file?	Yes	No
	b.	Are penalties being assessed on the delinquency?	Yes	No
		If no, is a reason given as to why not?	Yes	No
		If yes, is the amount of the penalty indicated in the file?	Yes	No
	c.	Are administrative costs being assessed on the delinquency?	Yes	No
		If no, is a reason given as to why not?	Yes	No
		If yes, are the administrative costs charged also indicated in the file?	Yes	No

3.	Has the debt been referred to a credit reporting bureau?	Yes	No
	If a consumer debt, was the debtor notified?	Yes	No
	Is the notification letter in the debtor's file?	Yes	No
	Is any debtor response also in the file?	Yes	No
	If the debt has been referred, does the file contain the date of initial referral?	Yes	No
	Are the names of the credit bureaus to whom the debt was referred recorded in the file?	Yes	No
	If not, does the agency retain that information elsewhere?	Yes	No
4.	Is the debt secured?	Yes	No
	Has liquidation of the security been attempted?	Yes	No
	Has the agency documented:		
	its decisions whether or not to liquidate collateral?	Yes	No
	its attempts at liquidating the collateral?	Yes	No
	the results of any collateral liquidation?	Yes	No
5.	Has the debt been referred to Treasury Offset Program for offset?	Yes	No
	If not, is a reason given why not?	Yes	No
6.	Has the agency tried to collect the debt using non-centralized offset?	Yes	No
	If not, is a reason given why not?	Yes	No
	Has the debt been referred for cross-servicing?	Yes	No
	If not, has the reason been documented in the file?	Yes	No
7.	Has the agency authorized the use of administrative wage garnishment in cross-servicing?	Yes	No
	If not authorized through cross-servicing, has the agency attempted to collect the debt using administrative wage garnishment?	Yes	No
	If not, has the reason been documented in the file?	Yes	No

8.	If the debt has not been referred for cross-servicing, has the agency referred the debt to a private collection agency?	Yes	No
	If not, has the reason been documented in the file?	Yes	No
9.	Has the debt been referred for litigation?	Yes	No
	If yes, has the agency properly documented the referral action in the file?	Yes	No
	If not, has the reason been documented in the file?	Yes	No

While Federal agencies are not subject to the Fair Debt Collection Practices Act (FDCPA), the FDCPA provides valuable guidance on appropriate practices in communicating with debtors and can be used as a source in developing an agency's guidelines. Most of the items on the following list are based on the practices and prohibitions described in the FDCPA. Additional information about the FDCPA may be found at *www.ftc.com*.

Disclaimer: On the following page is a list of suggested debt collection practices. Each agency should develop its own practices based on the type of debts being collected and applicable laws. Nothing in this list creates any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Do's & Don'ts of Debt Collection

✓ *DO . . .*	✗ *DO NOT . . .*
✓ *contact a debtor in person, by mail, telephone, telegram, or fax in accordance with your agency's debt collection practices. It is acceptable to use e-mail in limited circumstances with the debtor's consent. Consult with agency legal counsel on the appropriate use of e-mail and fax.*	✗ *contact the debtor at any unusual time or place, or a time or place that you should know is inconvenient to the debtor. Generally, 8:00 a.m. to 9:00 p.m. (debtor's time) is deemed to be convenient. Know your time zones!*
✓ *clearly identify who you are and that you are attempting to collect a debt when contacting a debtor. Use of "desk names" is acceptable under certain conditions. Check with agency legal counsel before using desk names.*	✗ *contact the debtor directly if you know the debtor is represented by an attorney. If the attorney fails to respond to your communication, consult with agency legal counsel on how to proceed.*
✓ *keep an objective written record of all communications with a debtor. Be aware that your written record (notes, e-mails, etc.) may be provided to the debtor upon request or may be subject to discovery in litigation.*	✗ *contact the debtor at his or her place of employment if you think that the debtor's employer does not allow such calls.*
✓ *be professional, courteous, firm and direct in all communications. Talk straight. Avoid getting angry or emotionally involved. Be aware that some debtors may record your conversation.*	✗ *threaten or use violence or other criminal means to harm the debtor or his or her property. Do not use obscene or profane language.*
✓ *listen carefully to the debtor.*	✗ *continue to contact the debtor after the debtor has requested that you stop further communication or the debtor has stated in writing that he or she refuses to pay the debt. You may, however, tell the debtor there will be no further contact or notify the debtor about specific collection actions to be taken.*
✓ *follow up telephone conversations with a written communication, if possible.*	✗ *discuss the debtor's matter with anyone other than the debtor unless otherwise authorized by the debtor in writing. When leaving a message or talking to an answering machine, leave your name and number only.*
✓ *respond promptly to a debtor's inquiries.*	✗ *continuously contact the debtor, ring the telephone for harassment, or threaten action that cannot be legally taken or is not intended to be taken.*
✓ *direct debtors to mail checks to a Treasury-approved lockbox. Debtors should be encouraged to use electronic funds transfer mechanisms, such as pre-authorized debit.*	✗ *accept a check that is postdated more than 5 days or threaten to deposit a postdated check early.*

The following information should be included in a Federal agency's written communication(s) with a debtor at least 60-days prior to referring a delinquent debt to the U.S. Department of the Treasury's Financial Management Service for debt collection (cross-servicing). The information may be included in one letter or a series of letters. Agencies should consult with agency counsel to determine what, if any, additional information is required. Letters should be tailored to meet agency-specific and debt-specific statutory and regulatory requirements.

- Nature and amount of the debt, including the basis for the debt.
- Explanation of how interest, penalties, and administrative costs are added to the debt.
- Date by which payment should be made to avoid late charges and enforced collection (generally, 30 days from the date the demand letter is mailed).
- Name, address, and phone number of a contact person or office within the creditor agency.
- Explain the agency's intent to enforce collection if debtor fails to pay by taking one or more of the following actions:
    - Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, and travel reimbursements and advances.
    - Refer the debt to a private collection agency.
    - Report the debt to a credit bureau.
    - Garnish the debtor's wages through administrative wage garnishment (no court order required).
    - Refer the debt to the Department of Justice for litigation (comply with Executive Order 12988).
    - Refer the debt to the U.S. Department of the Treasury for any of the above-described collection actions (advise debtor that agencies are required to refer when debt is 120 or 180 days delinquent depending on circumstances).

- Explain how debtor exercises the opportunity to:
    - Inspect and copy agency's records related to the debt.
    - Request a review of agency's determination of the debt.
    - If applicable, request a waiver.
    - For purposes of salary offset or administrative wage garnishment, request a hearing.
    - Enter into a reasonable written repayment agreement.

- Advise the debtor of the following:
    - Notify agency if bankruptcy filed.
    - Penalties for knowingly making false or frivolous statements.
    - Excess collections will be refunded to the debtor, unless prohibited by law.
    - For Federal salary offset, up to 15% of current net disposable pay may be deducted every pay period until the debt is paid.
    - For joint income tax filers, spouse should file Form 8379 with the IRS to claim his/her share of tax refund.

Financial Statement of Debtor

(Submitted for Government Action on Claims Due the United States)

NOTE: Use additional sheets where space on this form is insufficient or continue on back of this page.

Authority for the solicitation of the requested information is one or more of the following: 5 U.S.C. 301. 901 (see Note, Executive Order 6166 June 10, 1933): 28 U.S.C. 501. ex seq; U.S. 31 U.S.C. 951. ex seq; 44 U.S.C. 3101: 4 CFR 101, ex seq.: 28 CFR 0.160.0.171 and Appendix to Subpart Y. Fed R. Civ. P. 33(a), 28 U.S.C. 1651, 3201 ex seq.

The principal purpose for gathering this information is to evaluate your ability to pay the Government's claim or judgment against you. Routine uses of the information are established in the following U.S. Department of Justice Case File Systems published in Vol. 42 of the Federal Register: Justice/CIV-001 at page 5332; Justice/TAX-001 at page 15347; Justice/USA-005 at pages 53406-53407; Justice/USA-007 at pages 53408-53410; Justice/CRIM-016 at page 12774. Disclosure of the information is voluntary. However, if the requested information is not furnished, the U.S. Department of Justice has the right to such disclosure of the information by legal methods.

PERSONAL IDENTIFICATION

1. Name (*debtor*)	2. Birth Date (*mo. day yr.*)	3. Social Security No.
4. Home Address (*Street*)	5. Driver's License No.	
(City, State & Zip Code)	6. Home Phone (*Area Code*)	

EMPLOYMENT

7. Present Employer's Name	8. Employer's Phone Number
9. Employer's Address *(street)*	10. Job Title
(City, State, and Zip Code)	11. Present Employment *(length)*
12. List other employers you have had in the last 3 years:	

SALARY, WAGES OR COMMISSION

13. Your gross salary (before any deductions)
 monthly *bi-weekly* *weekly* _____

14. Your take home pay is _____

15. Your commission is _____

List the amount of deductions for:

16. Federal Taxes State/County/City Taxes $ _____
17. State/County/City Taxes $ _____
18. Social Security Taxes (FICA/Medicare) $ _____ **TOTAL $** _____

19. Medical Insurance _____

20. Union Dues if applicable _____

21. Allotments to Credit Union, Bank or others _____

22. Life Insurance _____

23. List any other payroll deductions (including 401 (k) contributions): _____

Attach a copy of your last pay slip to form

TOTAL DEDUCTIONS $ _____

SPOUSE/COMPANION

24. List Current Spouse's Name	25. Social Security Number:	26. Birth Date *(mo./day/yr.)*
27. If Spouse's home address is different, list below		
28. List Spouse's present Employer's name and address		29. Employer's Phone Number
30. Job Title		31. Present employment *(length)*

32. Spouse's gross salary is $_____ Spouse's take home pay is $_____

(Note: If not married, but have a live-in companion, furnish information on this companion in items 24 through 32 above.)

DEPENDENTS

33. List all dependents who live with you:

NAME	AGE	RELATIONSHIP

34. List names and addresses of all dependents who do not live with you:

NAME/ADDRESS	AGE	RELATIONSHIP

35. List amount of monthly income received by dependents from any sources other than you or your spouse $_____

36. Total amount of monthly income paid by you or your spouse to dependents listed in item 34 is $_____

37. Does spouse/companion receive alimony or child support from a previous marriage? If yes, amount $_____

38. List names and addresses of Parents/In-Laws if living. _____

TAXES

39. Did you file a Federal Income Tax Return last year? ☐ Yes ☐ No

☐ Joint ☐ Individual Amount of Gross Income on return was $_____

40. Are you or did you receive a tax refund from Federal, State, City or County? ☐ Yes ☐ No

If yes, list from whom and amount for each refund:

Entity: _____ $_____

Entity: _____ $_____

41. Do you owe delinquent taxes? ☐ Yes ☐ No If yes, list below years and amounts due:

_____

Attach a copy of your last Federal income tax form filed.

REAL PROPERTY: FARM/ LAND/VACATION HOME/RENTAL

42. Are you buying the home in which you live? ☐ Yes ☐ No
Are you buying or do you own real property other than your home? ☐ Yes ☐ No

43. List the value of each piece of property and your equity in it:

44. Is any of the above listed property owned jointly with anyone else? ☐ Yes ☐ No

If yes, list property and the name of the co-owner:

45. Are you making mortgage payments? ☐ Yes ☐ No

If yes, amount? $

46. Do you rent property to others? ☐ Yes ☐ No

If yes, what is the net income to you? $

47. Does your spouse/companion solely own real property? ☐ Yes ☐ No

If the answer is yes, list the property address and value:

48. *FIXED MONTHLY EXPENSES (Fill in Blanks)*

Rent/Mortgage		*Home Insurance & Taxes* *(List only if paid directly by you)*	
Car Payment		*Car Insurance*	
Gasoline		*Water*	
Electricity		*Telephone*	
Cable TV		*Public Transportation*	
Natural Gas		*Other Utilities (Specify)*	
Food		*Other*	
Subtotal		*Subtotal*	
		GRAND TOTAL	

List Credit Card, installment, or other payments below

Creditor	Date of Debt	Total Amount	Date of last	Payment	Frequency

If additional space needed, use back of last page

TOTAL FIXED MONTHLY EXPENSES $_____

49. CASH

Provide name and address of Bank or Institution	*Amount in Accounts or on Deposit*
Checking Account Number	
Savings Account Number	
Credit Union Account(s) Number	
Money Market Account	
Certificate of Deposit	
IRA or Keogh Account	
	Total Amount $

OTHER ASSETS

50. Do you or your spouse/companion own U.S. Savings Bonds? ☐ Yes ☐ No
If yes, number (_____). State Denomination _____ Value: $_____

51. Do you own stocks or other types of bonds? ☐ Yes ☐ No
If yes, list value and name and address of issuer:

_____ $_____

_____ $_____

52. Do you receive any other cash compensations, such as: an insurance annuity, lottery winnings, pensions, or disability benefits? ☐ Yes ☐ No

53. Do you receive food stamps, SSI funds or unemployment compensation? ☐ Yes ☐ No

If yes to either of these questions, list below the source and amount:

_____ $_____

_____ $_____

54. List make and model of any auto owned or being purchased by you, your spouse/companion or dependent:

Model/Year	Make/License No.	Value

TOTAL VALUE $_____

55.

Do you or your spouse own:	**Value**
a camper/recreational vehicle?	$_____
a boat, motorcycle, or bike?	$_____
Antiques, art collections?	$_____
Jewelry valued over $5,000?	$_____

Is any of the property listed above owned jointly with anyone else? ☐ Yes ☐ No

*If yes, with whom:*_____

ITEMS WHICH MIGHT AFFECT FUTURE ASSETS

56. Are you involved in a lawsuit in which you might receive money or something of value? ☐ Yes ☐ No
If yes, state where the suit is filed and what it involves: (include Court number and caption)

_____

_____

57. Are you a Trustee, Executor, or Administrator of an estate? ☐ Yes ☐ No
If yes, give details:

_____

_____

58. Is anyone holding money on your behalf? ☐ Yes ☐ No
If yes, give details_____

_____

59. Is there any likelihood you will receive an inheritance? ☐ Yes ☐ No
If yes, give specific details_____

_____

60. Have you sold or transferred either real property or stocks and bonds in the past three years ☐ Yes ☐ No
If you have, give specific details_____

_____

61. Are your wages and/or those of your spouse under garnishment at this time? ☐ Yes ☐ No
If yes, give specific details:_____

62. Are there any outstanding unpaid judgments against for debts other than this one? ☐ Yes ☐ No
If yes, give specific details_____

_____

63. Do you owe large medical bills ☐ Yes ☐ No
If yes, give specific details and attach copies of the bills:

_____

With knowledge of the penalties for false statements provided by 18 United States Code 1001 ($10,000 fine and/or five years imprisonment) and with knowledge that this financial statement is submitted by me to affect action by the U.S. Department of Justice, I certify that I believe the above statement is true and that it is a complete statement of all my income and assets, real and personal, whether held in my name or by any other.

_____ _____
Date *Signature*

_____ _____
Date *Spousal Signature (if applicable)*

PLEASE NOTE: *If you have added additional sheets to this form or added information on the back of this (or any) page, please also sign these sheets.

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Authorities

The Department of Justice's (DOJ) 1994 Appropriation Act (PL. 103-121) authorized DOJ to retain up to 3% of all amounts collected as the result of its civil debt collection litigation activities. The Debt Collection Act of 1982 (P.L. 97-365) authorized agencies to assess fees to cover the administrative costs associated with handling and processing delinquent debts. The agency can assess the litigation collection fee against the debtor only if it has so notified the debtor in an earlier demand letter.

Agency Options for Handling the Fee

The options described below are based on the following:

Assumptions	$7,000 principal	$500 interest accrued at DOJ
	$ 800 interest	
	$ 400 administrative charges	
	$ 700 penalties	
	$8,900 TOTAL	

Examples 1 and 2 also assume that the agency is not assessing the litigation collection fee against the debtor, whereas Example 3 assumes that the agency is.

Example #1

DOJ collects the full referred amount of $8,900 plus the interest that has accrued since referral of $500; DOJ retains as its fee of $282 (9,400 x .03) before returning the balance to the agency ($9,188). The agency would:

- (1) waive all or part of the $282 fee retained by DOJ and apply the balance to liquidate the remainder of the debt; and
- (2) charge the collection fee against either salaries and expenses or the appropriate program/revolving fund.

Since the fee was waived, the agency would not report the amount of the fee to IRS on Form 1099-C.

Example #2

DOJ collects a partial payment of $7,100, leaving an uncollected balance of $2,300 ($8,900 amount referred + $500 interest accrued - $7,100 collected); DOJ retains as its fee $213 before returning the balance of $6,887 to the agency. The agency would

(1) waive the collection fee of $213 and write-off the debt balance of $2,300;

(2) charge the collection fee against either salaries and expenses or the appropriate program/revolving fund; and (3) refer $2,300 to IRS on Form 1099-C. The agency would not report any waived amounts to IRS. The agency would handle the application of this partial collection as it would for any other.

Example #3

The agency decides to add the amount of the 3% fee to the amount referred and calculates it in the same way as it would for a collection agency.

$8,900 x (1.03) = $9,175

The agency refers a total of $9,175 for collection, including the litigation collection fee of $275, recording this amount as administrative fee due DOJ. Full collection: DOJ collects the full referred amount of $9,175 plus the interest that has accrued since referral of $500; DOJ retains its fee of $290 ($9,675 x .03) before returning the balance to the agency ($9,385). Because of the collection of the interest which had accrued since the agency referred the debt, the agency will not collect the full amount due DOJ; the agency will need to cover the balance of $15 from the appropriate account.

Partial collection: A partial collection of $7,100 results in an uncollected balance of $2,575 ($9,175 referral + $500 interest accrued - $7,100 collections). DOJ retains $213 and returns $6,887 to the agency. The agency would (1) adjust or 'back out' of its records $62 since that is the difference between the amount recorded as the litigation collection fee on the full amount ($275) and the amount actually paid as the collection fee ($213); (2) write-off the adjusted debt balance of $2,513 (42,575 - $62); and (3) refer $2,513 to IRS on Form 1099-C. The agency would handle the application of this partial collection as it would for any other.

Returned account/no collection: If DOJ decides not to pursue litigation on an account referred by an agency and returns the case or does not collect any monies on a litigated case, then the agency needs to adjust its records to the original account balance of $8,900 (i.e., 'back out' the collection fee of $275). The agency would write-off and report $8,900 to IRS on Form 1099-C.

For further information, please contact the Debt Accounting Operations Group.

Glossary

ACCELERATION	is declaring the full amount of a debt due and payable in the event that a debtor defaults on the terms of an installment payment agreement. Acceleration is permitted in accordance with an *acceleration clause* included in the agreement.
ACCOUNT SERVICING	includes monitoring the status of accounts of indebtedness, monitoring records of current debts, billing for amounts due, collecting amounts due, handling debtor correspondence, performing follow-up functions, and providing accurate reporting of debt portfolios.
ACCRUE	is the process of increasing account value, usually associated with interest or other time-dependent increments of account value.
ACTIVE COLLECTION	means that the debt is being collected through the use of all appropriate debt collection remedies, including but not limited to, demand letters, credit bureau reporting, offset, garnishment, foreclosure, litigation, and referral to the Department of the Treasury (Treasury) for collection (known as cross-servicing).
ADMINISTRATIVE COSTS/ LATE CHARGES	are additional costs incurred in processing and handling a debt because it has become delinquent. Costs should be based on actual costs incurred or cost analyses which estimate the average of actual additional costs incurred for particular types of debt at similar stages of delinquency. Administrative costs should be accrued and assessed from the date of delinquency (see "Delinquent").
ADMINISTRATIVE OFFSET	is to withhold money payable by the Government to or held by the Government for a person or entity in order to satisfy a debt that the person or entity owes.
ADMINISTRATIVE WAGE GARNISHMENT (AWG)	is a process whereby a Federal agency issues a wage garnishment order to a delinquent debtor's non-Federal employer. No court order is required. The employer withholds amounts from the employee's wages in

	compliance with the order and pays those amounts to the Federal creditor agency to which the employee owes a debt.
APPRAISAL	is a formal valuation of property, made by a competent authority.
ASSET	is any item of economic value either physical in nature (such as land) or a right to ownership, expressed in cost or some other value, which an individual or entity owns.
AUTOMATIC STAY IN BANKRUPTCY	is the statutory court order that prohibits a creditor from pursuing further collection action against a debtor while the debtor's bankruptcy is pending.
BANKRUPTCY	is a legal procedure for dealing with debt problems of individuals and businesses; specifically, a court case filed under one of the chapters of title 11 of the United States Code (Bankruptcy Code).
BARRING DELINQUENT DEBTORS	is a statutory requirement under the Debt Collection Improvement Act of 1996 that prohibits persons delinquent on a Federal non-tax debt from receiving Federal financial assistance in the form of a Federal loan, or a federally guaranteed or insured loan.
CENTRALIZED OFFSET	or Treasury Offset Program (TOP) is a process that allows agencies to submit delinquent debts to one centralized location, Financial Management Service, for collection through the offset of all eligible Federal payments.

CLAIM	is interchangeable and synonymous with the term "debt," for purposes of this document (see "Debt"). Alternative meanings of the word "claim" include a request (1) submitted by a lender for Government payment of a defaulted guaranteed loan; (2) filed with the Department of Justice for the pursuit of litigation and/or enforced collection of an account; or (3) filed with an agency for the payment of an amount considered due to the submitting individual or organization, such as for medical insurance.
CLAIMS COLLECTION LITIGATION REPORT (*CCLR*)	is a Department of Justice form for use in referring debts to the Department of Justice for litigation and enforced collection. The CCLR is also used for the referral of debts to the Department of Justice for its concurrence on a proposed compromise, suspension or termination of collection action.
CLOSE-OUT	is one of two classifications of write-off. An agency *closes out* a debt when it determines that further debt collection actions are prohibited (for example, a debtor is released from liability in bankruptcy) or the agency does not plan to take any future actions (either active or passive) to try to collect the debt. At close out, an agency may be required to report to the IRS the amount of the debt as potential income to the debtor on IRS Form 1099.
COLLATERAL	is any property pledged as security for a loan.
COLLECTION	is the process of receiving amounts owed to the Government, such as payment on a debt.
COMMERCIAL	is an adjective used to signify a business activity, regardless of whether that activity has been undertaken by an individual or business. For example, a loan to a farmer to purchase additional land for farming would be considered a commercial loan.

COMPROMISE	is to accept less than the full amount of the debt owed from the debtor in satisfaction of the debt. Also referred to as "settlement."
CONSUMER	is an adjective used to signify a personal activity. For example, a loan to a farmer to buy a personal residence would be considered a consumer loan.
CREDIT	is a promise of future payment in kind or in money given in exchange of present money, goods, or services.
CREDIT BUREAU (aka CREDIT REPORTING AGENCY)	is a private sector entity which collects financial information on debtors and whose reports on debtors reflect information received from the public and private sectors.
CREDIT EXTENSION	involves the review and approval of requests for short and long-term credit.
CREDIT MANAGEMENT/ DEBT COLLECTION CYCLE	is the complete credit process which is composed of four phases; credit extension, account servicing, delinquent debt collection, and termination/write-off/close-out/discharge of indebtedness.
CREDIT REPORT	is a document issued by a credit bureau containing data about the credit history of a person.
CREDIT REPORTING AGENCY	See "credit bureau."
CREDITOR AGENCY	refers to a Federal agency that is owed money by a person**.**
CROSS-SERVICING	is the process whereby agencies refer delinquent Federal nontax debts to Fiscal Service for collection. Fiscal Service applies a variety of collection tools once agencies refer their debts.

CURRENTLY NOT COLLECTIBLE is one of two classifications of write-off. At the time of *write-off*, an agency should classify the debt as *Currently not collectible (CNC)* when it intends to continue cost effective debt collection action.

DEBT is interchangeable and synonymous with the term "claim," for purposes of this document. It refers to an amount of money or property which has been determined by an appropriate Federal official to be owed to the U.S. from any person, organization, or entity other than another Federal agency.

Included as debts are amounts due the U.S. from loans, fees, duties, leases, rents, royalties, services, sales for real or personal property, overpayments, fines, penalties, damages, taxes, interest, forfeitures, and other sources.

DEBT COLLECTION describes the efforts to recover amounts due after the debtor fails to make the payment. This activity includes the assessment of the debtor's ability to pay, the exploration of possible alternative arrangements to increase the debtor's ability to repay and other efforts to secure payment.

DEBT COLLECTION STRATEGY is an organized plan of action incorporating the various collection tools to be used by an agency to recover debt. Each agency should establish and implement effective collection strategies that suit the agency's programs and needs.

DEFICIENCY represents that portion of a loan which remains outstanding after collateral property has been liquidated (converted to cash) and applied to the outstanding balance.

DELINQUENT	A debt becomes delinquent when (1) payment is not made by the due date or the end of the "grace period" as established in a loan or repayment agreement, in the case of debt being paid in installments *(the date of delinquency is the payment due date)*; or (2) payment is not made by the due date specified in the initial billing notice, in the case of administrative debts such as fines, fees, penalties, and overpayments. The due date is usually 30 days after the agency mailed the notice. *The date of delinquency for administrative debts is the date the agency mailed or delivered the billing notice.*
DEMAND LETTER	is a written notification sent by the agency to the debtor to notify the debtor of the debt's delinquent status when the debt is not resolved after the initial contact with the debtor. The demand letter may include notice of various debt collection tools that could be used to collect the debt, as well as opportunities to avoid the debt collection actions.
DISCHARGE	is to satisfy a debt as a legal obligation through the performance of the obligation(s) imposed under the debt instrument, such as to pay the debt in full, or through another action such as a compromise.
DISCHARGE IN BANKRUPTCY	is a release of a debtor from liability for certain debts. A discharge in bankruptcy prevents the creditors owed those debts from taking any action against the debtor or the debtor's property to collect the debt.
DISCHARGE OF INDEBTEDNESS	is an amount of a debt which will not or cannot be collected from a debtor and is defined as income to the debtor that may be taxable under the Internal Revenue Code. There are eight identifiable events under IRS regulations that trigger reporting discharge of indebtedness to IRS on Form 1099-C.

DISPOSABLE PAY	is an amount of a person's wages based on subtracting from gross pay certain statutory or regulatory deductions from gross pay (such as income taxes). Disposable pay is used to determine the amount which can be offset from a Federal Salary, and is used to determine the amount which may be collected from a debtor's non-Federal pay through administrative wage garnishment.
DUE PROCESS	in the context of Federal debt collection, the constitutional right of "due process" requires an agency to provide debtors with *notice* of, and the *opportunity to dispute*, a debt or intended debt collection action. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty or property without due process of law. . . ."
FEDERAL CLAIMS COLLECTION STANDARDS	are the Governmentwide debt collection standards published jointly by Treasury and the Department of Justice in Title 31 of the Code of Federal Regulations (CFR), Parts 900 through 904 (31 CFR Parts 900 – 904).
FINANCIAL ADVISOR	assists and represents the interests of an agency during a portfolio sale.
FORECLOSURE	is a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property.
IRS FORM 1099-C/ CANCELLATION OF DEBT	is the form a creditor uses to report to the Internal Revenue Service a discharge of indebtedness**.**
INSURANCE	is a type of guarantee in which any agency pledges the use of accumulated insurance premiums to secure lenders against default on the part of borrowers. "Loan insurance" is considered the equivalent of a "loan guarantee."

INSTALLMENT LOAN/ AGREEMENT	represents an obligation to repay monies borrowed or owed in more than one payment at fixed intervals over time.
INTEREST	is a sum paid or calculated for the use of capital. Financing interest is the charge assessed as a cost of extending credit as distinguished from additional interest which is the charge assessed on delinquent debts in order to compensate the Government for the time value of money owed and not paid when due. Additional interest is accrued and assessed from the date of delinquency.
JOINT AND SEVERAL LIABILITY	is liability shared by two or more parties, where each party is individually responsible for the entire obligation or debt.
LATE CHARGES	are the amounts accrued and assessed on a delinquent debt; the term includes administrative costs, penalties, and additional interest.
LEGALLY ENFORCEABLE	is a condition precedent for a debt being eligible for referral to Fiscal Service for collection action. A debt is considered *legally enforceable* for purposes of referral for cross-servicing if there has been a final agency determination that the debt is due and there are no legal bars to one or more of the collection actions to be taken by Fiscal Service. A debt is considered *legally enforceable* for TOP purposes if there has been a final agency determination that the debt is due and there are no legal bars to collection through the offset of Federal payments.
LETTER OF AGREEMENT	is a document that details the terms of the cross-servicing arrangement between Fiscal Service and the agency referring debts to Fiscal Service.

LIABILITY represents an amount owed (i.e., payable) by an individual or entity, such as for items received, services rendered, expenses incurred, assets acquired, construction performed, and amounts received but not yet earned.

LITIGATION means any lawsuit or other resort to the courts to determine a legal question or matter. Litigation may be used, where appropriate, to enforce collection on a debt.

LIQUIDATION is the process of converting collateral to cash in order to pay all or a portion of the debt.

LOAN is an extension of credit in exchange for a promise to repay the amount of funds available for disbursement after they have been disbursed. The amount of funds disbursed is to be repaid (with or without interest and late fees) in accordance with the terms of a promissory note and/or repayment schedule.

Direct Loan is an obligation created when: the Government agrees to disburse funds and contracts with the debtor for repayment, with or without interest; the Government acquires a guaranteed loan in satisfaction of a default or other claim; a Federal agency purchases non-Federal loans through secondary market operations; or an agency sells assets on credit terms of 90 days or more.

Guaranteed loan is a contingent liability created when the Government assures a private lender who has made a commitment to disburse funds to a borrower that the lender will be repaid to the extent of the guarantee in the event of default by the debtor.

LOAN-TO-VALUE RATIO represents the proportion of the amount of a loan to the value being pledged to secure that loan. It is derived as follows: total financing costs (i.e., the market value of the collateral plus the financed portion of any closing costs, insurance premiums, or other transaction-related expenses less the borrower's cash down payment) divided by the market value of the collateral.

LUMP SUM PAYMENT	is a single nonrecurring payment on a debt. This term is used most often when a payment is made to pay a debt in full.
NON-CENTRALIZED OFFSET	is ad hoc offset on a case-by-case basis. An agency should use centralized offset (Treasury Offset Program) to effectuate offset except in certain limited circumstances as explained in Chapter 6.
OFFSET	See "Administrative Offset" above.
PASSIVE COLLECTION	means that the debt is no longer being actively collected; that is, the debt remains secured by a judgment lien or other lien interest, has not been removed from the Treasury Offset Program (TOP) or is otherwise being collected by offset; and/or is scheduled for future sale.
PENALTY	is a charge assessed on delinquent debts to discourage delinquencies and encourage early payment of the delinquent debt in full. The rate to be assessed is set by law at no more than 6% per year and is assessed on the portion of a debt remaining delinquent more than 90 days, although the charge will accrue and be assessed from the date of delinquency.
PERSONAL PROPERTY	consists of tangible, movable assets, such as automobiles, planes, and boats.
PRE-AUTHORIZED DEBIT	is a form of payment which allows the agency to debit the bank account of a borrower/debtor as a result of a prior agreement between the borrower/debtor and the agency on a pre-determined schedule consistent with applicable laws.
PREPAYMENT	is a partial or full repurchase or other advance deposits of outstanding loan principal and interest by the borrower/debtor. The repurchase often may be made at a discount from the current outstanding principal balance.
PRINCIPAL	is the amount owed to the Government by a borrower or other debtor which excludes interest, penalties, administrative costs, loan fees, and prepaid charges.

PRIVATE COLLECTION AGENCY	is a private sector entity whose primary business is the collection of delinquent debts.
PROOF OF CLAIM FORM	is an official form submitted in a bankruptcy proceeding describing the reason a debtor owes a creditor money.
REAL PROPERTY	consists of tangible, non-movable assets, such as land and buildings.
RECEIVABLE	is an amount owed the Government by an individual, organization, or other entity to satisfy a debt or claim. Examples of receivables generated by Government activities include amounts due for taxes, loans, the sale of goods and services, fines, penalties, forfeitures, interest, and overpayments of salaries and benefits.
RECOUPMENT	is a special type of offset of a payment made under a contract to collect a claim arising under the same contract.
RECURRING PAYMENTS	for the purposes of centralized offset, recurring payments are those payments made to individuals that are expected to be paid to the payee at regular intervals, at least four times annually. Recurring payments do not include payments made pursuant to a contract, grant agreement or cooperative agreement.
REPAYMENT AGREEMENT	establishes the terms and conditions governing the recovery of a debt. Repayment agreements should be written or reduced to writing as soon as possible after such an agreement is reached.
RESCHEDULING	is a change in the existing terms of a loan, specifically those that reflect repayment of the debt.

ROUTINE USE	is a use identified in an agency's Privacy Act system of records notice that describes to whom information pertaining to individuals may be disclosed and for what purpose. One or more routine uses may be necessary to authorize the disclosure of information about an individual debtor for delinquent debt collection purposes.
SALARY OFFSET	is the process of collecting a delinquent Federal nontax debt from a Federal employee's current pay without his or her consent. Salary offset should be accomplished through centralized offset, unless centralized offset is unavailable.
SECURED DEBT	is a debt for which collateral has been pledged.
SERVICER	is an entity under contract to a lender or agency to perform account servicing functions.
SUSPENSION OF COLLECTION ACTION	is to place active collection action temporarily in abeyance due to the existence of a particular set of circumstances. Suspension of collection action is most appropriate in those cases where an agency has reason to believe that the suspension will enhance the chances of recovery, or, at minimum, will not endanger the recovery of the debt.
SYSTEM OF RECORDS	is a term under the Privacy Act of 1974 that describes a group of records under the control of an agency from which information about individuals is retrieved by the individual's name or other personal identifier. When an agency has a "system of records," certain requirements and restrictions delineated in the Privacy Act of 1974 apply to the collection, maintenance, use and dissemination of the records and information.
TAXPAYER IDENTIFYING NUMBER (*TIN*)	is the Social Security Number (SSN) for individuals or the Employee Identification Number (EIN) for business organizations or non-profit entities.

TERMINATE COLLECTION ACTION	is a decision to cease **active collection** action on a debt, in accordance with criteria set out in the Federal Claims Collection Standards, because such collection action is not economically worthwhile or is otherwise inappropriate. The program decision to terminate collection action and the accounting decision to write-off a debt often coincide, however, the determinations to terminate collection action and to write-off a debt are made for different reasons, and where appropriate and consistent with the agency's debt collection strategy for a particular class of debts, may be made at different times.
TREASURY REPORT ON RECEIVABLES DUE FROM THE PUBLIC *(TROR)*	is the Department of the Treasury's only comprehensive means for periodically collecting data on the status and condition of the Federal Government's non-tax debt portfolio, in accordance with the requirements of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (DCIA). The information contained in the report is obtained from the various federal agencies and is disseminated to Congress, the Office of Management and Budget, agency Chief Financial Officers, the Federal Credit Policy Working Group, other officials and representatives of Federal and state organizations, private sector organizations, and the public.
WORKOUT GROUP	is a group established within an agency, whose sole purpose is to resolve or attempt to resolve troubled debts.
WRITE-DOWN	is an action taken rather than write-off where an agency reduces the value of a debt for accounting purposes to its collateral's net realizable value. The agency may not write-down non-collateralized debts.
WRITE-OFF	is an accounting action that results in reporting the debt/receivable as having no value on the agency's financial and management reports. The agency does not need DOJ approval to *write-off* a debt since the agency is only adjusting its accounting records.