

## **CHAPTER 2. RECEIVABLES MANAGEMENT**

### **2-1 Establishing a Debt**

- A. Federal agencies are required** to aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. This requirement mandates that debt collection actions be taken promptly, once it is determined that a debt is owed.
- B. Debts owed to HUD can arise** from various sources, including contracts, grants, cooperative agreements, and employees. The debt is often not recognized at the time of its actual occurrence but is discovered during routine monitoring and accounting activities, sustained audit findings, and investigations. For example, when an OIG audit report is issued that recognizes disallowed costs are due to HUD, the debt is treated as a receivable when a management decision is reached.
- C. When the existence of a debt is observed**, the monitor, auditor, investigator, or other person making this observation is required to notify the Action Official responsible for the program activity in which the debt occurred and to provide the Action Official with all relevant documentation, including debtor's name(s), address, phone number, Social Security number (or Tax ID), amount of the debt, date of indebtedness, source of the debt, and any documents that substantiate the debt. In some instances, where illegal activities are suspected, OIG auditors or investigators may delay providing this information until an investigation is completed by the appropriate federal authority or the authority declines to investigate.
- D. The terms "claim" and "debt" are synonymous** and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. §§ 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. This latter category would only apply to HUD for salary offsets applied to HUD employees.
- E. Debts based in whole or in part on conduct 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 HUD for handling in accordance with the standards and requirements described in this chapter.

**2-2 Interest, Penalties, and Administrative Costs**

- A. The FCCS requires** executive agencies, including HUD, to charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. § 3717 (see exceptions below). The demand letter should include language explaining HUD’s requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.
- B. HUD is required to charge interest** on debts owed the United States as follows:
1. Interest shall accrue from the date of delinquency (see 3-1 for clarification), or as otherwise provided by law.
  2. Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by Treasury in accordance with 31 U.S.C. § 3717. HUD may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The reason(s) for HUD’s determination that the higher rate is necessary should be documented.
  3. The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, HUD may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.
- C. HUD is required to assess administrative costs** incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the program area and approved by the CFO.
- D. HUD shall charge a penalty**, unless otherwise established in a contract, repayment agreement, or by statute, pursuant to 31 U.S.C. § 3717(e)(2), not to exceed six percent a year on the amount due on a debt, excluding any previous charges, that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.
- E. HUD may increase an “administrative debt”** by the cost of living adjustment in lieu of charging interest and penalties under this section. “Administrative debt”

includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment 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 shall be computed annually. HUD will only use this option when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

- F. When a debt is paid in partial or installment payments**, amounts received shall be applied first to outstanding Treasury fees, second to penalties, third to administrative charges, fourth to interest, and last to principal.
- G. Interest and administrative charges** must be waived for any portion of the debt that is paid within 30 days, starting from the date when interest began to accrue. HUD may extend this 30-day period on a case-by-case basis. Interest, penalties, and administrative costs charged under this section, in whole or in part, may be waived without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if HUD determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.
- H. HUD does not impose interest and related charges** for periods during which collection activity has been suspended pending HUD review.
- I. HUD may impose interest and related charges** on debts not subject to 31 U.S.C. § 3717, "Interest and Penalty on Claims," in accordance with the common law. To determine whether this section applies to a particular case, the Claims Officer should consult with the Office of General Counsel.

### **2-3 Demand Letter**

- A. Upon being notified of the existence of a debt**, the Action Official reviews the supporting documentation and determines the extent of the debt. If fraud, misrepresentation, or other irregularity is suspected, the Action Official consults with the Office of General Counsel or the Office of Inspector General. Unless the case is placed under investigation or audit, the Action Official immediately initiates collection of the debt by sending a demand letter to each eligible (*i.e.*, not bankrupt) debtor. (A sample demand letter is included at Appendix 3)
- B. In determining the timing of the demand letter(s)**, the Action Official should give due regard to the need to refer debts promptly to the Department of Justice for litigation. When necessary to protect the Government's interest (for example, to

prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

- C. Prior to the initiation of the demand process** or at any time during or after completion of the demand process, if HUD determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed. HUD's regulation at 24 C.F.R. § 17.65 requires HUD to send both the demand letter and the Notice of Intent to Offset to the debtor. All correspondence must be sent to the most current address available.
- D. The demand letter should include** all relevant information regarding the debt, including:
1. The amount due, basis for the indebtedness, and the rights, if any, the debtor may have to seek review;
  2. The applicable standards for imposing any interest, penalties, or administrative costs;
  3. The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered;
  4. Clear instructions on how to make a payment, including the requirement to note on the check or money order information identifying the debtor's name, address, phone number, HUD case number, and an email address; and
  5. The name, address, and phone number of a contact person or office within HUD.
  6. The FCCS also requires that demand letters include such items as:
    - a. the agency's willingness to discuss alternative methods of payment;
    - b. its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies;
    - c. the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation);
    - d. the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and
    - e. depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

7. If the debt could be referred for litigation, the demand letter should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163), which provides guidance for just and efficient administrative adjudication. If not included in the demand letter, the notification may be given in a separate document. Litigation counsel for the Government should be advised that this notice has been given.
- E. The date of the demand letter** should be the same as the date when it is mailed or hand-delivered.
- F. The FCCS does not provide a prescribed format** for demand letters; however, for consistency, the format reflected in the sample in Appendix 3 should be used. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.
- G. When any HUD official** involved in the collection of a debt learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the responsible official should immediately seek legal advice from the Office of General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. (See Section 2-10 of this Handbook.)
- H. In accordance with the FCCS**, HUD personnel involved in debt collection should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

#### **2-4 Locating Debtors**

- A. When attempting to locate a debtor** in order to collect or compromise a debt, agencies may obtain a debtor's mailing address through the Department of the Treasury TOP Client database as well as from other agencies through interagency share agreements. Various skip tracing methods can also be used, including credit reports, Social Security records, voter registration records, etc.
- B. Agencies are authorized to use mailing addresses** obtained in this manner to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

#### **2-5 Receiving a Payment**

- A.** HUD handles all receipts and payments for outstanding debts through one of three processes: [Pay.gov](https://www.pay.gov), lockbox contracts, and direct mail. The government is

generally moving towards the use of online payments through Treasury authorized methods such as Paper Check Conversion Over the Counter (PCC OTC), Over the Counter Channel Application (OTCnet), Fedwire transfers, and [Pay.gov](http://Pay.gov), a website set up by Treasury's FMS to receive government payments. In addition, some receipts come through lockbox contracts, also established by Treasury. Some payments are sent to government offices, which in turn log the payments and forward them to a lockbox for deposit. Debtors are notified in the demand letter where payments are to be sent. For regulations pertaining to payments for FHA debts, see Handbook 4740.2. Payments received at the FWAC are forwarded to a lockbox. In all cases, payments are handled in accordance with Handbook 1911.1 REV-4, *Handling and Protecting Cash and Other Negotiable Instruments* (available at: <http://www.hud.gov/offices/adm/hudclips/handbooks/cfoh/19111/index.cfm>). Debt files are updated electronically where possible.

- B. If payment in full is received within the time specified in the initial notification or in any other contractual document, the debt is satisfied in full and the debtor avoids any record of delinquency. Payment in full received after a debt has become delinquent should be noted in the debtor's file for future credit reference purposes.

## 2-6 **Repayment Agreements**

- A. **Payment by Installment.** According to the FCCS, agencies should collect the total amount of a debt in one lump sum, whenever feasible. For HUD debts, if the Action Official determines that the debt cannot be paid in one lump sum, he or she may recommend to the Claims Officer to set up regular installment payments. The Claims Officer should obtain financial statements and independently verify statements from debtors who represent that they are unable to pay in one lump sum. For FHA claims, the guidelines are set forth in Handbook 4740.2. For OIG audit recommendations, the guidelines are included in Handbook 2000.06 REV-4.
- B. **The Claims Officer**, or in the case of OIG audit recommendations the Action Official, should obtain a legally enforceable written agreement. (See Appendix 5 for a sample repayment agreement.)
- C. **The agreement should include an executed promissory note**, whenever possible, including security for repayment and containing agreement for judgment (as set forth in the FCCS).
- D. **If a note is not feasible** in a given situation, the plan should be in writing, signed by the debtor.
- E. **The size and frequency of installment payments** should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in 3 years

or less. In the case of repayment of debts sustained in OIG recommendations, the guidelines in Handbook 2000.06 REV-4 will be followed.

- F. Interest should be charged.** The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness.
1. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section.
  2. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.
  3. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Claims Officer may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed.

## 2-7 Audit Recommendations

- A. For debts identified through OIG audits,** additional information regarding the responsibility and procedures for collection are included in Handbook 2000.06 REV-4, *Audits Management System (AMS)*. For cases where a judgment has been entered, see Court Enforced Payments in this Handbook.
- B. In cases of debts identified through an audit recommendation,** the Action Official responsible for collecting the debt is the same as the audit Action Official, as defined in Handbook 2000.6 REV-4, *Audits Management System (AMS)*. The Action Official is responsible for coordinating with and reporting progress to the Fort Worth Accounting Center as well as notifying the Audit Liaison Officer assigned to the recommendation.

## 2-8 Court Enforced Payments

- A. In cases where a criminal judgment has been entered,** the Claims Officer will pursue collection through a court-enforced process. The debtor is required to pay the Court, and the Court remits payment to HUD electronically. The debt collection process is managed by the Court, and the Court determines when and whether the obligation has been fulfilled.
- B. For OIG investigations,** the OIG forwards a copy of form 15G (see Appendix 7) to the FWAC for information and action. The form provides information that is useful in establishing a court-enforced collection process. For judgments involving FHA debts, form 15H is used.

## **2-9 Compromise**

### **A. Basis for Compromise**

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

1. A debt may be compromised if it cannot be collected in full because one or more of the following criteria apply:
  - a. The debtor is not able to pay in full in a reasonable time, as verified through financial statements, credit reports, or other financial documentation;
  - b. HUD is not able to collect the debt in full within a reasonable time by enforced collection proceedings;
  - c. The cost of the additional collection measures required to collect the debt in full exceeds the additional collection amounts that are likely to be recovered;
  - d. There is significant doubt concerning the Government's ability to prove its case in court.
2. Compromise settlements may be paid in a lump sum or by installment. Installment agreements should be for as short a period as possible, due to the added time and administrative expense. The basis for accepting an installment agreement should be sufficiently justified and documented, and the payment agreement must be in writing and include a covenant that the agreement to compromise the debt is null and void with all prior payments retained and applied to the full unpaid balance of the debt if the debtor defaults on the payment agreement. (See Section 2-6.F. regarding interest on repayment agreements.)

### **B. Joint and Several Liability**

1. Many debts owed to HUD involve two or more debtors who are jointly and severally liable. A decision to compromise or settle a debt must be based on one or more of the factors outlined above and should consider the individual financial circumstances of each debtor.
2. A compromise of the debt results in the release of liability of all debtors, the release of any security held, and the termination of further collection actions. When appropriate, the portion of the debt that is uncollected and cancelled is

reported to the Internal Revenue Service (IRS) and to the debtor(s) via form 1099C as required by the IRS tax code.

3. A partial settlement is where one (or more) debtor(s) is released from liability (or security for the debt is released or subordinated), but where other debtor(s) remain on the account. As collection actions continue after a partial settlement, no 1099C reporting is made regarding the released debtor(s). The amount accepted as a partial settlement for one debtor is not to be considered as a precedent in determining an amount that would be sufficient for the release of other debtors.

**C. Evaluation and Documentation**

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

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

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

**E. Releases and Reporting**

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

**2-10 Bankrupt Debtors**

Bankruptcy is a legal process through which a debtor can seek the protection of the court against creditors to gain a fresh start. The Bankruptcy Court has the authority to discharge the debtor's personal liability for most debts. The Court also has the authority to approve the distribution to creditors of available assets from the debtor's bankruptcy estate. Most consumer bankruptcies will fall under Chapters 7 and 13. Under those chapters, the court designates a trustee to oversee the liquidation and distribution of the assets and/or payment to creditors.

**A. Under the Bankruptcy Abuse Prevention and Consumer Protection Act**

(enacted April 20, 2005), debtors are required to receive credit counseling in order to qualify for bankruptcy. Other filing requirements in the Act serve to discourage repeat filings. Overall, the Act serves to strengthen the position of creditors in bankruptcy proceeding and discourage bankruptcy abuse. HUD Action Official and/or Claims Officers should consult with the Office of General Counsel when any technical matters arise regarding bankruptcy processing or the impact of the current bankruptcy laws on HUD efforts to collect a specific debt.

**B. Types of Bankruptcies**

1. Chapter 13. This type of bankruptcy allows an individual debtor with regular income to reorganize debts. It provides for a repayment plan over a 3-5 year period without the liquidation of assets. The plan typically pays unsecured creditors a percentage of what is owed. The claimant is legally required to comply with the plan.
2. Chapter 7. This type of bankruptcy is also known as a "straight" bankruptcy. The debtor receives a release from personal liability for debts owed, *i.e.*, a discharge in bankruptcy. Secured debts, however, are not discharged, and a

creditor may pursue an action against the property or security to recover the debt. Some property may be exempt, and a trustee is designated to receive ownership of all non-exempt property. Contacts should be made with the trustee or the trustee's attorney, rather than with the debtor. A debtor must pass a "means" test in order to qualify for this bankruptcy. If the debtor has sufficient income to pay a substantial part of the amount owed, he or she may be required to file a Chapter 13 bankruptcy.

3. Chapter 11. A person engaged in business (corporations, partnerships, and individuals) may file this type of bankruptcy in order to reorganize their financial affairs and continue as an on-going enterprise while receiving protection from creditors. Trustees normally are not appointed in these cases.
4. Chapter 12. This type of bankruptcy is similar to Chapter 13, but it applies to farmers.

**C. Automatic stay.**

1. Unless HUD determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. § 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.
2. After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. HUD should refer to the provisions of 11 U.S.C. § 106 relating to the consequences on sovereign immunity of filing a proof of claim.
3. If HUD is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. § 362.
4. Offset is stayed in most cases by the automatic stay. However, the responsible HUD official should seek legal advice from the Office of General Counsel to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Legal advice should also be sought to determine whether recoupment is available.

**2-11 Statute of Limitations (SOL)**

Action Officials should be alert to these limitations when determining how best to collect a debt. If the SOL pertaining to the particular debt is about to expire, the Action Official should allow time for referring the debt to the Department of Justice prior to expiration of the SOL. HUD's legal remedies are restricted by the statutes of limitations set forth below. For any questions regarding the applicability of the SOL for any particular case,

contact the Office of General Counsel's Office of Finance and Administration Law, Administrative Law Division.

- A. Civil Suit.** Six (6) years from date of accrual of action. (See 28 U.S.C. § 2415(a).)
1. A suit to collect a debt in court may be barred if the suit is filed more than 6 years after the right of action accrues. The "accrual of action" date will vary according to the type of debt.
  2. The six-year statute of limitations referenced at 28 U.S.C. § 2415 does not apply to administrative proceedings, which are governed by whatever applicable limitations period applies to the specific administrative proceeding.<sup>1</sup>
  3. For Title I claims and other FHA related claims, see Handbook 4730.2.
  4. Expiration of the SOL is an "affirmative defense." This means that a suit to collect a debt may be filed after the 6-year SOL time period has expired, but the debtor may rebut the suit using a SOL defense. Nonetheless, the Department of Justice (DOJ) will not ordinarily accept a SOL-expired debt for litigation unless there are unusual circumstances that warrant a waiver to this policy. Since DOJ will require lead-time to prepare and file suit, a referral to DOJ should be made at the earliest possible date and, absent special circumstances, should occur by one year before the SOL will expire.
- B. Criminal Violations.** Five (5) years from the date of the offense. (See 18 U.S.C. § 3282.)
- C. False Claims Act (Civil Fraud).** Six (6) years from the date the violation was committed. (See 31 U.S.C. § 3731(b).)
- D. Collection by Administrative Offset.** There are no time limitations for collection of debts by administrative offset, although there are some special notice requirements that may apply to debts that are ten (10) or more years old from the date that HUD's right to collect the debt first accrued. (See Treasury rule at <http://www.gpo.gov/fdsys/pkg/FR-2009-12-28/pdf/E9-30550.pdf>, where the statute of limitations was eliminated.) (See discussion in subparagraph A. above, concerning date of accrual.)
- E. Collection by Administrative Wage Garnishment.** There is no time limit on the collection of a delinquent debt via Administrative Wage Garnishment. (See In re. Douglas P. Hansen, HUDBCA No. 06-A-CH-AWG03 (October 6, 2006).)
- F. Extensions of the SOL.** The SOL time period may be extended by various factors such as the debtor's absence from the jurisdiction of the courts of the United States,

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<sup>1</sup> This was confirmed by a 2006 U.S. Supreme Court Decision in *BP American Production Co. v. Burton*, 549 U.S. 84 (2006).

exemption from process because of infancy, or the existence of facts material to the cause of action of which the Government has no notice. A voluntary payment or written acknowledgement of the debt may start a new SOL time period. Also, if the debt is subject to an administrative proceeding, the SOL time limit for civil suit may be extended so long as the suit is filed within one year after final decisions have been rendered in the applicable administrative proceeding.

**G. Repurchase of Claims by Insured Lending Institutions.**

This category refers to certain Title I claims and is covered in Handbook 4740.2