

from other source(s) of Federal payment(s) that may be due the debtor.

(n) *Workout group* means Departmental debt collection specialist(s) assigned to collection of a delinquent debt when the claim is 30 or more days past due.

§ 21.2 Purpose and scope.

(a) The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716. Among other things, this statute authorizes the heads of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(b) Unless otherwise provided for by statute, these regulations do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1-9602), the Social Security Act (42 U.S.C. 301-1397f), the tariff laws of the United States; or to contracts covered by the Contract Dispute Act of 1978 (41 U.S.C. 601-613).

(c) The regulations cover debts owed to the United States from any person, organization or entity, including debts owed by current and former Department employee, or other Federal employees, while employed in one capacity or another by the Department of Commerce.

(d) Debts or payments which are not subject to administrative offset under 31 U.S.C. 3716, unless otherwise provided for by contract or law, may be collected by administrative offset under the common law or other applicable statutory authority.

(e) Departmental unit head (and designees) will use administrative offset to collect delinquent claims which are certain in amount in every instance

and which collection is determined to be feasible and not prohibited by law.

§ 21.3 Department responsibilities.

(a) Each Departmental unit which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset when appropriate and best suited to further and protect all the Government's interests.

(b) The Departmental unit head (or designee) will determine the feasibility and cost effectiveness of collection by administrative offset on a case-by-case basis, exercising sound discretion in pursuing such offsets, and will consider the following:

- (1) The debtor's financial condition;
- (2) Whether offset would substantially interfere with or defeat the purposes of the Federal program authorizing the payments against which offset is contemplated; and
- (3) Whether offset best serves to further and protect all of the interests of the United States.

(c) Before advising the debtor that the delinquent debt will be subject to administrative offset, the Departmental unit workout group shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Commerce units, or in such other instances as the Assistant Secretary for Administration or his/her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which Departmental unit workout group or official(s) shall have responsibility for carrying out the provisions of this subpart.

(d) Administrative offset shall be considered by Department units only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act of 1966, as amended; except that no claim under this Act that has been outstanding for more than 10 years after the debt first accrued may be collected by means of administrative offset, unless facts, material to the right to collect the debt, were not known and could not reasonably have been known by the official of the Department who was charged with

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the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 21.4 Notification requirements before offset.

A debt is considered delinquent by the Department if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date.

(a) The Departmental unit head (and designees) responsible for carrying out the provisions of this subpart with respect to the debt shall ensure that appropriate written demands are sent to the debtor in terms which inform the debtor of the consequences of failure to cooperate in payment of the debt. The first demand letter should be sent within ten (10) days after the date the debt becomes delinquent. A total of three progressively stronger written demand letters, at not more than 30 calendar day intervals, will normally be made unless (1) a response to the first or second demand indicates that a further demand would be futile; (2) the debtor's response does not require any or immediate rebuttal; and/or (3) the bureau determines to pursue offset under the procedures specified in 4 CFR 102.3, Collection by Administrative Offset. In determining the timing of the demand letters, Departmental unit heads should give due regard to the need to act promptly; so as a general rule, if it is necessary to refer the debt to the Department of Justice for action, such referral can be made within one year of the final determination of the facts and the amount of the debt. When Departmental unit heads (and designees) deem it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand for payment may be preceded by other appropriate collection actions (also see § 21.10(c)).

(b) The Department official responsible for collection of the debt (generally an accounting or finance officer) shall ensure that an initial written demand notice is sent to the debtor, informing such debtor of:

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(1) The amount and basis for the indebtedness and whatever rights the debtor may have to seek review within the Department;

(2) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13);

(3) That the debtor has a right to inspect and copy Department records related to the debt, as determined by responsible Departmental official(s), and that such request to inspect and copy must be postmarked or received by the Department no later than 30 days after the date of the (first) demand letter;

(4) The name, mailing address, and telephone number of the Department workout group employee who can provide a full explanation of the claim and answer all related questions, as well as explain procedures to the debtor for inspecting and copying records related to the debt.

(c) The responsible Department officials shall exercise due care to insure that demand letters are mailed or hand delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken by the Departmental unit workout group to obtain a current address, including skip-trace assistance from the Internal Revenue Service and/or private sector credit reporting bureaus.

(d) Where applicable, the Departmental unit workout group must inform the debtor in a second demand letter, (Notice of Intent) of:

(1) The nature and amount of the debt;

(2) That the Department intends to collect the debt by administrative offset until the debt and all accumulated interest and other charges are paid in full;

(3) That the debtor has a right to obtain review within the Department of the initial determination of indebtedness, and that such request to have a review of the basis of indebtedness must be postmarked or received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent); and

(4) That the debtor may enter into a written agreement with the responsible Department official(s) to repay the