

General Services Administration

§ 105-55.010

amounts collected and will be added to the debt as an administrative cost (see § 105-55.016).

§ 105-55.010 Demand for payment.

(a) Written demand, as described in paragraph (b) of this section, will be made promptly upon a debtor of the United States in terms informing the debtor of the consequences of failing to cooperate with the General Services Administration (GSA) to resolve the debt. The specific content, timing, and number of demand letters (usually no more than three, thirty days apart) will depend upon the type and amount of the debt and the debtor's response, if any, to GSA's letters, telephone calls, electronic mail (e-mail) or Internet inquiries. In determining the timing of the demand letter(s), GSA will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 105-55.031. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor—

(1) The basis and the amount of the indebtedness and the rights, if any, the debtor may have to seek review within GSA (see § 105-55.011(e));

(2) The applicable standards for imposing any interest, penalties, or administrative costs (see § 105-55.016);

(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 will not be more than 30 days from the date the demand letter is mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within GSA.

(c) GSA will exercise care to ensure that demand letters are mailed or hand-delivered on the same day they are dated. For the purposes of written demand, notification by electronic mail (e-mail) and/or Internet delivery is considered a form of written demand notice. There is no prescribed format for demand letters. GSA will utilize de-

mand 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.

(d) GSA may include in demand letters such items as the willingness to discuss alternative methods of payment; Agency policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; Agency 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); the requirement that any debt delinquent for more than 180 days will be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

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

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if GSA determines to pursue, or is required to pursue, offset, the procedures applicable to offset will be followed (see § 105-55.011). The availability of funds or money for debt satisfaction by offset and GSA's determination to pursue collection by offset will release the Agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, GSA will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp. pp. 157-163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document.

(h) When GSA learns a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Agency will

ascertain the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Agency determines 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 will stop immediately.

(1) A proof of claim will be filed in most cases with the bankruptcy court or the Trustee. GSA will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If GSA 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.

(3) Offset is stayed in most cases by the automatic stay. However, GSA will determine whether its 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. GSA also will determine whether recoupment is available.

§ 105-55.011 Collection by administrative offset.

(a) *Scope.* (1) The term “administrative offset” has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to—

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal

statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

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

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the General Services Administration’s (GSA’s) right to collect the debt first accrued, unless facts material to GSA’s right to collect the debt were not known and could not reasonably have been known by the official or officials of GSA who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, GSA will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) GSA is required to refer past due, legally enforceable non-tax debts that are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts that are less than 180 days delinquent also may be referred to the Secretary for this purpose. See paragraph (b)(5) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other