

§ 3.15

nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the USDA Chief Financial Officer (CFO) or Deputy CFO. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a “delinquency” is “resolved” for purposes of this prohibition. *See* 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. *See* 31 U.S.C. 3201(e).

(c) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims must consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency’s regulations or governing procedures. The debtor shall be advised in the agency’s written demand for payment of the agency’s ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code) owed to any Federal

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agency or instrumentality is grounds for nonprocurement suspension or debarment if the debt is uncontested and the debtor’s legal administrative remedies for review of the debt are exhausted. *See* 7 CFR 3017.305(c)(3) and 405(a)(2).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 shall be reported to Treasury. Treasury will forward to all interested agencies notification that a surety’s certificate of authority to do business with the government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government’s ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, shall ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(e) In bankruptcy cases, before advising the debtor of an agency’s intention to suspend or revoke licenses, permits, or privileges, agencies may seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable statutes and regulations, agencies may liquidate security or collateral through a sale or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency may seek legal advice from OGC concerning

the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies shall obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments shall obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments shall be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments shall be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g) and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. If not included in the agency's demand notice, an agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency'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) Agencies shall charge interest on debts owed the United States as follows, except as otherwise required by law:

(1) Interest shall accrue from the date of delinquency, 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 the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency 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 agency must document the reason(s) for its determination that the higher rate is necessary.

(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, the agency 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) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs shall be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This