

Department of Energy

§ 1015.202

(c) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(d) DOE will cooperate with other agencies in its debt collection activities.

(e) DOE will refer debts to Treasury as soon as due process requirements are complete, and should refer such debts no later than 180 days after the debt has become delinquent. On behalf of DOE, Treasury will take appropriate action to collect or compromise the referred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the DOJ for litigation. (See 31 CFR 285.12, Transfer of Debts to Treasury for Collection.) This requirement does not apply to any debt that:

- (1) Is in litigation or foreclosure;
- (2) Will be disposed of under an approved asset sale program;
- (3) Has been referred to a private collection contractor for a period of time acceptable to Treasury; or
- (4) Will be collected under internal offset procedures within three years after the debt first became delinquent.

(f) Treasury is authorized to charge a fee for services rendered regarding referred or transferred debts. DOE will add the fee to the debt as an administrative cost (see § 1015.212(c)).

§ 1015.202 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 that inform the debtor of the consequences of failing to cooperate with DOE to resolve the debt. Generally, one demand letter issued 30 days after the initial notice, bill, or written demand should suffice. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limita-

tions), written demand may be preceded by other appropriate actions under this Part, including immediate referral for litigation.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within DOE;

(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) The name, address, and phone number of a contact person or office within DOE;

(5) DOE's intent to refer unpaid debts to Treasury for collection;

(6) DOE's intent to authorize Treasury to add fees for services rendered as an administrative fee;

(7) DOE's intent to authorize Treasury to utilize collection tools such as credit bureau reporting, private collection agencies, administrative wage garnishment, Federal salary offset, tax refund offset, administrative offset, litigation, and other tools, as appropriate, to collect the debt;

(8) DOE's willingness to discuss alternative methods of payment;

(9) The debtor's entitlement to consideration of a waiver, depending on applicable statutory authority; and

(10) DOE's intent to suspend or revoke licenses, permits, or privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with DOE regulations or governing procedures.

(c) DOE will seek to ensure that demand letters are mailed or hand-delivered on the same day that they are dated.

(d) DOE will seek to 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.

(e) Prior to the initiation of the demand process or at any time during or

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after completion of the demand process, if DOE determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see § 1015.203 of this subpart). The availability of funds or money for debt satisfaction by offset and DOE's determination to pursue collection by offset shall release DOE from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(f) Prior to referring a debt for litigation, DOE 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) and should be given as part of a demand letter under paragraph (b) of this section.

(g) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, DOE should immediately seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless counsel 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.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. DOE 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 DOE 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, DOE will seek legal advice from counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen until relief from the automatic stay can be obtained from the bankruptcy court. DOE also will seek legal advice from

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counsel to determine whether recoupment is available.

§ 1015.203 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 (42 U.S.C. 301, *et. seq.*) except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act (42 U.S.C. 301, *et. seq.*) 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 Government'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