

14. CREDIT AND DEBT MANAGEMENT

A. Establishment of a Debt. Grant and Cooperative Agreement-related debts to the Department of Commerce are generally established as a result of an audit resolution. However, a recipient may be billed for other reasons, such as retention of excess cash on hand or failure to meet cost sharing required by the award document. When a recipient is to be billed, the Grants Officer will provide proper notification to the recipient and will request that the appropriate accounting office bill the recipient.

B. Debt Collection.

1. In accordance with the DOC credit and debt management procedures, accounts receivable shall be promptly established, billed, and collected. The authorities listed below must be adhered to in the collection of debts related to Grants and Cooperative Agreements:

- a. the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*) (DCA) and the Federal Claims Collection Standards (31 CFR §§ 900-904);
- b. the DOC debt collection regulations 15 CFR Part 19 “Commerce Debt Collection”;
- c. the DOC Credit and Debt Management Operating Standards and Procedures Handbook (Debt Management Handbook) (www.osec.doc.gov/ofm/credit/cover.htm);
- d. the Treasury Financial Manual (TFM), Volume 1, Part 6, Chapter 8000 “Cash Management” (www.fms.treas.gov/tfm/vol1/index.html);
- e. OMB Circular A-129 Revised “Policies for Federal Credit Programs and Non-Tax Receivables”; and
- f. any other relevant laws, regulations, OMB circulars, and DOC policies.

2. Both the audit resolution process and the debt collection process independently require that debtors be given notice concerning the debt and an opportunity for review. (See, for example, DAO 213-5 and 15 CFR Part 19.4). All reasonable efforts should be made to satisfy the requirements of both in a single process. In particular, the audit resolution determination should, wherever reasonably possible, also serve as a demand and notice of intent letter as required by the DCA, as amended. (see Exhibit A and Debt Management Handbook, Chapter 8).

3. Delinquent debts shall be assessed the following charges-(see, 31 CFR § 901.9, 15 CFR Part 19.5, Handbook Chapter 8, and TFM, Volume 1, Part 6, Chapter 8000).

a. An interest charge on the amount due shall be applied and collected. Interest will accrue on the principle, or any portion thereof, owing and unpaid from the date the debt is established until it is paid in full. However, interest will automatically be waived on any portion of the principle that is paid within 30 days. The minimum annual rate of interest to be charged is the Department of the Treasury's (Treasury) Current Value of Funds (www.fms.treas.gov). This rate is published annually in the *Federal Register* by Treasury, and is available on the website of Treasury's Financial Management Service. The assessed rate shall remain fixed for the duration of the indebtedness.

b. A penalty charge, not to exceed six (6) percent a year, shall be added to delinquent debts. The charge will accrue on the principle, or any portion thereof, owing and unpaid from the date of delinquency, 31 days after the date the debt is established, until it is paid in full. However, the charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency.

c. An administrative charge shall be applied to cover processing and handling of the amount due.

d. For specific information on waiving late charges, whether additional interest, penalty charges, or administrative charges, refer to Chapter 8 of the Debt Management Handbook.

4. The Grants Officer shall advise the recipient that payment of debts cannot be from funds received from other Federal programs or result in a reduced level of program activity.

5. The Debt Collection Improvement Act of 1996 (DCIA), which amended the Debt Collection Act of 1982, named Treasury as the agency to receive from other Federal agencies for purposes of collecting debts delinquent for 180 days or more. The DCIA also established Treasury's Financial Management Service as the Federal Government's debt collection center. Treasury has chosen to implement the DCIA through an expanded Treasury Offset Program (TOP) and cross-servicing technique. DOC has signed a cross-servicing and TOP agreement with Treasury. Debts delinquent for less than 180 days may be transferred for cross-servicing at the election of DOC. The appropriate official must comply with notification requirements contained in 15 CFR Part 19, "Commerce Debt Collection", before debts are transferred to Treasury for action. See also 31 CFR § 901, "Standards for the Administrative Collections of Claims."

C. Impact of Delinquent Federal Debts on Award Eligibility

1. It is the policy of DOC that no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

2. Once an outstanding receivable becomes a delinquent Federal debt, no further awards to the recipient may be considered until the debt is paid, except in circumstances cited in subparagraph 1, above, and discussed in subparagraph 4, below. This includes debts that have been written off, but not yet closed out. Although a delinquent debt becomes inactive once it is written off and the operating unit takes no further action to collect it, the debt is still owed to the Federal Government. If, however, the debt is then closed out by the Finance/Accounting Officer, no further collection action may be taken after the debt is reported to the IRS on Form 1099-G "Certain Government Payments" as income to the debtor.

3. Federal policy as established under OMB Circular A-129, "Managing Federal Credit Programs," requires the aggressive but fair management of Federal receivables. It is the general policy of DOC that delinquent outstanding receivables be repaid in full in a lump sum. Mitigating circumstances may exist that justify issuance of an award outside the parameters of the policy if a repayment schedule is negotiated and approved and one payment received, or other arrangements satisfactory to DOC are made before an award is issued. Issuance of an award to a recipient who has an outstanding debt must be in accordance with the guidance provided below. The steps taken to safeguard the Federal Government's interests until repayment is made must be noted in the official award file.

a. In the event that a recipient is unable to repay the delinquent debt in one lump sum, a repayment schedule may be formally negotiated and entered into by the operating unit and the recipient. As long as the recipient is making payments in accordance with the repayment schedule, a new award may be made. Recipients must be placed on a reimbursement payment method until the debt is paid, unless the Grants Officer authorizes other arrangements.

(1) The Finance/Accounting Officer shall notify the Grants Officer and recipient when payment on a repayment schedule is ten (10) calendar days delinquent.

(2) The Grants Officer may suspend payments under any current award(s) if payment on a repayment schedule is fourteen (14) calendar days delinquent. The Grants Officer must suspend the current award(s) when payment is thirty (30) calendar days delinquent unless the Grants Officer determines and sets forth in writing the reasons that it is not in the best interest of the Federal Government to do so. This written determination shall become part of the official award file. Before sending the request to suspend an award to the Finance/Accounting Officer and the notification of suspension to the recipient, the Grants Officer must verify with the Finance/Accounting Officer that the repayment schedule remains delinquent.

(3) Suspended awards may be reactivated when payment on the repayment schedule becomes current.

(4) The Grants Officer may terminate a suspended award based on nonpayment of the debt.

b. Other extraordinary circumstances may exist which may warrant proceeding with an award prior to repayment of a delinquent debt. Circumstances that merit such action include:

(1) The recipient has acknowledged that it owes the debt, and has made satisfactory arrangements to repay; or

(2) The debt is reported as unpaid as a result of an error.

(3) When a determination is made that:

(a) there may be sufficient justification for delaying repayment of the debt that merits further investigation; and

(b) not proceeding with the award will frustrate successful achievement of programmatic goals.

The Program Officer shall prepare and sign a written justification for the concurrence of the Grants Officer, who shall maintain the documentation in the official award file. The justification must have the concurrence of the head of the operating unit and be included in the official award file.

D. Exceptions. The procedures set forth in this chapter are applicable to all operating units except those that are not subject to the disposition of claims under the DCIA or its implementing regulations. Where an operating unit is not required by law to follow DCIA procedures, it must develop and follow its own alternative procedures, but to the extent feasible, it also must comply with and employ the guidelines set out in this chapter.

Exhibit A – Sample Notice and Demand Letter/Audit Resolution Determination

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [Optional]

[Date 60 days prior to any further debt collection action]

[Name of Recipient/Debtor]

[Address Line 1]

[Address Line 2]

[Add “Attn:” and Name & Title of General Partner, Corporate President, or State Governmental Official, as appropriate, for Organizational Recipients/Debtors.]

RE: [Name of Recipient/Debtor] (“Recipient”)
Audit Resolution Determination (“Letter”)
Financial Assistance Agreement Number: _____ (“Agreement”)
Audit Report Number: _____ (“Audit Report”)

Dear _____:

Recipient entered into the Agreement with the U. S. Department of Commerce, [Operating Unit] (“Agency”). An audit has been performed relating to the Agreement, the Audit Report prepared, and Recipient provided a copy of the Audit Report. The Agency has reviewed the Audit Report (which includes Recipient comments, if any), determined that Recipient owes the Agency a refund, and established a debt in the amount of that refund. A summary of the financial and non-financial findings in the Audit Report, and the Agency’s resolution of them, is enclosed as Exhibit A. **[See Instructions for Content.]**

Debt and Demand for Payment

There is currently owing and unpaid by the Recipient to the Agency a debt, described above, in the amount of \$_____ principle, plus interest thereon at the rate of ____% per annum. Demand is hereby made for payment in full within 60 days of the date of this Letter (“Due Date”). The amount demanded should be paid in one lump sum by the Due Date in accordance with the bill enclosed as Exhibit B. **[Obtain bill from agency setting up the account receivable. Assure that the content of the bill does not conflict with the terms of this Letter.]**

Under the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701 *et seq.*, and 15 CFR § 19, interest will accrue on the principle, or any portion thereof, owing and unpaid from the date of this Audit Resolution Determination until the debt is paid in full. However, interest will automatically be waived on any portion of the principle that is paid within 30 days. The rate of interest that Recipient will be assessed is specified above and was determined in accordance with 31 U.S.C. § 3717.

The debt will be delinquent if not paid in full by the Due Date. If the debt becomes delinquent, interest will continue to accrue on the principal balance remaining due and unpaid at that time, and Recipient will also be assessed both a penalty charge and, to cover the cost of processing and handling the delinquent debt, an administrative charge.

The penalty charge will accrue on the principle, or any portion thereof, owing and unpaid from the date of delinquency, 31 days after the date of this Audit Resolution Determination, until the debt is paid in full. However, the penalty charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency. The penalty charge is ___ % per annum [**maximum of 6.0%**] and the administrative charge is \$ _____ [**currently \$25.00**]. Both charges are in accordance with 31 U.S.C. § 3717.

Interest and penalty charges will continue to be added until the entire debt has been paid in full. This includes payment of all principal, interest, and penalty and administrative charges. Keep in mind that any sums received will be applied first to administrative and penalty charges, then to interest, and lastly to principal.

Collection Actions

The Agency is entitled to take all appropriate steps to collect delinquent debts and will do so in this case if the debt is not paid as demanded, above. Those steps may include:

- ◆ referring the debt to the U.S. Department of the Treasury for offset of Recipient's income tax refunds, Recipient's contractor/vendor payments and any other Federal payments, including but not necessarily limited to certain benefit payments and loans to Recipient, that are not exempt from offset;
- ◆ referring the debt to a private collection agency;
- ◆ reporting the debt to a credit bureau;
- ◆ referring the debt to the U.S. Department of Justice for litigation;
- ◆ reporting the debt, if discharged, to the Internal Revenue Service as potential taxable income;
- ◆ referring the debt to the U.S. Department of the Treasury for any of the above described actions, which referral is required when the debt has been delinquent for 180 days; and
- ◆ performing administrative offset or common law set-off of the debt against any payments or credits that may be owned to Recipient by the Agency.

Also, failure to pay the debt by the Due Date could result in payments being withheld under any current Agency awards to Recipient and in the termination of such awards. In addition, Recipient will become ineligible for Federal loans (except disaster loans), loan insurance or guaranties. Persons controlled by [or controlling] [**Add for Organizational Recipients.**] Recipient may be similarly ineligible. Also, it is U. S. Department of Commerce policy that no award of Federal funds shall be made to a grant or cooperative agreement applicant who has an outstanding delinquent debt to the Department. [Finally, the Agency may deny, suspend or revoke licenses, permits, or other privileges for any

inexcusable or willful failure of Recipient to pay the debt.] **[Add where agency has such authority.]**

The Agency believes that the payment of this debt is entitled to priority treatment in accordance with 31 U.S.C. § 3713. Failure to satisfy the Agency's claims before paying the claims of other creditors may result in the personal liability of one or more of Recipient's officers, employees or other representatives for this debt.

Inspection and Copying of Documents

Recipient has the right to inspect and copy the agency records related to the debt as determined by the responsible agency official(s). However, with respect to this debt, the responsible agency official(s) has (have) determined that all documents have been previously provided to Recipient or are being provided herewith. These documents include the applicable Financial Assistance Agreement, the Audit Report, and this Audit Resolution Determination. If Recipient wishes additional copies, the Agency point of contact identified at the end of this letter will, upon request, explain the procedures for inspecting and copying the originals. **[If this is a special case with additional or different documents, refer to and enclose such records as are needed to support the proper establishment of the debt. Consult with legal counsel respecting such cases.]**

[Waiver of Indebtedness and] [Insert where applicable.] Repayment Agreement

[Recipient has the right to request, pursuant to _____, a waiver of all or a portion of the indebtedness. **[Add applicable statutory and regulatory authorities. Contact legal counsel for advice in this regard.]** If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Audit Resolution Determination or, if Recipient files a Request for Reconsideration, discussed below, then together with that Request. These will be Recipient's only opportunities to do so.] **[Insert where applicable.]**

Recipient also has the right to request to enter into a written repayment agreement with the responsible Agency official(s) to repay the debt, including interest, penalties and administrative charges determined by the Agency. If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Letter or, if Recipient files a Request for Reconsideration, discussed below, then within 10 days of the Agency issuing to Recipient a decision on such Request ("Reconsideration Determination"). These will be Recipient's only opportunities to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency's decision(s) on Recipient's request(s), interest and, should the debt become delinquent, penalty and administrative charges, will continue to accrue unless and until the debt is paid in full.

[To request a waiver, Recipient must submit an explanation of why, under the pertinent facts and the applicable legal authority, Recipient should be granted a waiver of all or part of the indebtedness. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the Agency at the address specified below for the filing of a Request for Reconsideration. The Agency will consider all evidence submitted in a timely manner and, in due course, issue a Reconsideration Determination to Recipient and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.] **[Insert where applicable.]**

To request to enter into a repayment agreement, Recipient must complete and return the Financial Statement form [U.S. Department of Justice OBD-500 or OBD-500C for individual or corporate recipients, respectively] **[Insert appropriate form designation.]**, enclosed as Exhibit C **[D if special documents related to the debt are attached as discussed above.]**, together with a proposed repayment schedule or, if Recipient is unable to pay the full amount of the debt, a settlement proposal in lieu of the schedule. This submission must be timely made to the Agency at the address specified below for filing a Request for Reconsideration. The Agency will review all information and materials submitted in a timely manner and any obtained from other sources (e.g., credit reports), and, in due course, issue a Reconsideration Determination to Recipient.

Request for Reconsideration

Recipient has the right to request that the Agency reconsider this Audit Resolution Determination, including providing Recipient with a review of any indebtedness established (“Request for Reconsideration”). If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Audit Resolution Determination. This will be Recipient’s only opportunity to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency’s Reconsideration Determination, interest and, should the debt become delinquent, penalty and administrative charges will continue to accrue unless and until the debt is paid in full. The exception would be if the Agency and Recipient previously entered into a written repayment agreement, in which case that agreement would apply.

To request reconsideration, Recipient must file a Request for Reconsideration containing an explanation of why, under the pertinent facts and the applicable legal authority, Recipient disagrees with this Audit Resolution Determination. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the address specified below. The Agency will consider all evidence submitted in a timely manner and, in due course, issue to Recipient a Reconsideration Determination and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.

The original and one copy of a Request for Reconsideration must be timely filed with the Agency at:

US Department of Commerce
[Operating Unit]
1401 Constitution Avenue, NW, Room _____
Washington, DC 20230
Attn: [Agency Point of Contact]

Contemporaneously with filing such a Request, submit one copy thereof to:

US Department of Commerce
Office of the Inspector General
Assistant Inspector General for Auditing
1401 Constitution Avenue, NW, Room 7721, MS H7721
Washington, DC 20230
Attn: [Name and Title of Appropriate OIG Official]

[Other Rights] **[Add when applicable.]**

[Recipient's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service provided that the spouse is not also delinquent on a debt to the United States.] **[Add for Individual Recipients.]**

[If there are any rights and remedies available to Recipient under programmatic statutory or regulatory authority under which the debt arose, state what they are and how they may be exercised. Consult with legal counsel respecting such provisions.]

Civil and Criminal Penalties

If you knowingly make or provide any false or frivolous statements, representations or evidence, you may be liable for civil penalties under the False Claims Act, as amended, 31 U.S.C. § 3729, *et seq.*, or other applicable law; and/or subject to criminal penalties under 18 U.S.C. §§ 286, 287, 1001 and 1002, or other applicable law.

Agency Point of Contact

Please direct any questions regarding this matter and, also, any notice that Recipient has filed bankruptcy, to _____, the Agency point of contact, at the address for filing a Request for Reconsideration, above, or at (____) ____ - ____.

Sincerely,

[Name and Title of Responsible Official]

Enclosures

cc: _____, Assistant Inspector General for Auditing