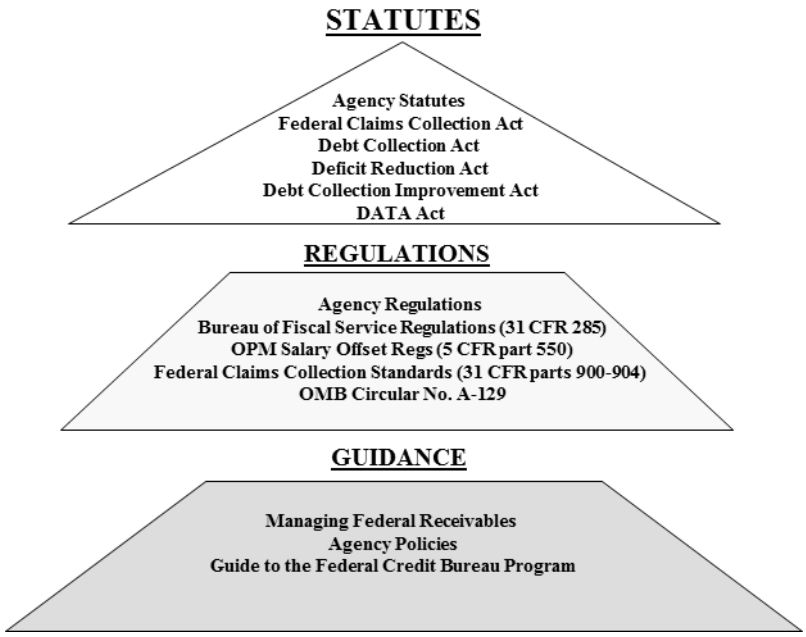
Overview

Agencies should have fair but aggressive programs to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each program should include a debt collection strategy, consistent with governmentwide and agency requirements, to restore the delinquent debts to current status or, if unsuccessful, maximize collection on the agency's accounts. The strategy should further promote the resolution of delinquencies as quickly as possible, since the ability of an agency to collect its delinquent debts will generally decrease as the debts become older. The strategy should take into account that debts within the jurisdiction of the bankruptcy courts are subject to the provisions of the United States Bankruptcy Code (see page 6-57). When a debtor has filed for bankruptcy protection, legal counsel should be consulted prior to continuing any collection activities, including those described in this Chapter.

This Chapter describes the collection techniques and tools available to assist agencies in collecting delinquent debts, and supplements the debt collection requirements contained in statutes and regulations. In this Chapter, a Federal agency that is owed a debt is sometimes referred to as a “creditor agency.”

Debt Collection Rules and Guidance Hierarchy



This Chapter is divided into three parts:

Part I, Managing Delinquencies, provides information on debt collection strategies and principles;

Part II, Debt Collection Tools and Programs, discusses delinquent debt collection tools, such as cross-servicing (transfer of debts to Bureau of the Fiscal Service (Fiscal Service) for collection), offset, administrative wage garnishment, collateral liquidation, and litigation; and

Part III, Miscellaneous Topics, describes several techniques an agency uses to support the debt collection process.

This Chapter applies to debts owed to the United States, including loans, fines, penalties, overpayments, and fees, but does not apply to the collection of Federal tax debts, debts owed by Federal agencies, or debts owed by foreign countries. Debts based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim must be referred to the Department of Justice (DOJ) for action. At its discretion, DOJ may return the debt to the agency for handling in accordance with the procedures described in this Chapter.

The policies and procedures detailed in this Chapter do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person. The failure of an agency to comply with any of the provisions in this Chapter shall not be available to any debtor as a defense, except as otherwise allowed by law.

Part I – Managing Delinquencies

Background

Delinquency Defined. A debt becomes delinquent when:

- payment is not made by the due date or the end of the "grace period" as established in a loan or repayment agreement, in the case of a debt being paid in installments. *The date of delinquency is the payment due date.*

  Example: Borrower's loan payment is due January 1. The loan agreement allows a grace period of 15 days, meaning that the lending agency will not assess late charges or declare the loan delinquent if the payment due on January 1 is made before January 16. If Borrower makes his or her payment before January 16, the loan is not delinquent. However, if Borrower fails to make a payment by January 16, then the loan is delinquent and the *date of delinquency is January 1* (the payment due date).

- payment is not made by the due date specified in the initial billing notice, in the case of administrative debts such as fines, fees, penalties, and overpayments. The due date is usually 30 days after the agency mailed the notice. *The date of delinquency is the date the agency mailed or delivered the billing notice.*

  Example*:* Agency discovers that duplicate payments were made to beneficiary and seeks to recover the overpayment. On March 1, the Agency mails a notice to beneficiary informing him about the overpayment. The notice states that payment must be made by March 31 to avoid assessment of late charges and enforced collection action. If beneficiary pays the amount requested before March 31, the debt is not delinquent. However, if beneficiary fails to pay by March 31, then the debt is delinquent, and the *date of delinquency is March 1* (the date of the initial notice about the debt).

Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act of 1996 (DCIA) provided Federal agencies with a variety of delinquent debt collection tools. The DCIA:

centralized delinquent debt collection at the Department of the Treasury (Treasury), requiring Treasury to pursue delinquent debts that are not actively being collected by Federal creditor agencies, a program known as "cross- servicing";
established a centralized offset process at Treasury, known as the "Treasury Offset Program"; authorized Treasury to manage a governmentwide, performance-based private collection agency contract for referral of delinquent debts for collection;

- requires Federal agencies to report delinquent consumer debts to credit bureaus;

- permits Federal agencies to administratively garnish the wages of non-Federal employees; and

- requires credit-granting agencies to bar debtors from receiving Federal direct, guaranteed, or insured loans until their delinquent debts owed to the United States are resolved.

Debt Collection Statutes. A list of the Federal statutes applicable to governmentwide debt collection is found at **Appendix 4**.

Governmentwide Debt Collection Regulations. The following regulations apply to governmentwide debt collection:

- The *Federal Claims Collection Standards* (FCCS) are the governmentwide debt collection standards published jointly by Treasury and DOJ in Title 31 of the Code of Federal Regulations (CFR), Parts 900 through 904 (31 CFR Parts 900 – 904);

- The *debt collection regulations issued by Treasury's Fiscal Service* at 31 CFR Part 285 govern Treasury's cross-servicing procedures; Treasury's centralized offset program, including administrative, tax refund, and salary offset programs; administrative wage garnishment; and, the

barring of delinquent debtors from receiving Federal loans and loan guaranties; and

- *Salary offset regulations* published by the Office of Personnel Management at 5 CFR Part 550.

- The Office of Management and Budget (OMB) has issued OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables."

- The Treasury Financial Manual Chapter I TFM 4-4000, "Debt Management Services Collection of Delinquent Nontax Debt."

Governmentwide Debt Collection Guidance. *Fiscal Service* has issued this document and other debt collection guidance, such as the "Guide to the Federal Credit Bureau Program" and the "Treatise on Federal Nontax Debt Collection Law."

Debt collection statutes, regulations, and guidance are found at the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_dca.htm.* Agency and program-specific statutes, regulations, and policies are not covered in this Chapter, but they also govern the debt collection programs of a specific agency. Agency personnel should contact agency counsel for information about agency-specific laws and requirements.

Key Debt Collection Principles

Federal agency personnel who collect debts for the government should understand the following key principles:

Agency Regulations. Regulations are rules and procedures governing an agency's programs or administrative processes. In many cases, an agency is required to publish rules and procedures in the *Federal Register*. After publication in the *Federal Register*, regulations are codified in the *Code of Federal Regulations* (CFR). *Federal Register* and CFR documents may be accessed online at *www.gpoaccess.gov/fr/index.html*.The governmentwide regulations mentioned above (Part I, Background) provide general rules and standards for a Federal agency to follow when using various debt

collection tools. **Each agency must promulgate its own debt collection regulations**. An agency should adopt the governmentwide debt collection rules and standards for its own programs, when appropriate. Additionally, an agency's rules and standards should cover any additional debt collection tools the agency intends to use. Agency counsel should be consulted to determine when an agency's rules and procedures must be published in the *Federal Register*.

Program Goals and Debt Collection. Delinquent debts arise from various Federal Government programs and actions. For some types of debts, the government's interests may be best served by resolving debts in a way that achieves an important goal of a specific program. For example, it may be in the government's best interest to lower a debtor's monthly payments to allow a debtor to remain in his or her own home, keep a business, or to recover from a disaster. An agency may agree to reduce fines and penalties in exchange for the correction of the health and safety violations that triggered the debt. Perhaps it is in the government's interest to compromise a medical profession debt if the debtor completes a service agreement that would allow the medical needs of an underserved community to be met. An agency should determine early in the debt collection process (normally, in the first 60 days) whether a debtor is willing and able to work with the agency to achieve the important government objective associated with the debt. If not, the agency's primary objective should be to maximize the collection of the debt and minimize potential losses.

Due Process. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty or property without due process of law.... " In the context of Federal debt collection, the constitutional right of "due process" requires an agency to provide debtors with *notice* of, and the *opportunity to dispute*, a debt or intended debt collection action.

- **Notice** must include the amount and type of debt owed, and the actions to be taken by an agency to collect the debt, such as adding interest and late charges, offset or garnishment, foreclosure of collateral property, and credit bureau reporting. **Opportunity to dispute** the debt or the adverse collection action to be taken includes, at a minimum, an opportunity for the debtor to challenge (1) the existence of all or part of the debt, and/or (2) whether the agency has met

the statutory or regulatory prerequisites for using the collection action mentioned in the notice.

The minimum "due process" required is generally established by the statutes that authorize the use of a specific debt collection tool or by implementing regulations. As the chart below indicates, the notices and opportunities to be provided to the debtor are not uniform for all debt collection actions and tools. Additionally, an agency, through its regulations and procedures, can require administrative processes in excess of the minimum due process standards (that is, processes that are more beneficial to the debtor).

Minimum Due Process Requirements

Debt Collection Tool	Notice	Opportunity to Dispute
Non-centralized administrative offset	Prior to offset, no specific time frame	Review with an agency official
Salary offset (non-centralized)	30 days prior to offset	Hearing with hearing official not under the control of the agency
Tax refund offset	60 days prior to offset	Review with an agency official
Treasury Offset Program (TOP) (centralized offset includes administrative, salary & tax refund offset)	60 days prior to submitting the debt to TOP	Review and/or hearing, as appropriate
Administrative wage garnishment	30 days prior to garnishment	Hearing with agency official or any qualified individual
Credit bureau reporting	60 days prior to report to consumer credit bureau	Review with an agency official

Additional details on due process requirements are discussed later in this Chapter.

Privacy Protections. Many of the debt collection tools discussed in this Chapter require disclosure of personal information concerning debtors to individuals and entities outside the creditor agency. For example, disclosures of information about debtors might be made to Fiscal Service for offset or cross-servicing, to private collection agencies, to credit bureaus, to employers to effectuate wage

garnishment, and/or to DOJ for litigation or concurrence in the agency's termination of collection action.

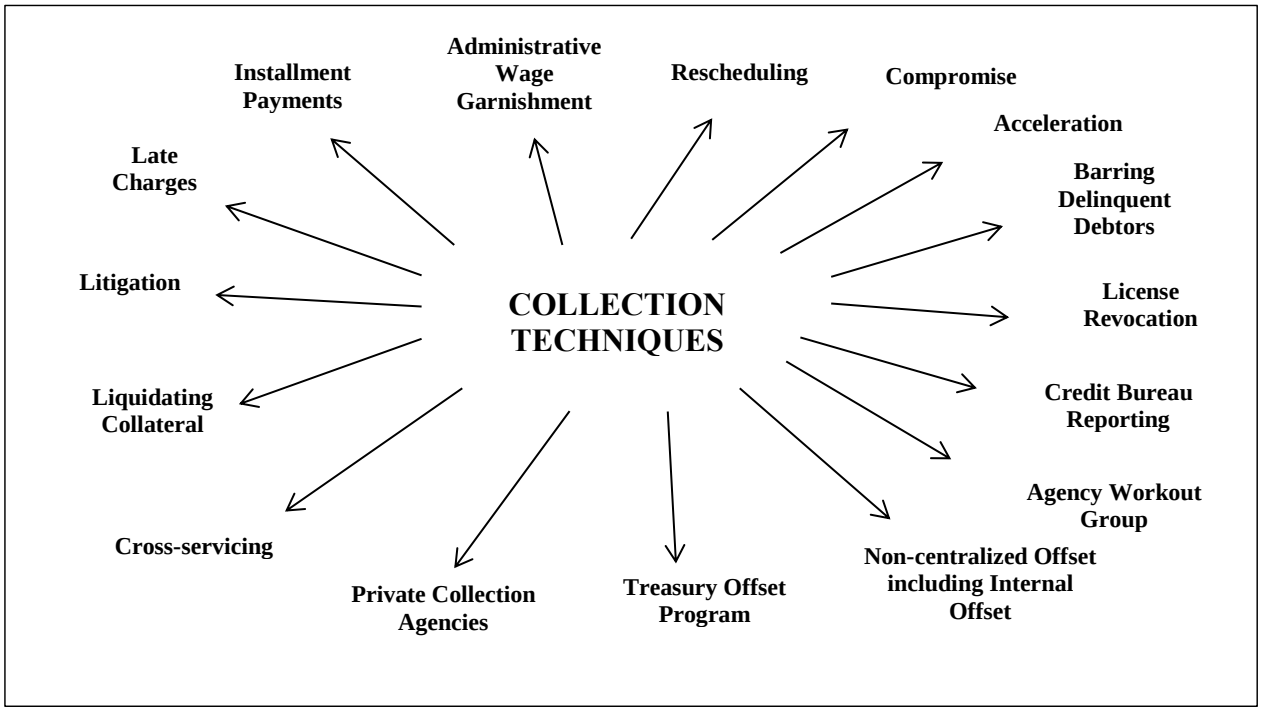
The Privacy Act of 1974 provides certain protections for individuals whose information is contained in records maintained by the Federal Government. Among other things, an agency may not improperly disclose information about individuals whose records are maintained in a "system of records" (a group of records where information about an individual can be accessed by name or personal identifier, such as a taxpayer identification number). An agency is required to publish notices in the *Federal Register* to identify its systems of records and to describe permissible disclosures, known as "routine uses," for those records.

When implementing its debt collection strategy, an agency should review its debtor records and consult with agency counsel to determine if:

- the records are a "system of records" as defined in the Privacy Act;
- a system of records notice has been published in the Federal Register and updated, where necessary; and
- the routine uses listed in the system of records or other legal authorities permit disclosures necessary for all appropriate debt collection tools and to prevent and identify improper payments or awards to delinquent debtors.

Within governmentwide rules and standards and an agency's own statutory authority, an agency has some flexibility in determining what collection techniques and tools to use and in what order. The best mix of tools for collecting delinquent debts at one agency may vary from that of another agency. However, <u>all</u> agencies must comply with Federal laws that <u>require</u> the use of certain debt collection tools, such as cross-servicing, offset, and credit bureau reporting.

Determining the Appropriate Collection Technique to Use



Key factors to consider when determining the technique or tool to use include:

- whether the agency is required by law to use the debt collection tool;
- the size and age of the debt;
- the type of debt, particularly whether commercial or consumer;
- the availability of the debt collection tool. For example, the Treasury Offset Program is not available until the agency knows the debtor's taxpayer indentification number (TIN);
- the requirements for use of the debt collection tool, such as minimum dollar thresholds;

- whether one tool can be used concurrently with another tool, such as private collection agencies and the Treasury Offset Program;

- the time and resources required to use the collection tool; the feasibility of using each tool, including any legal or contractual constraints; and

- the cost of each tool relative to the size of the debt. Costs include administrative costs, as well as fees charged by a private collection agency, Fiscal Service, or DOJ. The agency should weigh costs against the probability of collecting the debt.

Establishing a Collection Strategy

A collection strategy is an organized plan of action incorporating the various collection tools to be used by an agency to recover debt. Each agency should establish and implement effective collection strategies that suit the agency's programs and needs. Collection strategies must meet all statutory requirements. A collection strategy will facilitate debt collection by providing a systematic, uniform method for collecting accounts.

An agency should first seek to collect delinquent debts in one lump sum. If a debt cannot be collected in a lump sum, an agency should next attempt to collect the full amount in installment payments within a reasonable time (generally, less than three years). Finally, if a debt cannot be collected in full in a lump sum or through installments, an agency should consider partial collection of the debt through a compromise agreement.

Debt collection strategies will be based on the decisions made by an agency in determining what tool or technique to use at different points in the debt collection cycle. An agency's strategies will take into account that debts over 180 days delinquent must be referred to Fiscal Service for cross-servicing and offset. If an agency relies on Fiscal Service to submit debts for administrative offset on the agency's behalf, the agency must transfer the debts to Fiscal Service no later than 120 days delinquent. An agency should periodically (e.g., every three to five years) evaluate the soundness

of its strategies and collection activity. Samples of collection strategies are contained in **Appendix 5**.

Collection Action Documentation

During the debt collection phase of the credit cycle, the agency will build upon the documentation created during its credit extension and account servicing activities. It is essential that the agency continue to document all agency contacts with a debtor and actions taken to enforce collection in order to protect the government's interests. Documentation will also be critical if the agency decides to pursue litigation and for subsequent agency decisions to write-off and ultimately close-out a debt. An agency's automated systems may be used to document contacts with the debtor and other debt collection activities so long as the manner in which the information is retained is sufficient for evidentiary purposes in a court or administrative proceeding. See **Appendix 6** for a list of collection activities that should be documented.

An agency should also consider using digital imaging as a way to maintain copies of debt collection documentation. Digital imaging allows an agency to electronically maintain copies of documentation in various formats.

Agency Workout Groups

Agency workout groups are established for the sole purpose of resolving troubled debts, primarily loans. As such, agency workout groups should have the authority to decide on appropriate actions necessary to maximize debt recovery, including rescheduling debt. Strategies developed by workout groups should be case specific; however, the workout group should establish policies which outline options for handling different debt problems. The agency may want to establish a workout group if the volume and amount of its debts are large enough to warrant a special "problem account" department or if extraordinary effort or special expertise is required to enforce recovery. A workout group consists of loan officers, legal staff, and accounting personnel. Team members should have working knowledge of and abilities in the following areas:

- credit management and debt collection;
- business law;

- accounting;
- agency policies and procedures;
- liquidation proceedings;
- collateral appraisal;
- communication and interpersonal skills; and
- management policies and procedures.

Contact With the Debtor

Contact with the debtor is critical because contact:

- provides the debtor with notification of the existence of the debt and the amount of the debt if the debtor is otherwise unaware (for example, a beneficiary receives a benefit payment for more than the amount statutorily authorized, or a person is liable to the Federal Government for property damage but the amount of damage has not been determined);
- provides the debtor with the opportunity to repay the debt in full, or, if the debtor cannot pay the debt in full, to work out a satisfactory repayment arrangement with the agency;
- provides the debtor with information on the agency's policies regarding accrual of interest, penalties, and administrative costs;
- if in writing, can provide evidence of due process compliance when the letter advises the debtor of the agency's intent to use certain debt collection tools, as well as any rights the debtor may exercise to avoid the use of the debt collection tools;
- provides a means of responding to debtors who exercise due process rights; and

- for some programs, provides the opportunity to resolve the debt by meeting a specific program objective or goal (such as a medical professional complying with an agreement to practice in an underserved area, or an employer correcting a health and safety violation).

An agency must provide appropriate guidelines and training to its employees whose duties include contacting debtors. While Federal agencies are not subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1681 *et seq*., the FDCPA provides valuable guidance on appropriate practices in communicating with debtors and can be used as a source in developing an agency's guidelines. See **Appendix 7** for a sample list of appropriate practices.

It is critical for an agency to take action on a delinquent debt immediately to prevent the delinquency from becoming more serious. Acting on the delinquency quickly will greatly enhance the probability that the delinquency can be "cured" or the debt fully collected. Within 20 days after the payment due date or at the end of any grace period contractually established, the agency should contact the debtor, by letter or phone, in an attempt to resolve the non-payment. The agency should utilize personal contact with the debtor when such practice has proven to be effective. It is critical that all contact with the debtor be documented in the account files.

In the case of an administrative debt (for example, a fine, fee, penalty, overpayment, or other non-loan type of debt), the agency should have covered most of the items listed below in its initial billing notice, but may find it effective to contact the debtor to inform the debtor of the delinquency, remind the debtor of the agency's policies and procedures for collecting a delinquency, renew the request for payment, and attempt to resolve the delinquency. Although form letters are useful and can be dispatched quickly, the agency may find that a personalized letter or a phone call is more effective in emphasizing the seriousness of a delinquency, especially for those debtors who are routinely delinquent.

If the delinquency is not resolved after the initial contact with the debtor, the agency must notify the debtor of the debt's delinquent status through a demand letter or dunning notice. ***One demand letter sent no later than 30 days after delinquency should be***

sufficient. Except in rare circumstances, the agency should not send any more than two demand letters, no more than 30 days apart, as established in its debt collection strategy. The agency should ***terminate the process of sending demand letters at any time that it determines that the letters are no longer serving any useful purpose***. Any contacts beyond the first demand letter should be tailored to the circumstances of the debt, i.e., the size, type, and age of the debt, and the debtor's response to the initial contact. Each succeeding demand for payment must be progressively stronger and firmer in tone.

When not already covered in a prior invoice or letter, the demand for payment, which should be sent no later than 30 days after the date of delinquency, must include:

- the status of the debt as overdue;
- the amount owed;
- the basis of the indebtedness;
- policies on assessing interest, penalties, and administrative costs, and the applicable rates and amounts, especially if not provided in a loan agreement;the agency's intention to use various collection tools to collect the debt, including referral of the debt to Fiscal Service for collection (known as "cross-servicing"), offset, private collection agencies, administrative wage garnishment, and litigation. The agency should not threaten to take a collection action it is not authorized or does not intend to take;
- opportunities for the debtor to review the debt records, contest the debt and provide evidence to support the contentions, and enter into a reasonable repayment agreement;
- the need for the debtor to make immediate payment or contact the agency within a specified period of time from the date of the demand letter in order to avoid enforced collection; and

- the name, phone number, and address of an individual to contact within the agency to resolve the delinquency. It is extremely important for a debtor to be able to contact a person who is knowledgeable about the agency's debt collection policies and practices and who can respond to the debtor's questions and concerns.

In developing its demand letter procedures, an agency must consider that, for debts that will be referred to Fiscal Service for cross-servicing, the information listed in the Demand Letter Checklist found at **Appendix 8** must be sent to the debtor *at least 60 days prior to referral*.

If possible, the agency should respond to any communication from the debtor within 30 days. The agency should develop clear policies and procedures on how to respond to a debtor's request for copies of records related to the debt, consideration for a voluntary repayment agreement, or a review or hearing on the debt.

Assessing Interest, Penalties and Administrative Costs

The Debt Collection Act of 1982, as amended (codified at 31 U.S.C. § 3717), requires agencies, unless expressly prohibited or restricted by statute or contract, to assess three separate and distinct types of late charges on all delinquent debts, including debts owed by state and local governments. Late charges are categorized as interest, penalties, and administrative costs.

(1) **Interest**, sometimes referred to as **additional interest,** compensates the government for the loss of use of funds when the debt is not paid timely and accrues from the date of the delinquency. At a minimum, the interest rate will be set at the same rate as Treasury's Current Value of Funds Rate (prescribed and published annually by the Secretary of the Treasury in the *Federal Register* and available on the Fiscal Service website at *http://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm* for the period in which the debt became delinquent. The rate is published annually, but is subject to quarterly revisions if the annual average changes more than 2%. The agency may assess a higher rate if necessary to protect the government's interests.

The rate of interest remains fixed for the duration of the delinquency. The agency may not compound the interest or assess interest on administrative costs and penalties.

(2) **Penalties** discourage delinquencies and encourage early payment of the delinquent debt in full. As set by statute, the penalty to be assessed to a delinquent debt is an amount not to exceed 6% per year. An agency should not charge a penalty of less than 6% without a compelling reason. Accruing from the date of delinquency, the penalty charge is assessed on *any portion* of a debt that is outstanding for more than 90 days, including any interest and administrative costs.

(3) **Administrative costs** cover the costs associated with collecting a debt from the date of the delinquency. The agency will set the amount at either the actual costs incurred for the individual debt or the average cost incurred at similar stages of delinquency for similar types of debt. Costs may be assessed as a percentage of the amount collected.

Administrative costs should include the staffing and resources costs incurred to recover delinquent debts and other costs associated with using various collection tools to enforce recovery, including, but not limited to, the costs of obtaining a credit report and collection fees charged by Fiscal Service, DOJ and private collection agencies. To the extent allowed by law, an agency should add to the debt as administrative costs all fees charged by Fiscal Service, DOJ, private collection agencies and other entities that collect debt for creditor agencies.

The agency will continue assessing these late charges at the rates established by the agency until final payment is received, unless debt collection activity is suspended or terminated, the debt is compromised, the late charges are waived, or the late charges are altered as the result of a court judgment.

If a debtor defaults on an agreement to repay the delinquent debt, the agency should add all late charges to the principal amount. The

agency should start anew to accrue late charges, at the rate in effect at the time of default, on the new principal amount.

Waiver of Interest, Penalties, and Administrative Costs. The agency is required to waive *interest* and *administrative costs* on a debt paid within 30 days of the date of delinquency. The agency has discretion to waive interest, penalties, and administrative costs in accordance with its regulations, either (1) pursuant to a compromise or settlement agreement, or (2) when collection of these charges is against equity and good conscience or is not in the best interests of the United States. For example, a waiver may be appropriate when an agency cannot conduct a hearing within the statutorily required time frame (e.g., 60 days for salary offset). A waiver may be in whole or in part for each separate type of charge.

COLA Alternative to Assessment of Late Charges. In limited circumstances, an agency may increase an administrative debt by the cost of living adjustment (COLA) in lieu of charging interest, penalties, and administrative costs. The COLA alternative can be used only when: (1) the debt is an administrative debt (e.g., a fine, penalty, fee or overpayment), not a loan or debt arising from a loan guaranty; and (2) assessment of late charges is not cost effective or technically feasible, and a complete waiver of late charges is not supportable. Before using the COLA alternative, an agency should determine if charging interest alone and waiving penalties and administrative costs could accomplish the same objective as using the COLA. Agencies should ensure that new debt collection systems are developed with the capabilities to assess late charges in accordance with the requirements noted above, rather than using the COLA alternative.

The COLA is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted.

Increases to administrative debts using the COLA alternative shall be computed annually as of the date the COLA is published during each calendar year.

Each agency must publish regulations establishing agency policy regarding the accrual and waiver of interest, penalties and

administrative costs, including the circumstances under which these charges will not be imposed when collection action is suspended because of an appeal or other reason. An agency must inform debtors of its policies prior to accruing interest and other charges, either through incorporating the policies in a loan agreement or through inclusion of appropriate language in the initial demand letter.

Installment Payments

Whenever possible, an agency should try to collect an overdue debt in a single lump sum. In the event that the debtor claims financial inability to repay the debt in a single lump sum, the agency may consider collecting the overdue debt in installments. Before using certain collection remedies, such as offset and administrative wage garnishment, an agency must provide a delinquent debtor with the opportunity to enter into a reasonable repayment agreement. See Demand Letter Checklist at **Appendix 8**.

Prior to entering into an installment agreement, an agency should obtain a financial statement or credit report to verify the debtor's claim of inability to repay in a lump sum. See **Appendix 9** for a sample financial statement. Additionally, an agency should enter into such agreements only when there is evidence the debtor has (1) a willingness to abide by the terms of the agreement, including the repayment schedule; and (2) an ability to make the agreed upon payments. When determining the debtor's ability to pay, an agency should consider the following factors:

- age and health of the debtor;
- present and potential income inheritance prospects;
- possibility of hidden assets or fraudulent transfers;
- assets/income available through enforced collection; and
- reasonable and necessary living expenses for the debtor and the debtor's dependents.

An agency may wish to consult the Collection Financial Standards used by the Internal Revenue Service to determine reasonable amounts that an individual or family needs for living expenses. The Collection Financial Standards may be found at *www.irs.gov*.

The installment agreement should provide for as large an initial lump sum payment as the debtor can afford. While payments normally should be sufficient in size and frequency to liquidate the debt in three years or less, a greater amount of time may be appropriate based on the size of the debt and the debtor's ability to repay. The agency should seriously consider requiring the debtor to use pre-authorized debit to make the required installment payments. The agency may also require the debtor to post new or additional collateral to secure the outstanding balance of the account, especially in cases where the debtor's willingness to abide by the terms of the agreement is questionable, or where the amount of time to liquidate the account exceeds three years.

The installment agreement will be a legally enforceable written agreement in which all the terms and conditions of the installment arrangement, including those governing the assessment of financing interest and late charges, are stated. The interest rate to be charged on installment agreements of one year or less is the Current Value of Funds Rate in effect at the time of the agreement; for installment agreements of more than one year, the rate is the rate for a Treasury security of comparable length. If a debtor has defaulted under a previous repayment agreement, late charges that accrued but were not collected under the defaulted agreement must be added to the principal under the new agreement. The written agreement should provide for the *acceleration of the debt* (declaring the full amount of the debt due and payable) in the event that the debtor defaults. Where the term for payment of installments exceeds one year, an agency should consider including a clause that allows the agency to re-evaluate the amount of the installment payment on a periodic basis, with the goal of increasing the installment amount or requesting an additional lump sum payment, in order to collect the debt sooner.

Acceleration

Acceleration of a debt occurs when an agency calls the full amount of the debt due and payable. When a debt is accelerated, the agency demands that the debtor pay the entire debt (both the delinquent and non-delinquent portions of the debt), and considers the total amount of the debt delinquent. The agency should delineate circumstances in which acceleration is appropriate and develop procedures to incorporate acceleration into its debt collection activities. For example, acceleration is particularly appropriate when a debtor has failed to repay a debt in accordance with an installment agreement.

Rescheduling

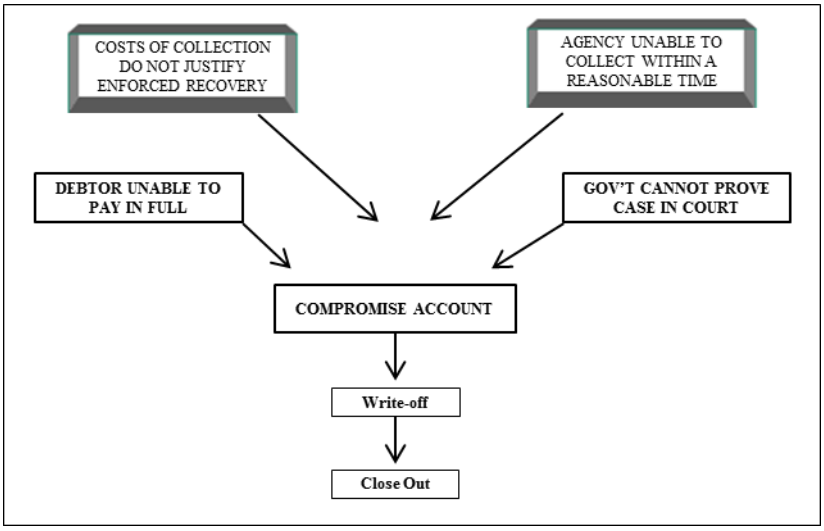
Rescheduling signifies a change in the existing terms of a loan. An agency should consider rescheduling a debt when it has determined that the rescheduling is in the government's interests and that recovery of all or a portion of the debt is reasonably assured.

As with installment payments, before rescheduling a debt, the agency should reassess the debtor's financial position and ability to repay the debt if rescheduled. The agency should also determine if it should require the debtor to use pre-authorized debit to make payment. As with any repayment arrangement, the terms and conditions of the rescheduling, including the acceleration clause, must be in writing and signed by the debtor. The agency should discourage informal workout arrangements with debtors.

Each agency should establish uniform policies, procedures and criteria for rescheduling and other types of workouts for each program area. Its policies and procedures should provide for the recognition of gains and losses on rescheduled accounts in accordance with the provisions of OMB guidance and changes in subsidy amounts as required under the Federal Credit Reform Act.

Compromise

An agency compromises a debt whenever it accepts less than the full amount of the outstanding debt in full satisfaction of the entire amount.



A compromise may be considered (but is not required) when one or more of the following criteria apply:

1. **the debtor is unable to pay the debt within a reasonable time period**, as verified through credit reports or other financial statements (see sample financial statement in **Appendix 9**);

2. **the agency is unable to enforce collection within a reasonable time period**. This may be the case when the agency cannot determine the amount it may realize if it forces the liquidation of available collateral;

3. **the cost of collection does not justify enforced collection of the full amount**. An agency may compromise statutory penalties, forfeitures, and claims established as an aid to enforcement and to compel compliance, if the agency's policies in terms of deterrence and securing compliance will be adequately served. Conversely, an agency may determine that enforced collection is justified regardless of the cost in

order to ensure compliance with the agency's policies or programs; or

4. **there is real doubt concerning the government's ability to prove its case in court**. In this situation, the agency may be in dispute with the debtor over the amount or have serious concerns related to the agency's ability to legally prove its case in court.

Using the Claims Collection Litigation Report, CCLR, an agency must refer compromise proposals where the principal amount of the debt exceeds $100,000 (or such larger amount as may be determined by the Attorney General) to DOJ for its concurrence in the compromise. The CCLR instructions can be found at:
http://www.justice.gov/sites/default/files/jmd/pages/attachments/2014/12/12/cclr_instructions.pdf
and the form at:
http://www.justice.gov/sites/default/files/jmd/legacy/2014/05/26/cclr-form-fillable.pdf.

DOJ has delegated to Fiscal Service, the authority to compromise a debt with a principal amount of $500,000 or less when the debt is being serviced by Fiscal Service in its Cross-Servicing Program. It is not necessary for the agency to refer proposals for compromise that do not meet the agency requirements for compromise and that the agency does not, therefore, intend or want to accept.

Compromise agreements should be in writing and signed by the debtor and the agency, whenever feasible. The agency should discourage the use of installment agreements to pay compromises. If, however, an agency does accept an installment agreement, the agreement must provide that, in the event of default, the full amount of the debt (less any amounts paid) will be reinstated and immediately due and payable. To further protect its position, the agency may also ask the debtor to pledge collateral to secure the debt.

Where two or more persons are jointly and severally liable on that same delinquent debt, an agency should ensure that a compromise with one debtor does not inadvertently release the agency's claim against the remaining debtor(s). The amount of a compromise with one debtor shall not be considered a precedent or binding in

determining what the appropriate compromise amount and terms might be with other co-debtors.

The agency needs to clearly indicate to the debtor that the compromise agreement applies to the amount of the debt and that the agency is not authorized to release the debtor from any other liabilities owed to the United States, including tax liability which may be incurred on the compromised amount. Depending on the type and amount of debt being compromised, the agency may be required to report the difference between the full amount of the debt and the amount paid by the debtor in a compromise agreement to IRS as potential income on Form 1099-C. See Chapter 7, Termination of Collection Action, Write-off and Close-out/ Cancellation of Indebtedness, for information on Form 1099-C reporting.

Taking Action Against Co-borrowers/Guarantors

An agency should take action to recover a debt from secondary debtors (co-borrowers or guarantors) when it becomes apparent that the primary debtor cannot or will not repay a debt. The agency should employ the same debt collection techniques and tools in pursuing secondary debtors as it uses for primary debtors. To successfully pursue secondary debtors, the agency must have obtained sufficient identifying information, including taxpayer identifying numbers, on all co-borrowers and guarantors. It is not necessary to allocate the amount of the debt among the secondary debtors in proportion to any investment or pursuant to any agreement or court order in a case to which the agency is not a party (for example, a partnership agreement or divorce judgment). Enforced collection should be taken against each debtor for the full amount of the debt, unless otherwise prohibited. In certain cases where a primary debtor has filed for bankruptcy protection, an agency may be precluded from pursuing the non-bankrupt secondary debtor. Whenever a debtor has filed for bankruptcy protection, an agency should consult with counsel to determine whether a bankruptcy stay is in effect and must be lifted before proceeding with collection action against a secondary debtor.

Application of Payments

Except as otherwise contractually provided, payments made by a debtor towards a delinquent debt are applied to the outstanding balance of the debt in the following order:

1. penalties;
2. administrative costs;
3. additional interest;
4. financing interest; and
5. principal.

If the debt is being collected by Fiscal Service through cross-servicing or TOP, or if a private collection agency is collecting the payment for an agency, each payment will first be applied to the amount of the contingency fee due Fiscal Service or the private collection agency. The rest of the payment would then be applied as indicated, to liquidate in full penalties, other administrative costs, interest, and principal. Other than the application of payment of the aforementioned fees, the agency may alter this order of payment if it determines that such a change is in the government's interests.

Part II – Debt Collection Tools and Programs

One of the major purposes of the DCIA is to "maximize collections of delinquent debts owed to the government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools." An agency is required to aggressively collect all debts arising out of the agency's activities. If a debtor fails to pay or otherwise resolve a delinquent debt, an agency must react quickly to determine the appropriate debt collection tools to be used to enforce collection. An agency may use more than one of the available tools at the same time in order to maximize its recovery on a bad debt. This part explains how to use the various debt collection tools and programs.

Transfer of Debts to Fiscal Service for Collection - Cross-Servicing. The DCIA requires that related debt collection activities be consolidated within the government, to the extent possible, to minimize the government's delinquent debt collection costs. One way that the government's delinquent debt collection operations have been consolidated is through the Cross-Servicing Program operated by Fiscal Service. Once an agency refers its delinquent debts to the Cross-Servicing Program, Fiscal Service then uses a variety of collection tools to collect the debt. Information on Fiscal Service's Cross-Servicing Program is available on the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/dms/xservg/debt_crosserv.htm* or by calling the Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725. Fiscal Service will provide an overview of the debt collection services available to an agency and will assist the agency in taking the steps necessary to participate in the Cross-Servicing Program.

Debt Referral Requirements. An agency should send its delinquent debts to Fiscal Service as early as possible in the debt collection cycle. See **Appendix 5** for sample debt collection strategies. If a debtor has not paid the debt, entered into a repayment arrangement, or otherwise resolved the debt within 60 days after the agency's last *demand letter*, the agency should refer the debt to Fiscal Service. The last demand letter, together with prior notices sent to the debtor, must include all of the items described in the Demand Letter Checklist (see **Appendix 8**). An agency could refer its debts to Fiscal Service as early as 61 days

after the delinquency date assuming that the appropriate demand letter was sent to the debtor on the delinquency date and that all other due process pre-requisites have been met.

As required by the DCIA, an agency must refer any eligible debt more than 180 days delinquent to Fiscal Service for cross-servicing. At least 60 days before a debt is submitted to Fiscal Service, an agency must have sent to the debtor one or more notices with the information in the Demand Letter Checklist in **Appendix 8**. Therefore, to meet the statutory debt referral requirement, an agency must send the due process letter to the debtor as soon as possible, preferably no later than 60 days delinquent.

The Digital Accountability and Transparency Act amended the DCIA to require agencies to notify Fiscal Service of all debts delinquent 120 days or more for purposes of administrative offset. If an agency relies on Fiscal Service to submit debts for administrative offset on the agency's behalf, the agency must transfer the debts to Fiscal Service no later than 120 days delinquent.

A debt is eligible for referral to Fiscal Service for cross-servicing if the debt is:

- past due;
- legally enforceable;
- owed by an individual or entity (including a state or local government) other than a Federal agency; and
- $25 or more (including interest, penalties and administrative costs).

A debt is considered *legally enforceable* for purposes of referral to Fiscal Service if there has been a final agency determination that the debt is due and there are no legal bars to one or more of the collection actions to be taken by Fiscal Service, as described beginning on page 6-28.

Exceptions to Referral Requirements. A debt is not eligible for referral to Fiscal Service for cross-servicing if the debt is:

- not past due or legally enforceable;
- owed by a debtor who has died;
- owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in a bankruptcy proceeding;
- owed by a Federal agency;
- the subject of an administrative appeal, until the appeal is concluded and the amount of the debt is fixed; or
- less than $25 (including interest, penalties and administrative costs).

An agency is not required to refer a debt to Fiscal Service for cross-servicing if the debt is:

- delinquent for 180 days or less, unless the agency relies on Fiscal Service to submit debts for administrative offset; in which case, the debt must be referred no later than 120 days delinquent (however, an agency may send such debts to Fiscal Service if they are otherwise eligible for referral);
- in litigation, that is, the debt has either been referred to DOJ for litigation, or is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy and post-judgment matters;
- in foreclosure, that is, the debt is secured by collateral that is being foreclosed, either through a court proceeding or non-judicially (see page 6-55 for information on liquidating collateral)
- scheduled for sale within one year under an asset sales program approved by OMB;
- at a private collection agency with the approval of Fiscal Service;

- at a Treasury-designated debt collection center;
- expected to be collected from payments issued to the debtor by the creditor agency within three years of the date of delinquency (commonly referred to as "internal offset");
- less than $100 and the agency is unable to obtain the debtor's taxpayer identifying number; or
- otherwise exempt from the statutory referral requirement by law or official action of Treasury.

Requirements for Agency Participation in Cross-Servicing. Chapter 4000 of the Treasury Financial Manual, Volume I, entitled "Debt Management Servcies Collection of Delinquent Nontax Debt," describes the requirements for agency participation in the Cross-Servicing Program and is available on the Fiscal Service website at *http://tfm.fiscal.treasury.gov/v1/p4/c400.html*.

Agency personnel should contact the Cross-Servicing Agency Liaison assigned to assist their agency or the Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725 for questions related to agency debts that have been referred to Cross-Servicing.

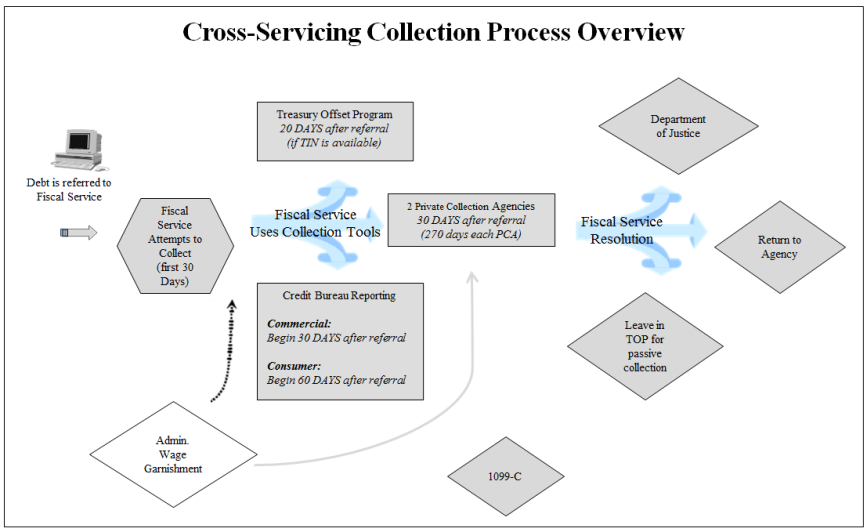
An agency must provide the debtor with proper due process before submitting a debt to Fiscal Service for cross-servicing. This means that, at a minimum, the agency has sent the debtor one or more demand letters with the information contained in the Demand Letter Checklist at **Appendix 8**, and has provided the debtor with the opportunity to dispute or challenge the debt. For each debt submitted to Fiscal Service for cross-servicing, an agency is required to certify that the debt is eligible for cross-servicing and all pre-requisites to collection have been met.

NOTE: Once a debt is referred to Fiscal Service, the agency must stop its own collection activity related to the referred debt. Any payments received by an agency for a debt that has been referred to Fiscal Service must be reported to Fiscal Service as a *payment* (not as an adjustment to the debt balance) to allow Fiscal Service to properly assess its fees.

Debt Collection Actions at Fiscal Service . When a debt is referred to cross-servicing for collection, the debt remains a debt owed to the referring agency and the referring agency shall continue to maintain all the official records, including accounting records, pertaining to the debt.

Cross-Servicing Programs require agencies to complete a profile for each distinct program under which a debt may arise. The profile identifies points of contacts and defines how the agency's debt portfolio will be serviced. It also specifies any unique laws that apply to an agency's debts, Debts referred to Fiscal Service are subject to the following actions, as appropriate:

- Treasury demand letter within five business days of referral;
- telephone calls between debtors and Fiscal Service personnel and repayment negotiations;
- submission of debt to the Treasury Offset Program (TOP) within 20 days of referral if the debtor's taxpayer identification number (TIN) is available. The debt remains in TOP until the debt is returned to the agency (see page 6-34 for a description of TOP);
- credit bureau reporting;
- referral to at least one private collection agency. In most cases, the debt is referred to a second agency if the first one is unable to resolve the debt;
- administrative wage garnishment, if the debtor is employed by an entity other than a Federal agency;
- referral to DOJ for litigation; and
- unpaid debt is reported to the Internal Revenue Service as potential income to the debtor on Form 1099-C.



If a debtor offers to compromise a debt or enter into a repayment agreement, Fiscal Service decides whether such offer is acceptable based on the FCCS and the parameters set by the creditor agency, i.e., the terms under which Fiscal Service may compromise an agency's debts or enter into repayment agreements. An agency must respond timely, as referenced in the TFM Chapter 1TFM 4-4000 to Fiscal Service's request for approval of any compromise or repayment offers to ensure that valid offers are promptly acted upon by the government.

While the debt is in the Cross-Servicing Program, Fiscal Service maintains debt balance information, collects the funds paid by the debtor, and returns the funds to the creditor agency for proper deposit and accounting. The creditor agency must maintain its original debtor records and remains responsible for any and all financial reporting associated with the debt. The creditor agency is responsible for the accuracy of the debt information submitted to Fiscal Service, and must provide updates and corrections of debtor information on a regular basis. Among other things, the creditor agency must immediately notify Fiscal Service when it learns that a debtor referred to Fiscal Service has filed for bankruptcy protection.

Agency personnel should contact the Fiscal Service liaison assigned to assist their agency or Fiscal Service's Cross-Servicing Agency Liaison staff, Client Services Branch, at (800) 858-0725 for questions related to agency debts that have been referred to cross-servicing.

Cross-Servicing Fees. Fiscal Service charges fees to cover its costs for collections through cross-servicing. The fee is a percentage of all collections received from the debtor after the debt is referred for cross-servicing. Fees are collected from amounts recovered or billed to the creditor agency. The creditor agency should add this fee to the debt as an administrative cost to the extent allowed by law.

Administrative Offset (Including the Treasury Offset Program)

Administrative offset occurs when the government withholds or intercepts monies due to, or held by the government for, a person to collect amounts owed to the government. Offsets may occur against tax refund payments, salary payments, military and civilian retirement pay, contractor payments, grant payments, tax overpayments, benefit payments, travel reimbursements and other Federal and state payments.

An agency may offset a debtor's payments using two methods – *centralized offset* via the Treasury Offset Program (TOP) operated by Fiscal Service and *non-centralized offset*, that is, ad hoc offset on a case-by-case basis. An agency should use TOP to effectuate offset except in certain limited circumstances as explained on page 6-41.

Centralized Offset Through TOP

In 1996, the DCIA required agencies to submit eligible delinquent debts to Fiscal Service for administrative offset once the debt was delinquent 180 days or more. In 2014, the Digital Accountability and Transparency Act amended the DCIA to require agencies to notify Fiscal Service of all debts for administrative offset at 120 days delinquent.

Agencies are encouraged to submit delinquent debts to TOP as early as 60 days after the required demand letter is sent to the debtor. (See the Demand Letter Checklist at **Appendix 8.**) For an agency that refers its debts to Fiscal Service's Cross-Servicing Program, Fiscal Service will submit the referred debts to TOP on behalf of the referring agency.

The information in this Chapter about TOP applies only to the offset of Federal and state payments to collect delinquent non-tax debts owed to the United States. The collection through TOP of Federal tax debts and state debts, such as delinquent child support and state income tax debts, is not discussed in this Guide.

How TOP Works

TOP allows agencies to submit debts to one centralized location for offset of all eligible Federal and state payments. Creditor agencies submit information about delinquent debts to Fiscal Service, which maintains the information in its delinquent debtor database. Federal payment agencies prepare and certify payment vouchers to Fiscal Service and other Federal disbursing agencies (such as the Department of Defense (DOD) or the United States Postal Service (USPS)). The payment vouchers contain information about the payment, including the name and taxpayer identification number (TIN) of the recipient. Before an eligible Federal payment is disbursed to a payee, Fiscal Service compares the payment information with debtor information in Fiscal Service's delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing agency offsets the payment, in whole or part, to satisfy the debt, to the extent allowed by law.
In addition to offsetting eligible Federal payments, Fiscal Service has entered into reciprocal agreements with states, whereby states agree to offset certain payments to payees who owe delinquent nontax debts to the United States. In return, TOP offsets federal vendor and other non-tax payments to payees who owe delinquent debts to state agencies.

Fiscal Service notifies the debtor, the creditor agency, and the payment agency when an offset occurs. The debtor is instructed to contact the creditor agency to resolve any issues related to the offset. An agency should respond promptly to a debtor's questions related to TOP collections.

Fiscal Service transmits amounts collected through offset to the appropriate creditor agencies after deducting the fees that Fiscal Service charges the creditor agencies to cover the cost of conducting the offset through TOP. The creditor agency should add such fees to the amount of debt to the extent allowed by law. Fiscal Service maintains information about a delinquent debt in the

TOP delinquent debtor database and continues to offset eligible Federal payments until the debt is paid in full or the creditor agency suspends or ceases debt collection or offset activity for the debt.

Debts Eligible for TOP. A debt is eligible for referral to TOP if the debt is delinquent and legally enforceable. A debt is considered *legally enforceable* for TOP purposes if there has been a final agency determination that the debt is due and there are no legal bars to collection through the offset of Federal payments.

Exceptions to Referral Requirements. A debt is not eligible for referral to TOP if the debt is:

- owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in a bankruptcy proceeding;
- owed by a Federal agency;
- the subject of an administrative appeal, until the appeal is concluded and the amount of the debt is fixed;
- less than $25 (including interest, penalties and administrative costs); or

An agency should not refer directly to TOP those debts that have been referred to Fiscal Service or another Treasury-designated debt collection center for cross-servicing, or to DOJ for litigation. Fiscal Service, debt collection centers, and DOJ are responsible for submitting these referred debts to TOP on behalf of the creditor agency. Debts that are not referred to Fiscal Service for cross-servicing may be eligible for TOP. If an agency does not submit its debts to Fiscal Service for cross- servicing, agency personnel may contact Fiscal Service's Treasury Offset Program Division at (202) 874-6810 for information on how an agency submits debts directly to TOP.

An agency should carefully review its portfolio of debts that are not sent to Fiscal Service for cross-servicing and submit all TOP-eligible debts for offset. Agency personnel should contact their agency's legal counsel for questions regarding whether a debt is eligible for referral to TOP.

Due Process Requirements. Before submitting a debt to TOP, an agency must provide due process to the debtor(s) owing the debt. If not already completed through the demand letter process, an agency must send notice to the debtor, at the debtor's most current address known to the agency, at least 60 days in advance of referring the account to TOP. For information on how to obtain a current address, see "Locating the Debtor" on page 6-71.

The Demand Letter Checklist at **Appendix 8** includes the information that must be sent to the debtor prior to submitting a debt to TOP. For each debt submitted to Fiscal Service for TOP, an agency is required to certify that the debt is eligible for TOP and all pre-requisites to collection through offset have been met.

Types of Payments Eligible for Offset Under TOP. All Federal payments may be offset under TOP except as prohibited by law or exempted by action of Treasury. This includes payments disbursed by Fiscal Service, DOD, USPS, and other government disbursing agencies. The following types of Federal payments are eligible for offset under TOP:

- Internal Revenue Service tax refunds;
- retirement payments issued by the Office of Personnel Management (OPM);
- vendor payments;
- Federal salary payments;
- travel advances and reimbursements;
- certain Federal benefit payments, such as Social Security retirement and disability payments;
- grant payments; and
- active military and military retirement payments.

For some types of payments, the government may not offset the entire payment. Limitations apply to OPM retirement payments

(25%); Federal salary payments (15% of disposable pay); and social security, railroad retirement, and black lung benefit payments (15%). In addition, a debtor's social security, railroad retirement, or black lung benefit payment may not be reduced to less than $750 per month after offset. These limitations apply to offset only. When a debtor's payment is subject to reduction via other legal processes to collect debts, such as tax levy or garnishment, the debtor's payment could be reduced by more than the limitation described here.

In addition, Fiscal Service has entered into reciprocal agreements with states that agree to offset certain payments to payees who owe delinquent nontax debts to the United States. The amount of the offset is dependent on the state's rules.

Payments Exempt from Offset Under TOP. Federal law prohibits the offset of certain types of Federal payments. Additionally, Treasury has granted requests by Federal payment agencies to exempt from TOP other types of payments. A complete list of payments that are exempt from offset under TOP is available on the Fiscal Service website at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_manuals.htm#topexempt*.

Special Provisions for Certain Recurring Payments. For certain types of Federal recurring payments, such as monthly retirement or social security benefit payments, TOP sends the debtor at least one warning notice before the offset occurs. The debtor is advised to contact the creditor agency to resolve the debt or to discuss alternatives to offset. An agency should be prepared to respond promptly to a debtor's request to discuss alternatives to offset, especially in those cases where the debtor presents evidence of financial hardship.

Offset of Federal Salary Payments Under TOP. Before Federal salary payments may be offset, the agency must send to the Federal employee/debtor, at least 30 days in advance, notice in writing of the intent of the agency to collect the debt by offsetting the debtor's salary payments. The written notice must provide opportunities for the debtor to (1) inspect the relevant records, (2) enter into a written repayment agreement, and (3) to have an administrative hearing concerning the existence and amount of the debt and/or terms of the

repayment schedule. Additionally, if the debtor requests a hearing, the hearing official must be someone who is not under the control of the creditor agency.

An agency may opt to temporarily exclude a debt from Federal salary offset if the agency has not completed the special due process pre-requisites for Federal employees. If, through TOP, the agency learns that the debtor is a Federal employee, the agency must provide the necessary due process immediately in order to certify the debt as eligible for Federal salary offset through TOP as soon as possible.

TOP offsets of Federal salary payments are limited to 15% of a debtor's disposable pay (as defined in 5 CFR Part 550.1103). For judgment debts, travel advance recoveries, and other debts that may be collected by offsetting more than 15% of a debtor's Federal salary, the creditor agency must initiate non-centralized administrative offset, discussed below, by directly contacting the debtor's employing Federal agency.

TOP Fees: Fiscal Service charges fees to cover its costs for collections through TOP. The fee is set annually and is collected from amounts offset. The creditor agency should add this fee to the debt as an administrative cost to the extent allowed by law.

Computer Matching and Privacy Protection Act of 1988. The Computer Matching and Privacy Protection Act of 1988 regulates certain matching activities of the Federal government where the intent of the match is to take an adverse action against an individual. The Act does not apply to tax refund offsets. In addition, the Act's requirements to enter into matching agreements and to provide post-match notice and verification to the debtor have been waived for debts properly certified to TOP for offset purposes.

Non-Centralized Administrative Offset

In cases where offset through TOP is not available or appropriate, an agency may request that another agency offset a Federal payment to satisfy a debt. This type of *ad hoc* case-by-case offset is known as "non-centralized administrative offset." Another type of non-centralized administrative offset occurs when the payment agency is the same as the creditor agency, referred to as "internal offset."

Non-centralized offset can be used for internal offset, or when the payment to be offset is not processed through TOP or the creditor agency is unable to meet the 60-day notice requirement for debt submission to TOP (see Due Process Requirements, on page 6-36 but is otherwise able to comply with the due process pre- requisites for offset (see "Minimum Due Process Requirements" on page 6-8). Agencies should be aware that some payment types that have been exempted from TOP by Treasury may be eligible for non-centralized offset.

In order to use non-centralized offset, an agency must identify the payment that can be offset and the agency responsible for making the payment. Financial statements and copies of tax returns submitted by the debtor or credit reports may be a source of information about any relationship(s) between the debtor and other Federal agencies, which may help identify payments available for offset. For example, the creditor agency may learn that the debtor receives regular grant payments (that are not processed through TOP) from another agency. If the payment agency is not the same as the creditor agency, then the creditor agency should contact the payment agency directly and request the offset. Prior to requesting the offset, the creditor agency must certify to the payment agency that all due process pre-requisites have been met except as otherwise allowed by law. This means that the creditor agency has sent the debtor advance notice of the nature and amount of the debt to be collected and its intent to administratively offset payments to collect the debt. In addition, the notice must give the debtor the opportunity to:

- make voluntary repayment;
- inspect and copy records related to the debt;
- request a review of the debt; and
- enter into a repayment agreement.

Prior notice and an opportunity for a review may be omitted, as authorized under an agency's regulations, in cases when the agency first learns of the existence of a debt owed by a debtor when there is insufficient time before payment would otherwise be made to provide notice and opportunity to the debtor. When omitted prior to

offset, the agency shall give the debtor notice and an opportunity for review as soon as practicable. The agency is required to promptly refund any money ultimately found not to have been owed to the agency.

Another method of identifying payments available for offset is to conduct computer matches (outside of TOP) to determine if there is a payment available for offset. Before conducting such matches, an agency should consult with its legal counsel to determine if the computer matches contemplated are subject to the requirements of the Computer Matching and Privacy Protection Act.

When evaluating the feasibility of pursuing non-centralized administrative offset, an agency may also take into consideration a debtor's financial condition and whether offsetting the payment would create significant financial hardship for the debtor and his/her family. The payment agency should honor the request of the creditor agency for offset or, at a minimum, put a hold on funds if feasible.

Types of Non-Centralized Administrative Offset

Examples of circumstances for which non-centralized offset would be appropriate include internal offset and the offset of contractor payments when the creditor agency is the same as the payment agency; collection of travel advances and training expenses through a Federal employee's pay, retirement or other amounts due; offset of future retirement pay; and offset of Federal salary pay when offset is not available through TOP.

Internal Offsets. An internal offset occurs where an agency that is owed a delinquent debt is also making one or more payments to its debtor and the agency determines that the payments can be offset to collect the debt. Internal offsets are most effective when the creditor agency routinely offsets its own payments made to its own debtors early in the collection process. An agency should incorporate internal offset in its debt collection strategy and provide notice of intent to collect the debt by offset at the earliest possible time.

Contractor Payments. An agency cannot offset a contract payment if the contract is being disputed under the Contract Disputes Act (CDA) or Federal Acquisition Regulations (FAR).

Once the dispute is settled under the CDA or FAR, then offset can be initiated against any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contract payments to a contractor involved in a CDA adjudication. Recoupment is a special type of administrative offset, where, within the terms of a given contractual relationship, the agency can offset amounts it is owed against payments due the contractor for services rendered.

Collection of Travel Advances and Training Expenses from Federal Employees. An agency should follow administrative offset notification requirements when attempting the collection of delinquent travel advances and training expenses -- not those associated with Federal employee salary offset. Once these notification procedures have been followed, the agency has the authority to withhold all or part of an employee/debtor's salary, retirement benefits, or any other amounts due the employee, including lump sum payments, to recover amounts owed. There are no statutory or regulatory limitations on the amount that can be withheld or offset. The agency should, in fact, withhold or offset as much as necessary to fully liquidate or satisfy the amount of the debt.

Retirement Pay. Generally, administrative offset against a debtor's current civilian retirement pay [whether Civil Service Retirement Fund (CSRS) or the Federal Employees Retirement System (FERS)] is conducted through TOP. If the agency knows that the debtor will be receiving a retirement payment that is not available for offset under TOP, the agency must notify the Office of Personnel Management (OPM) of its intention to use its administrative offset authority to collect on the delinquent debt. OPM will respond by "flagging" the account and will initiate offset when the debtor requests retirement pay or the release of the retirement funds (if the debtor is departing Federal service), regardless of the age of the debt itself. If the request for offset is outstanding for more than one year at the time the debtor files for retirement or requests the funds, then OPM will contact the agency to determine if the debt is still outstanding and the offset still valid, allowing enough time for the agency to contact the debtor to try to resolve the debt. In the case of lump sum payments, OPM will offset up to 100% of the payment amount; if an annuity payment is involved and the debt is too large to collect in one offset, OPM will offset the dollar amount or

percentage requested by the agency, up to 50% of the amount of the payment. Agencies should use SF 2805, "Request for Recovery of a Debt Due the United States," in making requests to OPM for these types of offsets (see CSRS and FERS Handbook, Chapter 4 - Debt Collection, available at *www.opm.gov*).

For offset against military retirement pay, the agency must contact each military service's finance and accounting center.

Federal Employee Salary Offset. Federal employee salary offset should be conducted through TOP, except in three circumstances: (1) where the debtor is employed at the creditor agency, (2) salary offset cannot be accomplished through TOP because the debtor's salary payments are not processed through TOP, or (3) the amount of offset can legally exceed 15% of the employee/debtor's disposable pay. Only in these limited circumstances should an agency use non-centralized offset of the debtor's Federal salary to recover delinquent debts owed by current Federal employees. The agency must comply with the provisions of the Privacy Act, as amended, and OMB guidelines on implementing the Privacy Act, as well as the salary offset regulations issued by OPM.

If the agency does not know if the debtor is a Federal employee or does not participate in TOP, the agency can identify delinquent debtors who are Federal employees by matching its delinquent debtor files with current and retired employee files of OPM, the DOD's Manpower Data Center (DMDC), the USPS, or other control sources. Once a debtor is identified on such a file, the agency must:

- provide due process notification to the debtor and request voluntary repayment of the debt;
- if the debt is still unresolved, contact the agency employing the debtor to arrange a salary offset, and certify the debt as being delinquent; or
- contact OPM or the DOD for offset against retirement pay.

Under the following circumstances, the agency does not need to provide a Federal employee with notice and an opportunity for a hearing prior to offset of Federal pay:

- any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

- a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and amount of the adjustment and point of contact for such adjustment; or

- any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

As with administrative offset cases, an agency must honor the request of another agency to arrange for a salary offset. As much as 15% of the debtor's disposable pay can be collected each pay period through offset until the full amount of the debt is repaid. If the agency has obtained a judgment against the employee, it may request the employing agency to offset up to 25% of the debtor's disposable salary and no hearings are required. However, in the case of military employees, even if a judgment has been obtained, the amount of the offset cannot exceed 15%. *At no time can the employing agency unilaterally change or adjust the amount being withheld, without the consent of the creditor agency.* The employing agency must remit the amount offset within each pay period; it cannot accumulate offset amounts until the entire debt is collected.

Reporting Delinquent Debts to Credit Bureaus

Reporting delinquent debts to credit bureaus is an essential part of an agency's debt collection efforts. The DCIA requires Federal agencies to report to credit bureaus information on all delinquent

Federal consumer debts. Federal agencies have been required, as a matter of policy, to report all delinquent commercial debts since September 1983. This requirement is incorporated into OMB Circular No. A-129 and the FCCS.

Specific requirements that govern the reporting of consumer and commercial debts to credit bureaus are set forth in the "Guide to the Federal Credit Bureau Program," issued by Fiscal Service and available on the Fiscal Service website at http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/fedcreditbureauguide.pdf. An agency should review the guide for detailed information on reporting current and delinquent debts to credit bureaus. The guide provides information on topics such as:

- distinction between the reporting of consumer and commercial debts;
- legal requirements;
- handling disputed information;
- agreements known as Memoranda of Understanding (MOUs) with credit bureaus;
- reporting formats for debts, including the use of Metro 2 format and frequency of reporting;
- credit bureau reporting on consumer debts when the debts change from "current" to "delinquent" status; and
- reporting of debts being collected by Fiscal Service through cross- servicing.

NOTE: An agency that elects to use expedited referral to cross-servicing, i.e., referral of debts within 60 days of the date of delinquency, does not need to report its debts to credit bureaus because Fiscal Service will report the debts on the agency's behalf. See **Appendix 5** for a debt collection strategy that includes expedited referral to Fiscal Service.

The Demand Letter Checklist at **Appendix 8** includes the information that must be sent to the debtor prior to reporting a consumer debt to a credit bureau.

Private Collection Agencies

In its efforts to recover a delinquent debt, an agency may use the services of private collection agencies (PCAs). As mandated by the DCIA, Fiscal Service maintains a list of PCAs eligible for referral of debts from Fiscal Service. In order to minimize the government's collections costs and avoid duplication of efforts, an agency should, whenever possible, refer debts to Fiscal Service for cross-servicing in order to obtain the services of a PCA. Fiscal Service monitors the performance of its PCAs in accordance with the terms of a task order for PCA services under a contract administered through a General Services Administration (GSA) Federal Supply Schedule (FSS). The terms of the task order reward better performing PCAs (based on collections and debt resolutions) with additional referrals and bonus monies.

Debts that are referred to Fiscal Service for cross-servicing will be referred to a PCA on Fiscal Service's list. When using PCAs on Fiscal Service's list, funds collected by the PCAs are remitted to the creditor agency by Fiscal Service with supporting detailed debt information. Under the terms of the Fiscal Service task order, PCAs charge fees, which are paid out of amounts collected. The creditor agency retains the final authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer accounts to DOJ for litigation. Agencies are strongly encouraged to delegate this authority to Fiscal Service, as appropriate. Fiscal Service provides guidance and standards for PCAs to follow when negotiating acceptable repayment plans and compromise agreements with debtors based on creditor agency parameters provided to Fiscal Service.

An agency may refer debt that is less than 180 days delinquent to a PCA pursuant to a contract between the creditor agency and the contractor, as authorized by law. Further, in some cases, a creditor agency may not be able to use the services of PCAs through Fiscal Service because such services are materially insufficient to collect the agency's debts. For example, if an agency has unique debt

collection tools, the agency may justify establishing its own contract with PCAs for assistance in utilizing those tools. A creditor agency that independently contracts for PCA services should use GSA's FSS contract to obtain collection services. An agency should ensure that the following terms are required under any PCA contract:

- The contract should allow the agency to contract with a number of PCAs who receive referrals based on performance, unless this is not cost-effective or not in the best interest of the government.

- The referral period for sending debts to any single PCA should not exceed 180 days and must not interfere with the statutory requirement to refer debts to Fiscal Service for cross- servicing unless the debts are exempt from such requirement. Unless exempt, an agency should consider that all debts at a PCA that are not subject to an acceptable repayment arrangement must be referred to Fiscal Service for cross- servicing no later than 30 days after the debt is eligible for referral (generally at 180 days delinquent or less, unless the agency relies on Fiscal Service to submit debts for administrative offset, in which case, the debt must be referred no later than 120 days).

- The contract must include provisions to clearly indicate that the collection efforts of PCAs are governed by the Privacy Act and Federal and state laws related to debt collection practices, including, but not limited to, the Fair Debt Collection Practices Act and the FCCS (as applicable to the agency).

- The contract should include controls to ensure that debtors are treated fairly, such as periodic monitoring of contractor performance, investigation and resolution of complaints, and a requirement that the PCA submit to periodic audits of its work.

- The agency must retain the final authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer accounts to DOJ for litigation (it should be clear that the PCA is not authorized to retain

legal counsel to represent the United States in any litigation).

- The agency should establish procedures to monitor the performance of the PCAs it uses and develop an information tracking system to account for cases referred.

Administrative Wage Garnishment

In the absence of extenuating circumstances, if a debtor is employed, the debtor should be repaying his or her debt to the government. The DCIA (as codified at 31 U.S.C. § 3720D) authorizes an agency to collect a delinquent debt by administrative garnishment of the pay of a delinquent debtor who is employed by any organization, business, state or local government, or other entity other than a Federal agency. See pages 6-38 and 6-42 for procedures on how to offset the salary of a Federal employee to collect a debt. Fiscal Service has issued regulations governing the administrative wage garnishment process (see 31 CFR 285.11).

Administrative wage garnishment is a process whereby a Federal agency issues a wage garnishment order to a delinquent debtor's non-Federal employer. No court order is required. The employer withholds amounts from the employee's wages in compliance with the order and pays those amounts to the Federal creditor agency to which the employee owes a debt.

Requirements for Agency Use of Administrative Wage Garnishment. Generally, an agency should use the services of Fiscal Service, through its Cross-Servicing Program, to implement administrative wage garnishment proceedings. An agency may, however, implement administrative wage garnishment directly if the agency has the appropriate procedures in place.

Before using administrative wage garnishment, an agency must do the following:

- adopt hearing procedures as described in, or consistent with, the procedures described in Fiscal Service's wage garnishment regulations; and

- authorize Fiscal Service to implement administrative wage garnishment for the agency through the Cross-Servicing Program.

Notice Requirements. For debts referred to Fiscal Service for cross- servicing, Fiscal Service or its PCA will send to a debtor, on behalf of the creditor agency, proper notice of the government's intent to collect a debt through deductions of his or her pay. Otherwise, at least 30 days before issuing a wage garnishment order, an agency must send written notice to the debtor, at the debtor's most current address known to the agency, informing the debtor of:

- the nature and amount of the debt;
- the intent of the agency to collect the debt through deductions of pay; and
- an explanation of the debtor's rights.

The debtor's rights include an opportunity to:

- inspect and copy the agency's records pertaining to the debt;
- enter into a repayment agreement acceptable to the agency; and
- receive a hearing concerning the existence or amount of the debt and the terms of the repayment schedule.

Hearing Requirements. An agency's procedures for administrative wage garnishment hearings must, at a minimum, provide for the following:

- If a request for a hearing is received within 15 business days following the mailing of the written notice to the debtor, a hearing must be held prior to the issuance of a wage garnishment order. If a request for a hearing is received after 15 business days, a hearing must still be held; however,

the garnishment order may be issued before the hearing is concluded;

- The hearing official may be any qualified person, as determined by the creditor agency, who will maintain an official summary record of the hearing. There is no requirement that the hearing official be an administrative law judge or someone outside the agency;

- Oral hearings are not required unless the matter cannot be resolved based on written evidence; and

- A final written decision on the hearing must be issued within 60 days of the date of receipt of the request. If a wage garnishment order has been issued and a final decision has not been issued by the 61st day, the agency must notify the employer to suspend collection on that order. An agency may begin collecting on that garnishment order again only after a final written decision in the agency's favor is mailed to the debtor.

Administrative Wage Garnishment Form (SF-329). An authorized agency official issues an administrative wage garnishment order using a standard form known as Administrative Wage Garnishment Form SF-329, which may be obtained through Fiscal Service's web site at *http://fiscal.treasury.gov/fsservices/gov/debtColl/rsrcsTools/debt_forms.htm*. The form consists of the following four parts:

- Letter to Employer & Important Notice to Employer (SF-329A) which is sent to the employer with the garnishment order to explain why a garnishment order is being issued;

- Wage Garnishment Order (SF-329B) which describes the terms of the garnishment and the amount the employer must garnish;

- Wage Garnishment Worksheet (SF-329C) which assists the employer in calculating the amount to be garnished; and

- Employer Certification (SF-329D) which is completed and returned to the agency by the employer with information related to the garnishment.

After the wage garnishment order is completed and signed by an authorized agency official, all four parts of form SF-329 should be sent to the debtor's employer. For debts referred to Fiscal Service for cross- servicing, Fiscal Service will sign the wage garnishment order on behalf of the creditor agency. Fiscal Service or its private collection contractor will then send the order to the employer and monitor the employer's compliance with the order.

Amount of Garnishment. Generally, an agency may garnish up to 15% of a debtor's disposable pay. "Disposable pay" is the debtor's net pay after deductions for taxes and health insurance premiums as described in the Wage Garnishment Worksheet (SF-329C). For example, if the gross amount paid to an employee is $500 per week, and taxes and insurance deductions total $150 per week, the employee's disposable pay is $350, and the amount of the garnishment should not exceed $52.50 (15% of $350). The employer is responsible for calculating the amount of the garnishment, and may use the Wage Garnishment Worksheet to calculate the amount available for garnishment. Below is an example of how the amount of garnishment would be calculated using the Wage Garnishment Worksheet (see the following page).

WAGE GARNISHMENT WORKSHEET

Pay Period Frequency (Select One):

☐ Weekly or less ☐ Every other week ☐ Two times per month ☐ Monthly ☐ Other (Specify:_____)

DISPOSABLE PAY COMPUTATION

1.	Gross Amount paid to Employee		500.00
2.	Amount Withheld:		
	a. Federal Income tax	75.00	
	b. F.I.C.A. (Social Security)	20.00	
	c. Medicare	5.00	
	d. State tax (including income tax, unemployment, disability)	20.00	
	e. City/Local tax		
	f. Health insurance premiums	30.00	
	g. Involuntary retirement or pension plan payments		
3.	Total allowable deductions [Add lines a - g]		150.00
4.	**DISPOSABLE PAY** [Subtract line 3 from line 1]		350.00

WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

5.	25% of Disposable Pay [Multiply line 4 by .25]	
6.	Total Amounts Withheld Under **Other Wage Withholding** Orders with Priority. See section 2(b) of the Order.	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(b)(1) of the Order by line 4. (The percentage from section 2(b)(1) of the Order may not exceed 15%). Example: If the percentage from section 2(b)(1) of the Order is 15%, multiply .15 by line 4.	52.50
9.	Amount equivalent to 30 times the Fed. min. wage ($7.25) If the employee is paid — Line 9 is Weekly or less — 217.50 Every other week — 435.00 If the employee is paid — Line 9 is 2x per month — 471.45 Monthly — 942.50	217.50
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	132.50
11.	**WAGE GARNISHMENT AMOUNT** Line 7, 8, or 10, whichever amount is the smallest	52.50

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An agency may issue multiple garnishment orders for the same debtor, but the total may not exceed 15% of the debtor's disposable pay.

Limitations on Amount of Garnishment. If a debtor owes multiple debts and the debtor's pay is already subject to other garnishments, the total amount garnished, including other garnishment orders, may not exceed 25% of the debtor's disposable pay. For example, if the pay of the debtor in the example above was subject to a prior withholding order of 15%, then the amount available for garnishment would be limited to $35 (10% of the debtor's disposable pay). An example of how this would be calculated within the Wage Garnishment Worksheet is detailed below.

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WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

5.	25% of Disposable Pay [Multiply line 4 by .25]	87.50
6.	Total Amounts Withheld Under Other Wage Withholding Orders with Priority. See section 2(b) of the Order.	52.50
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	35.00

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The amount to be garnished may be limited further if withholding 15% of the debtor's disposable pay would reduce the debtor's pay to an amount less than $217.50 per week (30 times the minimum wage of $7.25 per hour). For example, if the disposable pay of a debtor is $220.00 per week, deduction of 15% ($33) would leave the debtor with $187 per week. Since the debtor's pay cannot be reduced to less than $217.50 per week, the garnishment amount would be limited to the amount by which the debtor's pay exceed the minimum, or $2.50. This would be calculated on the Wage Garnishment Worksheet as follows:

4.			220.00

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9.	Amount equivalent to 30 times the Fed. min. wage ($7.25) If the employee is paid / Line 9 is Weekly or less / 217.50 Every other week / 435.00 If the employee is paid / Line 9 is 2x per month / 471.45 Monthly / 942.50	217.50
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	2.50
11.	**WAGE GARNISHMENT AMOUNT** Line 7, 8, or 10, whichever amount is the smallest	2.50

Assuming wage garnishment is cost-effective and available, this highly effective collection tool should be used whenever an employed debtor fails to meet his or her obligations to the government.

Financial Hardship. At any time during the garnishment process, a debtor may ask the creditor agency for a review of the amount being garnished based on a claim of financial hardship due to materially changed circumstances. If an agency finds that a debtor has properly documented financial hardship, the agency should downwardly adjust the amount of garnishment, or terminate or suspend collection through administrative wage garnishment, as appropriate.

Eligibility for Administrative Wage Garnishment. An agency may not garnish a debtor's wages if:

- The debtor earns less than 30 times the Federal minimum wage. Based on a minimum wage of $7.25 per hour, the wages of a debtor who earns less than $217.50 per week are not eligible for garnishment. Information about a debtor's wages may not be available until after the garnishment order is served on the employer. The employer would inform the agency that the debtor earns less than the minimum required for garnishment;

- The debtor is in a repayment agreement with the agency and is meeting his or her obligations under the agreement; or

- The agency knows that the debtor has not been working in his or her current job for at least 12 months and the debtor was involuntarily separated from his or her prior job. The debtor is required to inform the agency that he or she is ineligible for wage garnishment based on this requirement.

Termination of the Wage Garnishment Order. The agency must terminate the wage garnishment order when:

- the debt is paid in full, or otherwise resolved through compromise or other agreement with the agency;
- the debtor files for bankruptcy and the automatic stay is in effect, or the agency learns that the debt has been discharged in bankruptcy;
- the agency, a hearing official, judge or other appropriate adjudicator determines that the debt is not valid; or
- the agency otherwise determines that the wage garnishment order should be terminated due to the debtor's financial hardship or other appropriate reason.

The agency must send a letter or use Form 329E, Notice of Termination of Wage Garnishment, to inform the employer that the garnishment is terminated and that all withholdings from the employee's pay should stop.

Liquidating Collateral

For a secured debt, an agency should take action to liquidate the collateral, in accordance, with its specific statutory authority, when it becomes apparent that a debtor will not or cannot repay the amount owed and collateral liquidation is the best method for protecting the government's financial interests. The agency must ensure that the account was properly serviced prior to deciding to proceed with foreclosure or voluntary conveyance of the property; that is, the debtor was provided reasonable opportunity to cure the delinquency, including forbearance and rescheduling, in accordance with agency-specific statutes and regulations.

As a general rule, an agency should avoid taking title to the collateral property as part of its liquidation strategy; rather, an agency's goal should be to force a sale of the collateral to a third party so that the sales proceeds may be applied to the debt. However, if taking title to the collateral property would result in a better collection result or would further an agency's program purpose(s), the agency may seek to secure title to a collateralized property through voluntary conveyance by the debtor or enforced foreclosure proceedings, as it determines best in any given situation.

If an agency obtains title to a property, the agency is responsible for maintaining and insuring the property from the time it assumes title to the property until final property disposition. Each agency should establish procedures for the acquisition, management, and disposition of property acquired as a result of direct or guaranteed loan defaults.

If the amount of the debt is not fully satisfied by either the voluntary conveyance of the collateral or its liquidation, then the agency may decide to obtain a deficiency judgment or otherwise continue to pursue collection on the unrecovered portion of the debt, using the appropriate collection techniques, such as cross- servicing. Under certain circumstances, the agency may alternatively consider a debt "compromised" for the market value of the collateral, and report the unrecovered amount to the IRS as potential income to the debtor on Form 1099-C if required by IRS (see Chapter 7, Termination of Collection Action, Write-off and Close-out/Cancellation of Indebtedness). It is an agency's responsibility to liquidate any collateral, when appropriate, prior to referral of the debt to Fiscal Service for cross-servicing.

Bankruptcy

Generally, when a debtor files for bankruptcy protection, an agency is prohibited from pursuing further collection action while the bankruptcy is pending because of the *automatic stay.* An agency or individual found to have violated the automatic stay could be held in contempt by the bankruptcy court. The automatic stay is effective as of the date of the filing of a bankruptcy. In most cases, an agency will not be able to recover funds from a debtor in bankruptcy. However, there are cases in which funds may be available in the debtor's estate to pay some of the debtor's debts. Therefore, it is important for an agency to file a **Proof of Claim** form when allowed to do so by the bankruptcy court in order to ensure that the agency will receive its share of any proceeds available to pay creditors from the bankruptcy estate. The appropriate Proof of Claim form may be found at *www.uscourts.gov/bankform.*

An agency should determine whether other steps must be taken in a bankruptcy matter to protect the agency's position and to comply with the law. An agency probably will have to return funds inadvertently collected while the automatic stay is in effect, but agency counsel should be consulted for specific legal advice. In some cases, an agency may ask the bankruptcy court for "relief from the automatic stay," that is, permission to pursue collection. An agency must obtain relief from the automatic stay to pursue collection on all types of debts, including "non-dischargeable debts," that is, those debts that survive bankruptcy. An agency must also seek relief from the automatic stay in order to retain funds upon which the agency places a temporary freeze. See "Litigation" below for information on how to refer a matter to DOJ, which is responsible for legal representation of agencies before U.S. Bankruptcy Courts.

The debtor is released, or **discharged**, from having to repay most types of debts after the bankruptcy process is completed, unless the bankruptcy case is dismissed. In certain types of bankruptcy cases, however, the debtor is obligated to pay creditors according to the provisions of a bankruptcy plan before being discharged. In most cases, after a debtor is discharged in bankruptcy, an agency is forever precluded from pursuing collecting on most types of debts incurred

by the debtor prior to filing for bankruptcy protection. Agency personnel should consult with agency counsel to determine whether the debtor's debts are dischargeable in bankruptcy, whether the agency should take any action to protect its right to recover funds from a debtor in bankruptcy, and for other information concerning bankruptcy laws and procedures.

Litigation

Unless an agency has specific statutory authority to litigate its own debts, it must refer debts to DOJ for litigation, including bankruptcy litigation. Debts for which the principal amount is $1,000,000 or less must be referred through DOJ's Nationwide Central Intake Facility (NCIF):

DOJ/NCIF
Attn: Case Processing
1110 Bonifant Street, Suite 220
Silver Spring, MD 20910-3358.

The NCIF tracks, by agency, the number and dollar value of referred debts, their age at referral, and case rejection rates. The NCIF will acknowledge receipt of debts referred by the agencies, route the debts to the appropriate U.S. Attorney or private counsel for litigation, and provide the referring agency with contact information for the office receiving the referral. The NCIF will return incomplete referrals with a letter specifying the reason for the declination. Debts greater than $1,000,000 should be referred directly to the Civil Division at DOJ:

U.S. Department of Justice
Civil Division
Attn: Corporate/Financial
Litigation Branch
P.O. Box 875
Ben Franklin Station
Washington, DC 20044

The agency must make every effort to refer a debt within one year of the date of delinquency, and only in limited circumstances should the agency delay referral to a time when less than one year remains on the applicable statute of limitations for litigation. Fiscal Service will refer to DOJ for litigation, debts that have been referred to Fiscal Service for cross-servicing, when appropriate. When referring a debt to DOJ for litigation, an agency must provide a fully completed Claims Collection Litigation Report (CCLR). The CCLR instructions can be found at:
http://www.justice.gov/sites/default/files/jmd/pages/attachments/2014/12/12/cclr_instructions.pdf
and the form at:
http://www.justice.gov/sites/default/files/jmd/legacy/2014/05/26/cclr-form-fillable.pdf.

The CCLR should include the following:

- **Copies, not originals, of the relevant account information**. Originals may be requested by DOJ at a later date so the agency must be prepared to produce them promptly;

- **A fully completed Certificate of Indebtedness, submitted as part of the CCLR package**. The Certificate of Indebtedness must be an original document, not a copy, and must be signed by an authorized official of the agency;

- **A checklist or report of prior collection actions taken.** If the agency has not taken an appropriate collection action, then the checklist or report must explain why;

- **The current address of the debtor**. This may be obtained through various types of research (see page 6-71); and

- **Credit data for the debtor**. The data must have been obtained within the past 6 months and can be in any of the following formats:

  - A credit report. The credit report may be obtained through GSA's Federal Supply Schedule for Business Information Services (see page 6-71);

- an investigative report stating the debtor's assets, liabilities, income, and expenses;

- an individual's financial statement indicating assets, liabilities, income, and expenses. This statement must be signed by the debtor and certified as correct under penalty of perjury; and/or

- an audited balance sheet for a corporate debtor.

Credit data may be omitted only if

- the referring agency

  - has a surety bond sufficient in amount to satisfy the full amount of the debt;

  - seeks liquidation of the collateral by means of judicial foreclosure, but does not intend to obtain a deficiency judgment;

  - can document that the debtor is in receivership or bankruptcy; or

  - wants DOJ to obtain a judgment against a debtor and return the case to the agency for lien enforcement;

- the value of collateral in a forced sale is sufficient to satisfy the full amount of the debt. If the agency has any doubt whether the value of the collateral covers the outstanding amount of the debt, including all late charges assessed, then it must provide credit data;

- the outstanding amount of the debt is fully covered by insurance and the agency can provide all pertinent information, including name and address, on the insurer; and/or

- the debt is owed by an entity for which credit data are unavailable. For example: the debt is owed by a State Government.

The agency must provide the equivalent of the above information when transmitting accounts through an automated system. **The failure to provide adequate information, as called for in the CCLR, may result in the return of the case from DOJ**. You may contact DOJ to discuss the information available if you are unsure whether it meets these standards.

Further agency collection actions must cease at the point an account is referred for litigation. DOJ will submit an agency's eligible debts to TOP on behalf of the creditor agency. The agency should not do so once the account is referred for litigation.

Fraud/False Claims. In case of fraud, the account should be referred immediately to the Fraud Section of the Civil Division at DOJ for action. It is the responsibility of the party who first learns of the fraud to notify DOJ so that such cases can be acted on promptly. If DOJ advises the agency that it does not intend to pursue fraud or False Claims Act litigation, the agency should pursue collection of the debt just as it would any other debt.

Statute of Limitations. Federal law limits the time period within which an agency may file a lawsuit to collect a debt. If the "statute of limitations" has expired, the agency is barred from initiating litigation to collect its debt; however, other debt collection tools, such as administrative offset and referral to a private collection agency, may be available. Generally, a lawsuit to collect a debt based on a contract must be initiated within *six years* after the date of delinquency (see page 6-4 for the definition of the "date of delinquency"). A lawsuit for money damages based on property damage or personal injury caused by the debtor must be initiated within *three years* after the date of the damage or injury. Other statutes of limitations may apply to a particular type of debt being collected. Therefore, referrals to DOJ for collection through litigation or for termination of collection action should be made timely, that is, at least one year before the applicable statute of limitations expires. Also, it is extremely important that agency personnel consult with agency counsel to determine the statute of limitations applicable to the debts being collected by the agency.

Further, agency counsel should be consulted to determine whether the statute of limitations has been extended in a particular case

based on the debtor's written acknowledgement of the debt, a voluntary payment made by the debtor, the debtor having fled the country, the fact that the agency did not know and reasonably could not have known about its claim when it first accrued, or some other reason that allows the time period to be extended.

Potentially Ineligible Referrals. The agency should not refer a debt for litigation if:

- the debt, exclusive of interest, penalties, and administrative costs, is less than $2,500. However, debts less than $2,500 may be referred if, after consultation with DOJ, the agency determines that -
  - litigation to collect small claims is important to ensure compliance with the agency's policies or programs,
  - the debt is being referred solely for the purpose of securing a judgment against the debtor, or
  - the debtor has the clear ability to pay the debt and the government effectively can enforce payment;
- the statute of limitations for initiating litigation has expired. However, the debt may be referred if there is a possibility that the time to sue has been extended or legislation has been enacted abolishing or waiving the statutes of limitations as a defense to suits to collect its debts;
- the debt has been written-off/closed-out and collection action terminated;
- it is unlikely that litigation will result in full or partial recovery of the amount owed;
- all available assets have been liquidated and the debtor is unemployed, unless the agency believes that the debtor's financial situation will substantially improve and the statute of limitations is about to expire;

- the current address of debtor cannot be provided, except in rare circumstances where, after consultation with DOJ, an agency deems it advisable to commence litigation to preserve the agency's claim;

- the documentation necessary to prove that the debtor is liable for the debt or otherwise support the litigation effort cannot be provided; or

- the estimated costs of pursuing litigation will probably exceed the amount recoverable. In this case, the agency should consider terminating collection action and writing off the debt. Only when it is critical to an agency's enforcement efforts and is in the government's best interests should litigation be pursued regardless of cost. If the agency wishes to pursue enforced collection action for these reasons, then the checklist or report must explain why.

Pre-Referral Requirements. The agency may elect to refer a delinquent debt to DOJ for litigation before referring the debt to Fiscal Service's Cross-Servicing Program or pursuing other administrative debt collection activities. This may be desirable, for example, if the debtor refuses to pay in response to the agency's demand letter and the debtor owes a large debt, or an important enforcement principle is at stake. At a minimum, before referring a debt to DOJ for litigation, an agency must send a final demand letter to the debtor. See Demand Letter Checklist at **Appendix 8** for a list of the information that should be sent to the debtor before referring the debt to DOJ for litigation. The letter should be tailored to the specific case when a debt is being referred to DOJ prior to referral to Fiscal Service for cross-servicing and/or offset.

Post-Referral Activities. Upon referral by an agency and acceptance by DOJ, the U.S. Attorney's office will try to initiate suit within 45 days of receipt of the case. The U.S. Attorney's office will notify the agency when a complaint is filed and when a judgment is entered, and provide the post-judgment interest rate for the debt as well as any other information necessary for the agency to properly update its account and maintain an accurate balance. Interest is compounded on post-judgment debts. DOJ must notify the agency when it closes its case. If DOJ closes the case and returns the debt to the agency for surveillance (*i.e.*, monitoring), the

agency should write-off the debt and characterize it as "currently not collectible."

If DOJ advises that the debt is uncollectible, the agency should write-off and "close-out" the debt, and if appropriate, report the uncollectible debt to the IRS as potential income to the debtor on IRS Form 1099-C. See Chapter 7, Termination of Collection Action, Write-off and Close-out/Cancellation of Indebtedness; and OMB Circular No. A-129 for an explanation of "currently not collectible" and "close-out." If the U.S. Attorney's office has filed a judicial lien for the debt, the agency must submit a request to that office to release the lien at the time the agency closes out the debt. In consultation with DOJ, the agency should establish a tracking system to account for cases referred to and returned from DOJ since the agency remains responsible for monitoring account activity. DOJ will assess a 3% administrative fee on amounts collected while the case is at DOJ. The agency should pass this cost along to the debtor whenever possible. See **Appendix 10** for more information on assessing and accounting for the DOJ fee.

In consultation with DOJ and the U.S. Bankruptcy Courts, the agency will establish bankruptcy notification procedures to ensure the lien position of the Federal Government is protected. DOJ is responsible for the legal representation of agencies before U.S. Bankruptcy Courts. Notice of a bankruptcy filing should be sent by the bankruptcy court to both the creditor agency and to the U.S. Attorney's office in the district where the bankruptcy is filed. In order to assure that the government's proof of claim can be filed with the bankruptcy court, the agency's procedures must ensure that the notice of bankruptcy is sent to the appropriate contact within the agency, and that there is consultation where necessary with the U. S. Attorney's office. This will allow the review of bankruptcy plans to ensure secured property is recovered for the Federal Government.

Barring Delinquent Debtors from Obtaining Federal Loans, Guaranties and Loan Insurance

As required by the DCIA, a delinquent debtor is ineligible for Federal financial assistance until the delinquency that triggers the bar is resolved. Federal financial assistance includes any Federal loan (other than a disaster loan), loan insurance, or loan guaranty. This eligibility requirement applies to all Federal loan programs

even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, and may be waived only by the head of an agency, or if properly delegated, the Chief Financial Officer or Deputy Chief Financial Officer.

It is extremely important for creditor agencies to properly report delinquent debt to appropriate databases so that lending agencies may enforce the DCIA loan bar against persons who owe debts to the government. Delinquent debt databases accessed by lending agencies as part of loan origination processes include credit bureaus, the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), and the TOP delinquent debtor database (parts of which are made available to lending agencies and their lenders through a program known as "Do Not Pay"). More information about CAIVRS can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/93-17ml.txt.*

More information on the Do Not Pay database can be found at *http://donotpay.treas.gov/Resources.htm.*

Delinquent Status. A debt is considered to be in "delinquent status" for purposes of the DCIA loan eligibility requirement if the debt has not been paid by the payment due date or by the end of any grace period. A debt is not in delinquent status for purposes of the DCIA requirement if:

- the debtor has been released from any obligation to repay the debt or there has been an adjudication or determination that the debtor does not have to pay the debt;
- the debtor is the subject of, or has been discharged in, a bankruptcy proceeding, including if the debtor is current on any court authorized repayment plan; or
- the existence of the debt is the subject of an administrative appeal that has been filed on a timely basis.

A debt may be considered "delinquent" for other purposes, such as making a claim in a bankruptcy proceeding, even though the debt is not in "delinquent status" for purposes of the DCIA loan eligibility requirement.

Delinquency Resolution. A delinquent debtor may be eligible for loan assistance once the delinquent debt is resolved in accordance with regulations issued by Fiscal Service at 31 CFR 285.13. A creditor agency should respond promptly to debtors who seek to resolve their debts in order to become eligible for Federal loan assistance. For purposes of the DCIA loan eligibility requirement, a debt is resolved only if the person:

- pays or otherwise satisfies the delinquent debt in full;
- pays the amount of a compromise reached with the creditor agency;
- cures the delinquency (that is, brings the loan or agreement current) under terms acceptable to the creditor agency; or
- enters into a repayment agreement under terms acceptable to the creditor agency.

A debt is not resolved if:

- collection action is suspended or terminated;
- the debt is written off on the agency's accounting records; or
- the debt has been reported to the Internal Revenue Service as a discharge of indebtedness ("closed-out").

Revoking/Suspending Licenses or Eligibility

An agency, in accordance with its policies and procedures, should consider suspending or revoking Federal licenses (e.g., pilot licenses, concession licenses, etc.) or the eligibility of debtors who willfully fail to pay forfeitures, penalties, or other debts. This may include suspending guaranteed lenders from participation in guaranteed loan programs or not allowing a company to bid on a contract, if the organization is itself delinquent on a government debt. In cases where the creditor agency has no other relationship with the debtor, it may be able to implement a suspension or revocation through an agreement with another agency which does.

An agency may also enter into agreements with state agencies to withhold or revoke state-issued licenses, such as for doctors or attorneys, to the extent allowed by law. The agency should consider taking such actions, particularly for prolonged or repeated failures to repay a debt.

In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits or privileges, agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code.

Part III – Miscellaneous Topics

Purchasing Credit Reports and Locating the Debtor

An agency may need to obtain additional information about the debtor to:

- locate the debtor;
- determine the debtor's ability to repay the debt in full and assess the likelihood that the debtor will do so;
- evaluate compromise offers;
- determine a reasonable installment payment plan;
- decide whether to reschedule an account;
- verify information provided by the debtor in support of requests for compromise, repayment in installments, or rescheduling;
- determine if an opportunity for administrative offset or suspending/revoking licenses exists; and
- support litigation.

Credit Reports. There are two types of credit reports available, consumer and commercial. A consumer credit report contains credit information about an individual person. The DCIA expressly authorizes a Federal agency to obtain a consumer report on any person who is liable for a debt being collected or compromised by the agency, or for which an agency is terminating collection action. A Federal agency may also obtain a commercial credit report, which contains credit information for a business entity.

Consumer Credit Report. A typical consumer credit report includes an individual's name, possible aliases, current and previous addresses, social security number, year of birth, current and previous employer information, and if applicable, spouse's name. A consumer credit report will list credit accounts with banks, retailers, credit card issuers and other lenders. For each credit account the report will list the type of loan (revolving credit, student loan, mortgage, etc.). The report will also include the date the account was opened, the credit limit or loan amounts, account balances, any co-borrowers responsible for paying the account, and the pattern of payment made by the consumer over the previous two years (noting the timeliness of payments). The consumer credit report includes public record information such as Federal, state and county court records related to bankruptcies, tax liens or monetary judgments. In some states child support payments are reported.

Commercial Credit Report. A commercial credit report includes general information about a business such as the business name, current address and telephone number, if available. The report may name the principal officers involved in the business, their titles and addresses.

A commercial credit report will provide trade payment history, including the business' credit capacity, credit rating, high credit, worth, payment history, and trends for payment. The report also will provide financial data on the business, and provide commercial and/or banking relationships, if this information is available. The commercial credit report, like the consumer credit report, includes public record information such as state and county court records related to bankruptcies, tax liens or monetary judgments.

The commercial credit report also contains information pertaining to Uniform Commercial Code (UCC) filings. UCC filings are done at the state or county level, and indicate when a business has pledged personal property assets as collateral (such as inventory and machinery & equipment) to secure credit or debts owed by the business.

Reviewing Credit Report and Other Financial Information. An agency should obtain credit reports to verify or determine a debtor's employment, income, assets, and credit history. To the extent possible, an agency should also request financial statements, copies of tax returns, and other supplementary data sources from the debtor. When using a credit report and other supplementary data sources to determine the debtor's ability to pay or whether to pursue the enforced collection of the debt, the agency should review and evaluate the information on the credit report or other financial data in terms of the following questions:

- **Does the debtor have other delinquent accounts?** If the sole delinquency is a Federal debt it may indicate that the debtor is giving priority to paying other creditors first. The debtor may be able to restructure payment to other creditors to secure payment in full of the outstanding Federal debt.

- **Does the debtor own any assets that are available to repay the debt, such as equity in real property, a second car or a boat?** If the debtor has sufficient equity in real property or other assets, the debtor may be able to secure a loan against an asset to pay his or her debt in full. Non-essential assets such as a boat could be liquidated to pay the debt in full or to reduce the balance.

- **Is the debtor employed? If so, by whom?** If employed by another Federal agency, then the creditor agency could pursue collection through salary offset. If privately employed, collection may be obtained through an administrative wage garnishment.

- **Are there any current accounts that may soon be paid in full?** The money earmarked for payment of these accounts should be taken into consideration when determining the debtor's ability to make payments in installments.

- **Does the debtor have too much debt?** It may reflect the debtor's inability to handle the debt incurred and must be viewed as a potential for the filing of bankruptcy, jeopardizing the collection of the delinquency. Conversely, it may indicate the debtor has access to hidden income or

assets to pay debt in excess of the debtor's apparent ability to pay.

- **Has the debtor declared bankruptcy?** The type and timing of the bankruptcy filing could, in effect, force the agency to stop or suspend all efforts to collect.

Credit reports, as well as other services (such as locating the debtor) are available through GSA's Federal Supply Schedule for Business Information Services (Special Item Number 520-16). Each agency needs to identify the types of reports that will best suit its needs in a given situation and order the reports accordingly. The costs of purchasing a credit report, or obtaining other services, to assist an agency in collecting a debt should be passed along to the debtor as part of the agency's administrative costs. See **Appendix 1** for a key to reading credit reports.

Locating the Debtor. If an agency cannot locate a debtor, the tools described below may be used to locate the debtor and/or the debtor's assets. When contacting third parties to obtain information about a debtor, an agency should ensure that such contacts are in compliance with the Privacy Act and other Federal laws. An agency should review its procedures with agency counsel to ensure that any disclosures of information to a third party, as may be necessary to identify a debtor about whom an agency seeks information, do not violate Privacy Act requirements.

Depending on the circumstances and the information desired, the following tools may assist the agency in locating the debtor.

GSA's Federal Supply Schedule for Business Information Services (Special Item Number 520-16). Contractors on GSA's schedule are available to supply debtor location services.

Internet Resources. The Internet is a resource for obtaining information at no cost to the requestor. Information sources generally available include telephone directories and address locator services.

Internal Revenue Service. The Internal Revenue Service (IRS) will provide mailing addresses of taxpayers to a Federal agency collecting debt. Agencies that wish to participate in a computer matching program with IRS to obtain mailing addresses of debtors in batches of 100 or more should contact:

IRS Office of Governmental Liaison
Taxpayer Address Request (TAR) Program Manager
1111 Constitution Avenue, NW
CL:GLD:GL Room 1611 IR
Washington, DC 20224
Facsimile Number: (202) 622-3041

For a detailed description of computer matching and applicable agency requirements, refer to the Privacy Act of 1974, as amended, which may be found at *www.usdoj.gov/foia/privstat.html*.

Agencies that wish to obtain mailing addresses from IRS for individual debtors should contact the local disclosure officer in the IRS office in the State where the agency is located. You can access your local IRS office information from *www.irs.gov*.

Contact with the TAR Manager must include the following:

- Description of your agency's purpose for requesting the information and how your agency will use the taxpayers' addresses;
- The Internal Revenue Code section which permits your agency to request address information from the IRS (generally 26 U.S.C. § 6103(m) for debt collection purposes);
- The approximate number of annual requests for addresses you anticipate will be made; and
- Name, title, address, phone and fax number of the person responsible for administering and maintaining this program if/when your agency begins computer matching.

Note: Participation in computer matching requires the agency to provide IRS with the taxpayers' social security numbers and names.

The IRS advises that taxpayer information, such as name and social security number, should not be sent by fax.

An agency should review IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, for requirements on how the IRS information must be safeguarded.

For debts being collected through TOP, Fiscal Service will assist agencies in requesting taxpayer mailing address information from the IRS. For information on how to obtain the addresses for debts in TOP, an agency should contact Fiscal Service's Treasury Offset Division at (202) 874-6810.

Post Office Trace. A letter on agency letterhead, sent to the United States Postmaster located at the debtor's last known post office, can be used to validate an address or obtain an updated address if a forwarding address was provided. A letter format is available at 39 CFR 265.6.

Department of Motor Vehicles. The Department of Motor Vehicles may provide a current home address for the debtor and a list of any vehicles registered to the debtor. The identity of the vehicle lien holder may be provided if there is an outstanding lien. The lien holder may be able to provide information to locate the debtor or his/her assets.

Place of Employment. If the debtor's employer is known, the employer may provide information about a debtor, such as a current address and telephone number.

Automated Collection Services

Automated collection services provide an agency with a means to:

- immediately contact a delinquent debtor by telephone after a payment due date has passed without payment;
- set collection priorities;
- document contacts with a debtor and/or the results of any collection actions taken;
- generate management reports; and
- track an individual collector's performance.

Automated collection services that are commercially available can be adapted to meet individual agency or program needs. They can be designed to provide an automated dialing capability and to require a minimum of human intervention. An agency with a large volume of debt should evaluate the feasibility of using automated collection services to facilitate debt collection.