



BUREAU OF THE

**Fiscal Service**

U.S. DEPARTMENT OF THE TREASURY

# Due Process for Debt Collection

Office of the Chief Counsel

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# Due Process

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*No person . . . shall be deprived of life, liberty, or property without the due process of law . . .*

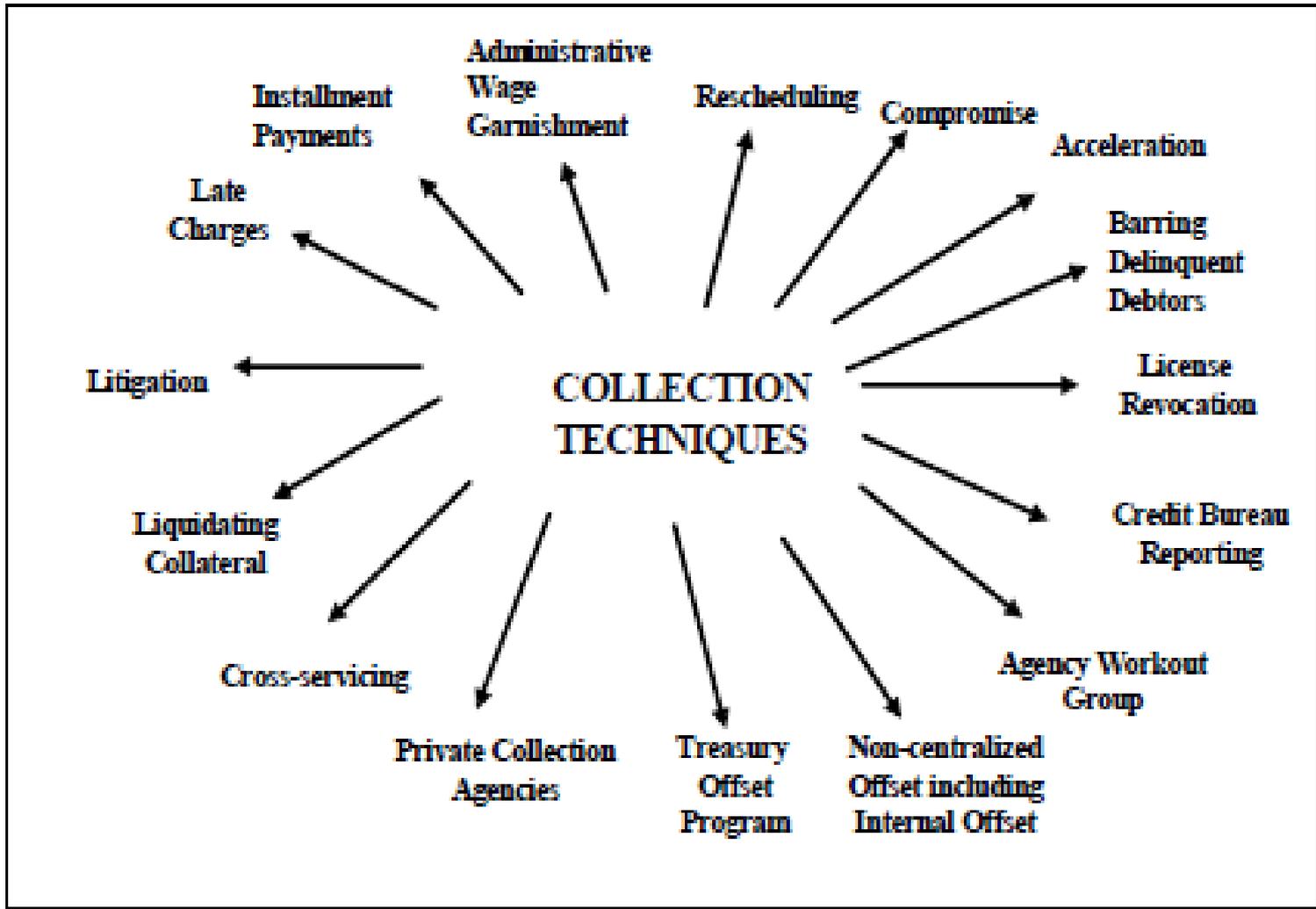
Fifth Amendment  
to the U.S. Constitution

# Affirmative Duty to Collect

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- ❑ Agencies are required to affirmatively and aggressively collect debts
- ❑ Agencies are authorized by law to use debt collection actions to collect debts owed to them
- ❑ Agencies are generally required to use one or more of the collection tools available to them
- ❑ *See 31 U.S.C. § 3711(a)(1); 31 CFR 901.1; OMB Circular A-129.*

# Debt Collection Tools



# Due Process

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- ❑ Debt collection is an adverse action
- ❑ Prerequisites to debt collection actions:
  - Delinquency
  - Due Process
- ❑ Procedural due process
  - How much process is due?
  - What constitutes Constitutional compliance?

# Due Process

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- ❑ Required by the Constitution
- ❑ Defined by statute and regulation
- ❑ Provides for fairness in the process before the Government takes an adverse action

# What is Due Process?

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**Notice  
and  
Opportunity  
to Dispute or Challenge**

# Due Process: Notice

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- Notice should provide information regarding
  - Amount and type of debt
  - Actions the agency might take
  - Opportunity to review
  - Opportunity to dispute
  - Opportunity to enter into repayment plan

# Due Process: Notice

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- ❑ Due process notice requirements may differ by
  - Debt type to be collected
  - Collection action to be used
- ❑ Single due process notice can cover notice requirements for all collection actions
- ❑ Need not duplicate due process proceedings

# Minimum Due Process Requirements

Debt Collection Tool	Notice	Opportunity to Dispute
Administrative offset (non-salary, non-tax)	Prior to offset, but no specific timeframe	Review with an agency official
Salary offset	30 days prior to offset	Hearing with hearing official <i>not under the control of the agency</i>
Tax refund offset	60 days prior to offset	Review with an agency official
Treasury Offset Program (TOP) (includes administrative, salary & tax refund offset)	60 days prior to debt submission 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 (consumer reporting only)	60 days prior to reporting	Review with an agency official

# Due Process: Notice

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## □ Notice requirements

- Sent by first class mail (unless specific statute or regulation provides otherwise)
- Sent to debtor's last address known/available to the agency (must meet “reasonable notice” standard)
- Actual receipt of notice is not required for due process to be effective

# Due Process: Opportunity to Dispute

- What can be disputed
  - Existence or amount of debt
    - Includes correct identity of the debtor
  - Legality of a particular collection action
    - No due process or insufficient due process given
  - In some cases, the amount to be collected with a particular collection action
    - Example: wage garnishment minimums and limitations

# Due Process: Opportunity to Dispute

- How to dispute?
  - Debtor can review file
  - Debtor can request agency review (administrative review)
  - Debtor can request a hearing for
    - Federal salary offset
    - Administrative Wage Garnishment (AWG)

# Due Process: Opportunity to Dispute

- Agencies required to have procedures to
  - handle requests for reviews and/or hearings
  - communicate results of requested reviews and/or hearings



# Opportunity to Dispute: Hearings

- ❑ If a hearing is required:
  - “Paper hearing” (review of the written record provided by agency) may be sufficient
  - Hearing official need not be administrative law judge or lawyer
  
- ❑ Oral hearing required where:
  - There are agency-specific statutes or regulations;
  - Agency cannot resolve question of indebtedness by review of paper evidence; or
  - Waiver of indebtedness determination turns on an issue of credibility or veracity

# Opportunity to Dispute: Hearings

## □ Burden of Proof

- Agency must first prove debt
- Debtor must present evidence that no debt exists or the amount is incorrect
- AWG rule specifies standard of proof as *“preponderance of the evidence”*

# Salary Offset Hearing

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- ❑ Hearing official cannot be an individual under the supervision or control of the head of the agency (may be an administrative law judge)
- ❑ Individual has 15 days to request hearing from
  - Receipt of notice; or
  - Commencement of Federal employment
- ❑ Hearing official must issue decision within 60 days of date petition filed

# AWG Hearing

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- ❑ Agencies required to have AWG regulations in place or may adopt Treasury's regulations (See 31 C.F.R. 285.11(f))
- ❑ "Paper hearing" is required
- ❑ Oral hearing only required if the agency determines that the issues in dispute cannot be resolved by review of the paper evidence
  - debtor may choose in-person over telephone hearing

# AWG Hearing

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- ❑ Hearing official may be any qualified individual as determined by the head of the agency (including administrative law judge)
- ❑ Individual has 15 days to request hearing from mailing of notice
- ❑ Hearing official must issue decision within 60 days of date petition filed

# Due Process: Legal References

## □ Administrative offset

- 31 U.S.C. § 3716
- 31 CFR § 285.5
- Federal Claims Collection Standards (31 CFR § 901.3)
- Agency statutes and regulations

## □ Tax refund offset

- 31 U.S.C. § 3720A
- 31 CFR § 285.2
- Agency regulations

## □ Credit bureau reporting

- 31 U.S.C. § 3711(e)(2)

# Due Process: Legal References

## □ Salary offset

- 5 U.S.C. § 5514
- 5 CFR § 550.1104
- 31 CFR § 285.7
- Agency regulations

## □ Administrative Wage Garnishment

- 31 U.S.C. § 3720D
- 31 CFR § 285.11
- Agency regulations

# Contacts

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