

CHAPTER 1. INTRODUCTION

1-1. PURPOSE.

- a. Overview. Debts to HUD may originate in several ways, including debts arising from loans, contracts for services, overpayments by HUD of grants and subsidies, sustained audit findings, and fraud investigations. If debts due HUD are not repaid on time, they become delinquent. If delinquency is not resolved within 90 days, the debts are established as formal claims.

The significance of promptly and efficiently collecting debts cannot be overemphasized. Outstanding debts may represent not only a breach of contract but a loss of revenue to HUD as well. As such, it is imperative that HUD collection personnel take any and all available measures first to attempt to forestall delinquent debt, and then -- if delinquency does arise -- to resolve it promptly. The policies and procedures set forth in this handbook present a system for establishing debt collection measures and for processing claims by HUD against debtors. The procedures described herein are designed to ensure that HUD's interests are protected in the settlement of claims against debtors.

While this Handbook is strongly oriented to field use, nearly all of its provisions apply to Headquarters offices and personnel as well.

- b. Users. This Handbook is addressed to all HUD personnel who deal with debts owed to the Department. Specific emphasis is given to the following:
 - o The Action Official, who first establishes that a debt exists and who performs initial collection;
 - o The Claims Collection Officer (CCO), who pursues "aggressive collection" of the debt after initial collection efforts have failed and the delinquent debt has been placed in claim status;
 - o The Departmental Claims Officer (DCO), who exercises overall authority on all HUD claims collection activities and who takes final action on problem claims or claims that exceed CCO authority; and

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- o The Regional Accounting Division (RAD), which monitors the debt/claim throughout the collection process. For Headquarters-generated debts/claims, this function is performed by the HUD Debt Collection Project (DCP) in conjunction with the Office of

Finance and Accounting (OFA).

The Handbook also briefly discusses the roles of Office of General Counsel (OGC) and Office of the Inspector General (OIG) entities as they relate to the collection process.

Given the broad range of personnel involved in debt collection, effective coordination and communication are extremely important. Each office must be sure to advise all other affected offices of changes in the status of debts due HUD.

Coordination and communication are key to successful debt collection, particularly given the broad range of involved personnel. Each office must be sure to advise all other affected offices on the status of costs due HUD.

1-2. SCOPE. The provisions of this Handbook apply to all HUD entities, except as noted below.

- a. Program Authority. Four HUD program areas have the authority to resolve claims through \$20,000 for:
 - o Title I loans;
 - o Section 312 rehabilitation loans;
 - o Tenants or former tenants of HUD-owned properties and those properties where HUD is mortgagee-in-possession; and
 - o Government National Mortgage Association(GNMA) operational (nonadministrative) activities.

Within these program areas, Action Officials and CCOs may establish their own collection procedures, subject to and in accordance with the Debt Collection Act of 1982 and applicable regulations. Such collection procedures cover all claims within those program areas. However, where termination of collection action (writeoff) or compromise of claims of more than \$20,000 (exclusive of any interest or penalties, and less any principal which has been collected) is sought, the Action Official must submit the proposed compromise or writeoff to the DCO, OFA, Headquarters, for referral to the Department of Justice (DOJ) or the General Accounting Office (GAO), as appropriate. (See Appendix 1A for more information.)

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- b. Exceptions. The procedures in this Handbook do not apply to claims that arise from the following conditions (for handling these claims, refer to the appropriate procedures):

- o Shortages and discrepancies in the accounts of disbursing officers and imprest fund cashiers.
 - o Debts secured by mortgages -- e.g., mortgages under single family and multifamily housing insurance programs, Secretary-held, assigned and purchase money mortgages, and junior liens resulting from such programs as Section 203(k), Section 235 recapture, and Title I home improvement loans secured by mortgages.
 - o Cases in which HUD has a discretionary right to act -- i.e., when amounts are due grantee program accounts and not HUD.
 - o See Appendix 1B, Special Provisions Applicable to community Development Block Grants (CDBG) and Related Programs.
- c. Offsets and Interest. Throughout the Handbook, reference is made to offsets and interest charges as procedures for implementing the Debt Collection Act of 1982. The offset and interest provisions of the Act do not apply to local governments; therefore, the offset and interest procedures in this Handbook do not apply to certain types of debts owed by State and local governments --e.g., certain debts arising under the Public and Indian Housing Program and CDBG.

The question of whether or not a Public Housing Agency or Indian Housing Authority is considered an agency of a State or local government -- or is considered a special purpose government and thus is susceptible to the "local government" classification -- must be decided by legal counsel in consultation with the appropriate Headquarters program office, on a case-by-case basis.

1-3. ORGANIZATION. This Handbook is divided into two major parts. The first of these (Chapters 2 through 4) discusses the process of debt collection; the second (Chapters 5 through 7) summarizes the specific functions of individual collection personnel. In this way, the user can understand how his/her particular functions relate to the whole process. Additionally, a special chapter on offsets is included for users' convenience (Chapter 8).

Chapters 2, 3, and 4 trace the debt from its origins through final collection/resolution. Chapters 5, 6, and 7 discuss personnel functions. Chapter 8 describes the process and policies of offsetting. A glossary of frequently used acronyms and terms appears in the front of this Handbook for convenient reference.

be used in your debt collection activities. These have been filled out, where possible, for your convenience and reference.

1-4. STATUTES AND REGULATIONS. The following statutes and regulations are the basis for the policies and procedures in this Handbook:

- o Federal Claims Collection Act of 1966 (repealed);
- o Contract Disputes Act of 1978;
- o Debt Collection Act of 1982: 31 USC 3701, 3711, 3716-3718;
- o GAO/DOJ Regulations 4 CFR 101 through 105;
- o HUD Regulations on Administrative Claims 24 CFR 17;
- o Office of Personnel Management Regulations 5 CFR 550;
- o Debarment Regulations, 24 CFR Part 24;
- o Federal Acquisition Regulations Subpart 32.6; and
- o Statute of Limitations on Claims: 28 USC 2415 and 31 USC 3716(c).

1-5. STATUTE OF LIMITATIONS ON CLAIMS.

- a. Legal Authority. 28 USC 2415 provides that, with certain exceptions, every action to recover money damages brought by the U.S., or an officer or agency thereof, which is founded upon any contract -- expressed or implied -- in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law (whichever is later). Accrual of action may vary according to the type of debt. In the event of later partial payment or written acknowledgment of the debt, the right of action is deemed to accrue again at the time of each such payment or acknowledgment (i.e., the statute of limitations is restarted).

In addition, the statute provides that, with certain exceptions, every action for money damages brought by the U.S., or an officer or agency thereof, which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues.

- b. Limitations for Administrative Offset. Although 28 USC 2415 provides that the statute of limitations for collection is normally 6 years, 31 USC 3716(c) provides that the limitations period for collection by administrative offset is 10 years from the original date of the debt.
- c. HUD Responsibilities. Under the statute of limitations, HUD personnel are responsible for the following:
- (1) All Regional Claims Collection Officers (RCCOs) and CCOs should be familiar with the provisions of the statute of limitations, including the exceptions and

exclusions to the general definition. Guidance is available from the OGC, Regional Counsel, or Field Counsel, as appropriate.

- (2) Care should be exercised during claims processing to prevent the statute's expiration. Cases should be considered for litigation prior to the earliest barring date that might apply. Any case in which the statute of limitations has expired or will expire before it can be sent to DOJ should be examined for an alternative basis on which to proceed. This will leave sufficient time for DOJ to take appropriate action. Other statutory authority should be considered (as well as finding a reasonable basis for using a later date or using one or more of the exclusions covered in 28 USC 2415). Cases in which there is doubt as to the statute of limitations should be sent to the OGC, Regional Counsel, or Field Counsel for determination.
- (3) Cases that are to be forwarded to GAO should be submitted to the DCO at least one year before the statute of limitations expires. Only the DCO may forward cases to GAO.
- (4) Cases to be forwarded to DOJ should be submitted at least one year before the statute of limitations expires. The DCO and RCCO/CCO through the OGC and Regional Counsel, respectively, may forward cases to DOJ. RCCOs and CCOs should allow time for full compliance with the procedures and policies prescribed in this handbook. Any omission of these requirements will be limited to those cases in which the date is imminent on which the suit will be barred.
- (5) The Action Official or the DCO/RCCO/CCO should coordinate administrative/civil recovery prospects with the Office of Inspector General (OIG) before the expiration of the statute of limitations with respect to audit-related and investigative claims where criminal actions are possible.

1-6. TREATMENT OF FRAUD, FALSE CLAIMS, AND MISREPRESENTATION CASES.

a. Policy.

- (1) GAO/DOJ Regulations 4 CFR 101.3 state:

"The standards set forth do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest

in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only DOJ has authority to compromise or terminate collection action on such claims. However, matters submitted to the DOJ for consideration without compliance with the regulations because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted."

- (2) HUD Regulations 24 CFR 17.64 state:

"There shall be no compromise or terminated collection action with respect to any claim: (1) as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) such claims shall be promptly referred to the DOJ or GAO, as appropriate."

b. Procedure.

- (1) Each HUD official who handles debt/claim cases will examine each case for indication of fraud, false claim, and misrepresentation. When such indications are present, the case shall be immediately reported to the OIG in accordance with HUD Handbook 2000.3, Office of Inspector General Activities. While with the OIG for criminal determination, the case shall be carried by the RCCO/CCO as an on-hand case and reported to the DCO as such. A debt of this type may not be compromised or terminated while an open case with the OIG, OGC, Regional or Field Counsel, and/or DOJ.
- (2) When the OIG, OGC, Regional/Field Counsel, and/or DOJ notifies the DCO/RCCO/CCO that the case will not be criminally prosecuted, the DCO/RCCO/CCO shall begin collection action on the claim.
- (3) The DCO/RCCO/CCO shall consult with the OIG or OGC/Regional or Field Counsel to determine whether collection efforts would interfere with any criminal proceedings if the OIG, OGC/Regional or Field Counsel, and/or DOJ have not notified the DCO/RCCO/CCO of the status of the case when:
- o It has been 12 months since the DCO/RCCO/CCO reported the case; or

- o The statute of limitations will expire within 24 months.

If collection is permissible, but the CCO's efforts are unsuccessful the CCO shall request the Regional Counsel to present the case to the U.S. Attorney for suit. If the U.S. Attorney declines to sue, the Regional Counsel may request the U.S. Attorney to authorize HUD counsel to sue the debtor. If, in the Regional Counsel's opinion, the case does not have merit, the debt should be terminated unless the criminal proceeding is still pending. (See paragraphs 6-3 and 6-4.)

- (4) A fraud, false claim, or misrepresentation case shall not be transferred to the DCO while still an open case with the OIG and/or DOJ.
- (5) Regardless of whether there has been a criminal prosecution, if a debt grounded upon fraudulent conduct can be well documented, it should be considered as a possible action under the False Claims Act, 31 USC 3729, et seq. This type of debt should be brought to legal counsel's attention as soon as possible, because the limitations period -- though six years long -- is measured from the date the violation is committed.

1-7. REPORTING THE STATUS OF DEBTS. HUD must report to the U.S. Treasury and Office of Management and Budget on the status of all debts -- whether current, delinquent, or seriously delinquent due HUD. The OFA Reports Control and Analysis Staff, Headquarters, prepares this report based on input from the Regional Accounting Divisions and OFA operating divisions.

1-8. CONSEQUENCES OF UNCOLLECTIBLE CLAIMS. The consequences to the debtor of not repaying a claim are significant and include several administrative sanctions. These are discussed in the following paragraphs.

- a. Debarment. HUD may debar the debtor, excluding him/her from participation in HUD programs for a reasonable specified period commensurate with the seriousness of the causes or as determined by the Assistant Secretary.
- b. Suspension. HUD may temporarily suspend the debtor from participation in HUD programs because of suspected improper conduct. Normally, suspension may not exceed 12 months; during this period, investigations and administrative and/or legal proceedings take place. The suspended party may request to be heard and to be represented by counsel.

- c. Temporary Denial of Participation. A Field Office can place a contractor or grantee in ineligibility status by issuing an order denying participation. This order is called a Temporary Denial of Participation (TDP) and is limited to the program under which the offense occurred. It is for a temporary period pending the completion of an investigation.
- d. Conditional Participation. This is an exclusion of a contractor or grantee from participation in one HUD program, generally pending corrective action by the contractor or grantee. This exclusion is limited to the jurisdiction of the office imposing the condition and the specific program under which action is taken.
- e. Credit Reporting. HUD may decide to refer the debtor to credit reporting agencies (CRAs). The debtor receives 60 days advance notice of the intention to refer the claim information to a CRA. Once HUD refers the information to a CRA, it becomes part of the debtor's credit record.

HUD reports all non-tax commercial claims, all delinquent non-tax commercial claims, and all delinquent non-tax consumer claims of more than \$100 to CRAs. Foreign debts, and debts of State and local governments, Indian tribal governments, public housing authorities and Indian housing authorities, and other public institutions need not be referred to CRAs.

The RCCO, on a monthly basis, will report new debtors or any change in status of previously reported accounts, to the CRA or DCO, as instructed. The RCCO will use the instructions issued by the CRA/DCO to report this information.

- e. Reporting Taxable Income to the Internal Revenue Service (IRS). Taxable income arises when an obligation is satisfied or forgiven at less than its face value. The RCCO or DCO will report to IRS any defaulted debt which meets the following criteria:
 - (1) The amount of the defaulted debt, not in dispute, accrues to a total of \$600 or more for the year;
 - (2) The claim has not been discharged in a bankruptcy proceeding; and

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- (3) The claim is no longer collectible because:
 - o The time limit in the applicable statute for enforcing collection expired during the tax year; or
 - o Some form of formal compromise agreement was

reached during the year in which the debtor was legally discharged of all or a portion of the obligation (in this case the portion discharged is reportable).

Compromises are reported in the year of discharge. The discharge of indebtedness with respect to terminations are reported when the statute of limitations expires (normally six years). Form 1099-G is used to report compromises to IRS. (See Appendix 15.)

- 1-9. DEBT/CLAIM FILE STORAGE, SECURITY, AND RETENTION. Because of sensitive personal information, all debt/claim files will be stored in locked file cabinets (fireproof when required) and handled according to applicable Privacy Act and security regulations. File information will be disclosed only to those with a need to know in order to perform their duties. The CCOs, RCCOs, and DCO or designate will be responsible for the safekeeping of the files and the sensitive information contained therein.

Debt/claim files will be retained for a period of 11 years after the date of debt origination or 1 year after the statute of limitations runs out, whichever is longer.