

VOLUME 5, CHAPTER 28: “MANAGEMENT AND COLLECTION OF INDIVIDUAL DEBT”

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated September 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
280208	Divided 280207 into two paragraphs, “Duplication of Administrative Proceedings” and “No Private Right Created” since they are separate subjects. Renumbered remaining paragraph.	Update
280402.G (Sept 2010 version)	Deleted paragraph on individual high dollar improper payments since these are not to be reported publicly per Office of the Secretary of Defense (OSD) and Office of Management and Budget guidance.	Delete
280402.F	Added language that demand letters to the debtor should comply with the Treasury Financial Management Service (FMS) due process notification requirements listed in Appendix 8, “Managing Federal Receivables,” dated May 2005.	Add
280904.A.5	Added the requirement that debt packages referred to Debt and Claims Management Office must include the date the debt became delinquent. Added language that demand letters should comply with the Treasury FMS due process notification requirements listed in Appendix 8, “Managing Federal Receivables,” dated May 2005.	Add
280904.A.7	Clarified language to create a transmittal number by adding a unique identifier for each transmittal letter.	Update

Table of Contents

VOLUME 5, CHAPTER 28: “MANAGEMENT AND COLLECTION OF INDIVIDUAL DEBT	1
2801 OVERVIEW.....	6
280101. Purpose	6
280102. Scope	6
280103. Internal Controls.....	6
2802 GENERAL GUIDANCE	6
280201. General Legislative Authority	6
280202. Debt Management Program	7
280203. Prompt Collection of Debt	7
280204. Prevention of Indebtedness	7
280205. Method of Payment	7
280206. DoD Debtor Information Exchange and Debt Collection Partnership Programs	7
280207. Duplication of Administrative Proceedings	8
*280208. No Private Right Created	8
280209. Accounting Entries.....	8
2803 DEBT COLLECTION AND RECOVERY TOOLS FOR DELINQUENT DEBTS	8
280301. General	8
280302. Offset by DoD and/or the Department of the Treasury.....	8
280303. Authorities Other Than Offset.....	8
280304. Alternative Administrative Remedies	9
280305. Lump-Sum Collection	9
280306. Collection Before Due Process	9
2804 NOTIFICATION TO DEBTOR	9
280401. General Requirements for Debt Notification and Demand for Payment	10
*280402. Demand Letters	10
2805 RESPONDING TO DEBTOR INQUIRIES	11
2806 INTEREST, PENALTY, AND ADMINISTRATIVE CHARGES	11
2807 INSTALLMENT COLLECTION.....	11
280701. Installment Criteria.....	11
280702. Installment Timing and Amount	12
280703. Installment Payment Agreement	12

Table of Contents (Continued)

280704.	Installment Payment Delinquency	12
280705.	Installment Payment Application to Multiple Debts.....	12
280706.	Installment Payment Application to Late Payment Charges and Debt Principal	13
280707.	Installment Payment Review.....	13
2808	ADMINISTRATIVE AND SALARY OFFSET FOR COLLECTION OF INDIVIDUAL DEBT	13
280801.	General	13
280802.	Administrative Offset for Advancements and Deductions	13
280803.	Administrative Offset for Damage to Military Housing	14
280804.	Administrative Offset for Administratively Determined Debts.....	14
280805.	Administrative Offset to Recover Public Funds	14
280806.	Salary Offset for Monthly Installments.....	14
280807.	Offset Under Statutes Not Specifically Covered.....	15
280808.	Collection by Administrative Offset	15
280809.	Noncentralized Administrative Offset	18
280810.	Department of the Treasury Centralized Administrative Offset Program	19
280811.	Administrative Offset From the Civil Service Retirement and Disability Fund (CSRD) and the Federal Employee Retirement System (FERS).....	19
2809	COLLECTION AND PROCESSING OF INDIVIDUAL OUT-OF-SERVICE DEBT	19
280901.	General	19
280902.	Incidence of Individual Out-of-Service Debts	19
280903.	Obtaining Service from DCMO.....	19
*280904.	Individual Out-of-Service Debt Collection Procedures	19
280905.	Collection Assistance for Military Pay System-Generated Individual Out-of- Service Debts.....	23
2810	RECONSIDERATION AND HEARINGS FOR ADMINISTRATIVE OFFSETS....	23
281001.	General	23
281002.	Debtor Responsibilities	24
281003.	DCO and DCMO Responsibilities	24
281004.	Administrative Offset Reconsideration or Hearing Officials.....	25
281005.	Hearing Official Responsibilities	26
2811	BANKRUPTCY DEBTS	26
281101.	Bankruptcy Petition Filed.....	26

Table of Contents (Continued)

281102.	Proof of Claim.....	26
281103.	Relief from Automatic Stay.....	27
281104.	Offset and Recoupment.....	27
2812	DEBT REFERRALS OUTSIDE THE DEPARTMENT OF DEFENSE.....	27
281201.	Referrals to DOJ.....	27
281202.	Debt Referrals to Private Collection Agencies.....	29
281203.	Debt Reporting to Credit Bureaus.....	30
281204.	Referral to Department of the Treasury.....	31
2813	DEBT COMPROMISE, SUSPENSION, AND TERMINATION.....	33
281301.	General.....	33
281302.	Determining Debt Amount for Compromise, Suspension, and Termination.....	33
281303.	Compromise.....	33
281304.	Suspension of Collection Action.....	36
281305.	Termination of Collection Actions.....	39
281306.	Suspension or Termination of Indebtedness From Deceased Debtors.....	41
2814	STANDARDS FOR DETERMINING FINANCIAL POSITION OF DEBTOR.....	41
281401.	General.....	41
281402.	Information to be Considered.....	41
2815	DEBT WRITE-OFF AND CLOSE-OUT.....	41
2816	REMISSION AND WAIVER OF INDEBTEDNESS.....	41
281601.	Remission of Indebtedness Due From Military Members.....	41
281602.	Waiver of Indebtedness Arising From Erroneous Payments.....	42
2817	REFUNDING PREVIOUSLY COLLECTED DEBTS AND LATE PAYMENT CHARGES.....	42
281701.	General.....	42
281702.	Determination of Refund Amount.....	42
281703.	Funding the Payment of Collected Debt Refunds.....	43
Table 28-1.	DoD Financial Management Regulation Volumes and Chapters on Debt Collection.....	44
Table 28-2.	Selection of Hearing/Reconsideration Officials for DoD Component Debts.....	45

Table of Contents (Continued)

Figure 28-1. Debt Certification Statement 46

Figure 28-2. Defense Debt Management System (DDMS) Debt Processing Steps..... 47

CHAPTER 28

MANAGEMENT AND COLLECTION OF INDIVIDUAL DEBT

2801 OVERVIEW

280101. Purpose

This chapter provides an overview of the requirements for debt management and collection of individual debts within the Department of Defense (DoD).

280102. Scope

Policies and procedures in this chapter apply to administrative actions associated with the collection and disposition of individual debts owed to the United States and collected by DoD. This chapter does not apply to collection of debts owed by contractors, vendors, assignees, state and local governments, or foreign governments. Nor does this chapter apply to the collection of child support, alimony, or commercial debts from the pay or salaries of DoD civilian employees or military members through garnishment or involuntary allotment. This chapter also does not apply to antitrust, fraud, tax, and interagency claims. Refer to Table 28-1 to determine the applicable volume and chapter for guidance on collection of debts not covered by this chapter.

280103. Internal Controls

All organizations involved in the collection and management of individual debts will establish and maintain internal controls to ensure debts owed to DoD are aggressively managed and collected in accordance with this chapter and other applicable regulatory and statutory requirements.

2802 GENERAL GUIDANCE

280201. General Legislative Authority

A. Where a specific statutory authority applies to the collection of a particular category of debt, the provisions of the applicable statute and implementing regulation(s) **must** determine the appropriate debt recovery and collection procedures that **must** be used in each case.

B. The “Federal Claims Collection Act of 1966” gave agencies certain authorities to collect delinquent debts. The “Debt Collection Act of 1982” expanded agencies’ authority to use such tools as credit bureau reporting and private debt collection agencies. In 1984, the Congress added tax refund offset as a collection tool available to agencies with the passage of the Deficit Reduction Act. The “Federal Claims Collection Standards” (FCCS), **[Title 31, Code of Federal Regulations, Parts 900-904 \(31 C.F.R. 900-904\)](#)** prescribes standards for Federal agencies’ use in the administrative collection, offset, compromise, and suspension or termination of collection activity for civil claims for money, funds, or property, except as

otherwise provided for by specific Federal Agency statutes or regulations, or by [Title 11 of the United States Code \(U.S.C.\)](#), when the debt involves bankruptcy. The FCCS also prescribes standards for referring debts to the Department of Justice (DOJ) for litigation. Rules governing the use of certain debt collection tools under the “Debt Collection Improvement Act of 1996,” such as administrative wage garnishment, are also issued in [31 C.F.R. 285](#).

280202. Debt Management Program

The DoD Components **must** establish and maintain a debt management program to identify, recover, and collect debts owed by individuals to the United States, as appropriate. The recovery of debts **must** be undertaken promptly, using a strategy that is determined to result in maximum recovery of debt within acceptable costs. Debtors **must** be afforded appropriate due process in accordance with this and applicable regulations and [31 C.F.R. 901.3\(b\)\(4\)](#). The DoD Components **must** clearly designate the official(s) responsible for the recovery and collection of individual debts within the DoD Component. Guidance **must** be established that clearly assigns responsibilities for processing, monitoring, reporting, and closing out individual delinquent debts throughout the entire debt collection process.

280203. Prompt Collection of Debt

Debt Collection Offices (DCOs) **must** take prompt and aggressive action to recover and collect debts owed to DoD and to the United States and **must** pursue continuing follow-up actions, as necessary, to ensure that debts owed to DoD and to the United States are collected.

280204. Prevention of Indebtedness

The DoD Components **must** institute procedures and assign responsibility to designated personnel as necessary to ensure that all appropriate personnel and organizations (e.g., personnel, entitlement, payroll, finance and accounting, disbursing, and legal offices) are promptly notified and kept apprised of any activities that potentially could give rise to indebtedness by any member, employee, or other personnel based on employment or other financial or contractual relationship between DoD and the indebted individual(s). The DoD Components **must** maintain continuous communication and follow-up to prevent inadvertent indebtedness to remain unresolved for an extended period.

280205. Method of Payment

Debts may be paid in the form of money, or, when a contractual basis exists, demand may be made for the return of specific property or the performance of specific services. Debts otherwise may be resolved by law, regulation, contract, or agreement.

280206. DoD Debtor Information Exchange and Debt Collection Partnership Programs

DCOs **must** participate in sharing information concerning delinquent debtors. DCOs **must** cooperate with each other and with other Federal agencies, including private debt collection

agencies and credit bureaus, to facilitate the collection of delinquent debts owed by current and former DoD civilian employees and military members.

280207. Duplication of Administrative Proceedings

Nothing in this chapter or FCCS requires the omission or duplication of administrative proceedings associated with debt collection that may be required by other laws or regulations. Refer to [31 C.F.R 900.7](#).

*280208. No Private Right Created

DoD's failure to comply with FCCS does not create any right or benefit, substantive or procedural, enforceable by law or in equity by a party against the United States, its agencies, its officers, or any other person. Refer to [31 C.F.R 900.8](#).

280209. Accounting Entries

Guidance for recording associated accounts receivable transactions for individual debt is in Volume 4, Chapter 3.

2803 DEBT COLLECTION AND RECOVERY TOOLS FOR DELINQUENT DEBTS

280301. General

This section contains information on debt collection remedies and procedures, including those specified in the "Debt Collection Improvement Act" and FCCS. Nothing contained in this chapter, however, precludes the use of any other administrative remedies that may be available under other statutes, regulations, or DoD's common-law rights for the collection or disposition of delinquent debts. These remedies generally do not apply to debts arising under, or payments made under, the "Internal Revenue Code of 1986," the "Social Security Act" (except to the extent provided under [42 U.S.C. 404](#), and [31 U.S.C. 3716](#)), or tariff laws of the United States.

280302. Offset by DoD and/or the Department of the Treasury

A. Administrative and Salary Offset by DoD. Refer to section 2808 for guidance on administrative and salary offset from DoD civilian employees and military members.

B. Administrative Offset of Federal Payments. Refer to paragraph 281204 for guidance on the Department of the Treasury's administrative offset programs.

280303. Authorities Other Than Offset

A. Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges (except for disaster loans and where exempted by the Under Secretary of Defense (Comptroller) or his designee, the Deputy Chief Financial Officer, DoD);

- B. Liquidation of collateral;
- C. Collection in installments;
- D. Administrative wage garnishment;
- E. Credit bureau reporting;
- F. Contracting with collection agencies; or
- G. Litigation. (Refer to paragraph 281201 for a detailed explanation of referral to DOJ.)

280304. Alternative Administrative Remedies

A. Security or collateral may be liquidated by the DoD Component through a power of sale or nonjudicial foreclosure if debtors fail to pay debts within a reasonable time after issuance of a demand letter, if such action is in the best interests of the government. Give consideration to security or collateral disposition costs as compared to amounts that might be received from such a sale. After the DoD Component liquidates the security or collateral to satisfy a debt, the DoD Component **must** give the debtor a written notice of sale and an accounting of surplus proceeds in accordance with applicable law or regulation. The servicing general counsel should be contacted if there is a bankruptcy filed, which is possible if there is a liquidation of security or collateral.

B. Collection from other sources, including liquidation of collateral or security, is not a prerequisite to requiring payment by a surety or insurance concern unless expressly required by law.

280305. Lump-Sum Collection

DCOs **must** request payment of debts, along with penalties, administrative charges, and interest in one lump-sum amount, whenever possible. Lump-sum collection is the preferred collection method. Lump-sum collections by offset from current pay or salary, unless voluntary, cannot exceed the percentages specified in Volume 7A, Chapter 50, Volume 7B, Chapter 28, and Volume 8, Chapter 8, and other applicable regulations.

280306. Collection Before Due Process

DCOs may, when necessary, collect the money before giving due process. For example, appropriate collection action(s) may precede written demands for payment when necessary to protect the DoD Component's interests and to prevent the applicable statute of limitations from expiring. Due process should be completed as expeditiously as possible after collection.

2804 NOTIFICATION TO DEBTOR

280401. General Requirements for Debt Notification and Demand for Payment

FCCS requires the issuance of a minimum of one demand letter. That requirement may be a single, all-inclusive demand letter or several successive and progressively stronger demand letters depending on the type and amount of the debt and the debtor's response to collection efforts. Use demand letters to expedite the resolution and collection of debts or arrive at the earliest practicable decision on the final disposition or referral of debts to DOJ for litigation. In determining the timing of the demand for payment, give consideration to the need to refer delinquent debts promptly to DOJ for litigation.

*280402. Demand Letters

DCOs **must** issue the initial demand letter within **five** working days following confirmation of the debt, the basis of indebtedness, and the amount of the debt. DCOs **must** exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. Demand letters will inform the debtor of the following information and requirements:

A. The reason for the indebtedness (e.g., overpayment of living quarters allowance), the authority of establishing the debt (e.g., 31 U.S.C. 3716), and the rights, if any, that the debtor may have to seek review of the indebtedness.

B. The applicable standards (e.g., [31 C.F.R. 901.9](#)) upon which any interest, penalties, or administrative charges are based.

C. The date by which payment must be made in order for the debtor to avoid late charges and enforced collection (that date generally will not be more than 30 days from the date the demand letter is mailed or hand-delivered).

D. The name, address, and telephone number of a point of contact or office the debtor may speak with or write to regarding the demand for payment of the debt.

E. Remedies that DCO will use to enforce payment of debts may include:

1. Federal salary offset, including routine pay adjustments and recoupments, or salary offsets according to the policies and procedures specified in Volume 7A, Chapter 50; Volume 7B, Chapter 28; and Volume 8, Chapter 8 or other provisions of this Regulation, as appropriate;

2. Assessment of interest, administrative charges, and penalties;

3. Allotments;

4. Collection of collateral and collection from other sources;

5. Tax refund and administrative offset (through the Department of the Treasury Offset Program);
6. Credit bureau reporting;
7. Collection agencies;
8. Administrative wage garnishment; or
9. Litigation.

F. Other appropriate information, if applicable, including DCO's willingness to discuss alternative methods of payment, any rights to a hearing, and any opportunity to seek a waiver or remission of the debt. Demand letters should comply with the Treasury Financial Management Service (FMS) due process notification requirements listed in "[Managing Federal Receivables](#)," Appendix 8, dated May 2005.

2805 RESPONDING TO DEBTOR INQUIRIES

DCOs **must** respond promptly to communications from debtors, normally not later than 30 days from the date of receipt of the debtor's correspondence. DCOs **must** advise debtors who dispute debts to furnish available evidence to support their position. Refer to section 2810 for information on reconsiderations and hearings. When it becomes necessary to extend the 30 day notice/written demand period, DCO **must** act promptly to facilitate a possible referral/request for debt litigation from DOJ within 1 year of the most recent debt delinquency event.

2806 INTEREST, PENALTY, AND ADMINISTRATIVE CHARGES

Title 31, U.S.C., section 3717 and FCCS authorize the assessment of interest, penalty, and administrative charges on delinquent debts. All interest, penalty, and administrative charges on delinquent debts **must** be calculated and recorded in the DoD Component accounting system. Refer to Volume 4, Chapter 3, Annex 1 for guidance on assessing these charges and possible waiver of these charges.

2807 INSTALLMENT COLLECTION

280701. Installment Criteria

If a debtor informs DCO that financial constraints prevent payment of a debt in one lump-sum, then payments may be accepted in regularly scheduled installments. If the debtor submits financial statements, then make those documents a part of the debtor's permanent debt file. DCO will base a decision to accept installment repayment of a debt on a review of the debtor's financial statement(s) or independent verification of the debtor's reported financial position and the following factors:

- A. Age and health of the debtor;

- B. Present and potential income;
- C. Inheritance prospects;
- D. Possibility of hidden assets or fraudulent transfers;
- E. Assets/income available through enforced collection; and
- F. Reasonable and necessary living expenses for the debtor and the debtor's dependents.

280702. Installment Timing and Amount

Debtors generally **must** make installment payments on a monthly basis. Installment payments **must** bear a reasonable relationship to the size of the debt and the debtor's ability to pay. Except when a debtor can prove financial hardship or another reasonable cause exists, installment payments **must** be at least \$50 each month and **must** be sufficient to liquidate a debt within **three** years or less. Installment payments from current pay or salary, unless voluntary, **must** not exceed the offset percentages established in Volume 7A, Chapter 50; Volume 7B, Chapter 28; and Volume 8, Chapter 8.

280703. Installment Payment Agreement

DCOs that agree to accept installment payments **must** obtain signed, legally enforceable repayment agreements from the debtor. Such agreements **must** specify the terms agreed upon by the parties, including a provision accelerating the debt, and requiring that the remaining debt balance **must** be due and payable immediately upon the debtor's default on the agreement. As part of the agreement, require the debtor to submit financial statements annually, as necessary, whenever the repayment period exceeds **three** years. DCOs **must** accept installment payments, notwithstanding a debtor's refusal to execute a written agreement or to provide security.

280704. Installment Payment Delinquency

Debts in an active repayment status (according to an installment payment agreement) are not considered delinquent. If an installment payment is not made by the due date, then the entire balance of the debt becomes delinquent from the due date of the missed payment.

280705. Installment Payment Application to Multiple Debts

DCOs accepting installment payments for multiple debts of a debtor **must** apply the payments to the various debts owed to DoD according to the best interests of DoD and in accordance with FCCS. Unless otherwise prescribed by statute or regulation, DCOs will collect debts owed to more than one DoD Component or Federal Agency in the following priority sequence (within each component, collect the oldest debt first):

- A. Debts owed to the creditor DoD Component;

- B. Debts owed to other DoD Components; and
- C. Debts owed to other Federal Agencies.

280706. Installment Payment Application to Late Payment Charges and Debt Principal

Installment payments **must** be applied in the following order:

- A. Penalty charges;
- B. Administrative charges;
- C. Accrued interest; and
- D. Debt principal balance.

280707. Installment Payment Review

DCOs that collect debts by installment **must** review the debtor's annual financial statements and determine whether to collect the balance due in a lump-sum or continue the installment payment agreement at the same or increased amounts. Smaller installment payments may be accepted at the request of a debtor, on an exception basis, when a request is supported by financial data confirming the debtor's inability to pay the full amount of the agreed upon installment payment. DCOs normally **must** not reduce installment payments if a determination is made that the debtor could have controlled the financial condition that reduced the debtor's ability to meet existing installment payment requirements.

2808 ADMINISTRATIVE AND SALARY OFFSET FOR COLLECTION OF INDIVIDUAL DEBT

280801. General

This chapter implements the administrative offset authority in 31 U.S.C. 3716 and FCCS for collecting delinquent debts owed to the United States. Debts owed to DoD or other Federal agencies by current or retired members of the military or current or retired DoD civilian employees that can be collected through salary offset **must** be collected as provided in Volume 7A, Chapter 50; Volume 7B, Chapter 28; and Volume 8, Chapter 8. Debts determined to be owed to the United States that must be collected administratively other than through salary offset **must** be collected under the authority of 31 U.S.C. 3716 and FCCS applying the procedures in this section.

280802. Administrative Offset for Advancements and Deductions

Under [5 U.S.C. 5705](#), when making collections of unearned advance per diem or mileage allowances, DCOs **must** give DoD civilian employees the opportunity **to** immediately pay the

amount due. If immediate payment is not made, then full offset, if it does not cause undue financial hardship, **must** be made immediately against accrued pay, retired pay, or any other amount due the civilian employee from the United States. If the civilian employee does not pay, or if there is no amount available for offset, then DCO **must** follow all other appropriate debt collection provisions of this Regulation. DCOs should inform employees of the requirement for immediate repayment of unearned advances of per diem and mileage allowances at the time that advances are made. Hearings are not required, but DCOs must reconsider debts upon request of the debtor.

280803. Administrative Offset for Damage to Military Housing

Under [10 U.S.C. 2775](#), administrative offset is authorized to pay for the cost of repair, replacement, or cleaning of military housing caused by the abuse or neglect of military members. Hearings are not required for debts being collected by administrative offset under this statute. All other provisions for administrative offset apply to collection of these debts. DCOs **must** reconsider these debts upon request of the debtor.

280804. Administrative Offset for Administratively Determined Debts

Under [37 U.S.C. 1007](#), administrative offsets are authorized to collect debts that administratively are determined to be owed to a DoD Component by a military member. Except where there are questions of debt validity or truthfulness, hearings are not required before collection of debts by administrative offset under this statute. Policies and procedures for collecting routine pay adjustments under this statutory authority are in Volume 7A, Chapter 50 and Volume 7B, Chapter 28.

280805. Administrative Offset to Recover Public Funds

Under [5 U.S.C. 5512](#), administrative offset is authorized to offset the pay of an accountable officer in arrears to the United States for all sums for which he or she is liable. This authority only pertains to collection of debt when the debt is the result of an individual being held liable for a loss of funds. Withhold the pay of individuals in arrears to the United States until they have accounted for and paid into the U.S. Treasury all sums for which they are liable. [Refer to](#) Chapter 6 of this volume for additional guidance on loss of funds.

280806. Salary Offset for Monthly Installments

Under [5 U.S.C. 5514](#), DCOs may initiate salary offset to collect indebtedness by installment deductions. Refer to Volume 7A, Chapter 50; Volume 7B, Chapter 28; Volume 8, Chapter 8; and Volume 13, Chapter 8 for salary offset procedures under this statute. This statutory authority **must** be used to collect indebtedness of military members, DoD civilian employees, and nonappropriated fund instrumentality (NAFI) employees from their current pay or salary accounts when offset is not authorized or required by other more specific statutes. Unless otherwise provided by this or other Regulation, the paying office **must** ensure that the debtor has received due process before the current pay or salary can be involuntarily offset to satisfy a debt to the United States. The right to a hearing conducted by an independent hearing

official is one of the due process protections afforded an individual under this statute. Refer to section 2810 of this chapter for guidance on hearings. Debts owed by individuals to agencies other than DoD Components are sent by those agencies to the Department of the Treasury's Federal Offset Program for processing. Additional guidance pertaining to the Department of the Treasury's offset program can be found at: <http://www.fms.treas.gov/debt/top.html>.

280807. Offset Under Statutes Not Specifically Covered

Nothing contained in this chapter **must** prevent the collection of indebtedness under the common law within the statutory period allowed, utilizing any available statutory authority not covered herein.

280808. Collection by Administrative Offset

A. General. Administrative offset under 31 U.S.C. 3716 is the withholding of funds from amounts payable by the United States to a person, including a state or local government but excluding an agency of the United States, to satisfy a debt. The provisions for administrative offset in FCCS hereby are implemented by FCCS and this chapter. In the event of any inconsistency between this chapter and FCCS when 31 U.S.C. 3716 is the authority for the action, the provisions of FCCS will prevail. Where feasible, DCOs **must** collect debts by administrative offset whenever a debtor refuses to pay a debt in lump-sum or by an installment repayment agreement. Debts not subject to administrative offset under 31 U.S.C. 3716 still can be collected by offset under the common law or other applicable statute. This paragraph applies to administrative offsets undertaken pursuant to 31 U.S.C. 3716 and FCCS against funds or money payable to or held for a debtor. This paragraph does not apply to:

1. Offset against Federal salaries, to the extent that FCCS are inconsistent with regulations implementing salary offsets under 37 U.S.C. 1007 or 5 U.S.C. 5514 (also refer to Volumes 7A, 7B, 8, and 13);
2. Offset under [31 U.S.C. 3728](#) against a judgment obtained by a debtor against the United States;
3. Offset or recoupment under common law, state law, or Federal statutes specifically prohibiting offset or recoupment of particular types of debts; or
4. Offset in the course of judicial proceedings, including bankruptcy.

B. Provisions for Administrative Offset. FCCS provides for administrative offset utilizing both agency managed noncentralized administrative offset programs and centralized Department of the Treasury administrative offset programs. The following provisions apply to either a noncentralized or centralized administrative offset program.

1. Statute of Limitation. Section 14219 of [Public Law 110-246](#) amended 31 USC 3716(e) to eliminate the 10 year statute of limitations on collection by administrative offset. As a result, all debts, including those previously ineligible for collection

prior to the removal of the time limit, may now be collected by administrative offset, without any time limitation. Debts more than 10 years delinquent as of December 31, 2009, that were previously ineligible for collection may now be collected by administrative offset provided additional notice and due process requirements are met. Refer to subparagraph 280808.B.3 of this chapter.

2. Notice Requirements. Before administrative offset is initiated, DCO will advise the debtor of the proposed action. This notification may be part of the initial demand letter described in paragraph 280402 of this chapter. Whether included in the initial demand letter or issued as a separate notification, the DCO will include in the notice of intent to offset, at a minimum, the following:

a. Written notice of the basis and the amount of the debt and the intent to use administrative offset to collect the debt after 30 calendar days from date of the notice, unless a written response is received from the debtor requesting a hearing or debt determination reconsideration or the debtor provides supporting or mitigating statements/documents or repayment. Debts referred to the Treasury Offset Program (TOP) require 60 day notice prior to referral.

b. Information regarding the debtor's right to inspect and copy government records related to the debt at the debtor's expense.

c. Information regarding the debtor's right to a hearing, including a statement of the type of hearing (oral or administrative) appropriate for the debt in question, and an offer to reconsider the debt basis and amount. Refer to section 2810 for additional guidance on hearings.

d. A request for the debtor to submit any documentation or statement regarding the debt basis or amount for inclusion in a reconsideration or hearing.

e. An opportunity to make a written agreement to repay the debt.

f. A date for the debtor to respond in writing to the notice of offset and submission of additional documentation or statement, normally not less than 30 days from receipt of the initial notice or 45 days if recipient is overseas.

g. The fact that the debtor's failure to respond will result in processing the administrative offset.

h. The fact that if the debtor knowingly provides false or frivolous statements, representations, or evidence, then the debtor may be subject to penalties under the False Claims Act ([31 U.S.C. 3729](#), [3730](#), and [3731](#)), [18 U.S.C. 286](#), [287](#), [1001](#), or [1002](#), or other applicable statutes.

i. Statement that any amounts paid or administratively offset from a payment for the debt that are later waived or found not owing will be promptly refunded unless prohibited by law or contract.

j. Mailing address and telephone number of point of contact for the debtor to write or call with any questions or discussions regarding the debt.

3. Additional Notice and Due Process Requirements. Additional notice and due process requirements apply to the collection of debts that are 10 years delinquent as of December 31, 2009, and which are referred to TOP. For debts outstanding more than 10 years on or before December 31, 2009, a second written notice of the agency's intent to offset must be issued to the debtor even if such a notice was previously issued prior to the debt becoming 10 years delinquent. The second notice **must** describe the agency's intent to collect the debt through offset and provide the debtor with additional inspection, copying, review, and repayment opportunities. The second notice **must** meet the requirements of subparagraphs 280808.B.2.a through B.2.j. [Refer to 31 C.F.R. 285.5](#) for additional guidance.

4. When Requirements may be Omitted. The requirements that must precede administrative offset may be omitted under any of the following circumstances:

a. The administrative offset is in the nature of a recoupment.

b. The first indication of the existence of a debt provides an insufficient time before the payment subject to administrative offset would be made to the debtor to allow for prior notice and opportunity for review.

NOTE: When the preceding conditions are present, afford the debtor an opportunity for review as soon as practicable and promptly refund any money offset to collect an indebtedness ultimately found not to have been owed.

5. FCCS requires disbursing officers and certifying officials to cooperate with all government agencies to collect debts referred for administrative offset except under either of the following conditions:

a. The offset would not be in the best interest of the United States with respect to the program against which offset is requested as determined by the head of the agency holding funds or monies for offset; **or**

b. The offset would be contrary to another applicable law.

6. When collecting multiple claims by administrative offset, amounts recovered **must** be applied to those claims in accordance with the best interests of the United States, as determined by the facts and circumstances in each case, particularly the applicable statutes of limitation.

7. When a debtor previously has been given any of the required notice and review opportunities with respect to a debt, there is no need to duplicate these before initiating administrative offset with regard to that debt, except as provided in subparagraph 280808.B.3. Accomplish administrative offset as funds or monies become due and payable to a debtor after consideration is given to administrative offset requirements.

280809. Noncentralized Administrative Offset

A. Requests for Offset From Non-DoD Federal Agencies. Administrative offsets under 31 U.S.C. 3716 and FCCS can be made by DoD or other Federal Agency disbursing officers or officials certifying or authorizing payments to a debtor. All requests from non-DoD Federal agencies for administrative offset by the DoD Components **must** be forwarded to the Department of the Treasury. Additional information regarding the Department of the Treasury administrative offset process is available at <http://www.fms.treas.gov/debt/top.html>.

B. Determining Merit of Offset. Organizations processing requests for administrative offset are not authorized to determine the merits of debts for which offset is requested. DCO requesting the offset is responsible for determining the validity and merits of the debt.

C. Requests for Offset Within DoD

1. Requests by a DCO from one DoD Component for administrative offset against a military member or civilian employee of another DoD Component are initiated by sending a [DD Form 139](#) (Pay Adjustment Authorization), [DD Form 2481](#) (Request for Recovery of Debt Due the United States by Salary Offset), other prescribed or authorized form, or an automated transaction to the debtor's payroll processing activity. Refer to Volume 7A, Chapter 50 and Volume 8, Chapter 8 for specific guidance regarding processing these requests.

2. The request **must** include certification that the debtor owes the debt and that requesting DCO has fully complied with regulatory requirements concerning administrative or salary offset.

3. The request **must** include a point of contact at DCO who **must** respond to questions or disputes from the debtor.

4. When a debtor consents to administrative offset in writing or signs a statement acknowledging receipt of due process procedures, requesting DCO will include the consent or statement with the request for offset along with the certification and all supporting documentation. Administrative offset cannot be accomplished until the organization requested to make the offset has been provided the supporting documentation. The organization processing the offset will advise the debtor of the offset request and when the offset will be accomplished. If the debtor terminates employment or transfers to another agency while an offset is ongoing, then the organization processing the offset **must** inform requesting DCO that the individual is no longer employed by the organization and will provide a recap of amounts offset to date.

280810. Department of the Treasury Centralized Administrative Offset Program

The FMS, Department of the Treasury, has broad administrative offset collection responsibilities for delinquent debts based on the “Debt Collection Improvement Act of 1996,” as codified at [31 U. S. C. 3711\(g\)](#). The DoD Components are required to refer legally enforceable debts over 180 days delinquent to the Department of the Treasury for continued collection action. Refer to paragraph 281204 for additional information.

280811. Administrative Offset From the Civil Service Retirement and Disability Fund (CSRD) and the Federal Employee Retirement System (FERS)

Procedures for requesting offset from CSRD or FERS for debts owed by retired DoD civilian employees are contained in Volume 8. Requests for offset forwarded to the Office of Personnel Management in accordance with Volume 8 **must** not be referred to the Department of the Treasury under paragraph 280809 or 281204 of this chapter since this action would result in duplicative offset requests. These debts, however, are eligible for all other collection processes.

2809 COLLECTION AND PROCESSING OF INDIVIDUAL OUT-OF-SERVICE DEBT

280901. General

This section pertains to the processing of individual out-of-service debts referred by DCOs to the Defense Finance and Accounting Service (DFAS), Debt and Claims Management Office (DCMO). DCMO operates and maintains the Defense Debt Management System (DDMS) to provide centralized, cost-effective, automated debt management and collection assistance for delinquent debts owed to DoD by individuals who currently are not paid by DoD. DCMO **must** comply with the “Federal Claims Collection Act of 1966,” as amended, [31 U.S.C. 3701-3720E](#) and all applicable laws and regulations, including the FCCS.

280902. Incidence of Individual Out-of-Service Debts

Individual out-of-service indebtedness occurs when the debtor is not receiving salary or other payments from DoD that can be offset to collect existing debt owed to DoD. Individual out-of-service debts may arise from overpayments, erroneous payments, indebtedness by the public for use of DoD’s facilities or services, or indebtedness by individuals previously serving in or employed by a DoD Component.

280903. Obtaining Service from DCMO

The DoD Components not supported by DFAS may obtain debt collection services from DCMO. The DoD Component and DCMO **must** document the services to be provided using a Support Agreement ([DD Form 1144](#)).

*280904. Individual Out-of-Service Debt Collection Procedures

A. DCO Responsibilities. DCO is the office responsible for initial debt collection and due process actions. DCO may be part of the DoD Component's supporting accounting office or a separate organizational element within the DoD Component. DCO will:

1. Issue the initial bill, invoice, notice, or demand letter to the debtor and take appropriate follow-up action. Only one demand letter is required; however, DCOs may issue additional follow-up notices to the debtor as deemed appropriate. Refer to section 2804.

2. Complete any previously initiated actions such as reclamation, appeal, litigation, or foreclosure before referring delinquent individual out-of-service debts to DCMO.

3. Research and verify the military or civilian status of debtors to ensure that only eligible individual out-of-service debts are referred to DCMO.

4. Refer delinquent individual out-of-service debts that are \$225 or greater to DCMO no later than 60 days after the payment due date when DCO has not been able to collect the debt or establish a repayment schedule. If an individual has multiple debts all under \$225, then consolidate the debts and refer them to DCMO as one debt package. Refer to Volume 4, Chapter 3 for guidance on guidance for clearing individual out-of-service debts that are under \$225.

5. Use a transmittal letter to control referral of eligible debts to DCMO and to ensure that the debts are received by DCMO. Prepare the transmittal letter in duplicate and send it to DCMO, DFAS-IN, Department 3300 (ATTN: Special Actions), 8899 E. 56th Street, Indianapolis, IN 46249-3300, as required, but no less frequently than weekly. Identify on the transmittal letter all attached debt case files by name, Social Security number, and amount. Include the name, email address, and telephone number for DCO point of contact and the name and location of the office accountable for the debt. Attach a copy of all documentation and background material in the debt case files. Documentation includes:

- a. A copy of the original bill or other demand for payment.
- b. The demand letter should comply with the Treasury FMS due process notification requirements listed in "[Managing Federal Receivables](#)," Appendix 8, dated May 2005, in order for the DCMO to accept the debt.
- c. The original debt principal amount with complete accounting classification and fiscal year to be credited with any collections. Include a copy of the original disbursement voucher when the debt is the result of a previous payment.
- d. The date the debt became known.
- e. The date the debt was due.
- f. The date the debt became delinquent.

- penalty fees.
- g. The amount of accrued interest, administrative charges, and
 - h. Copies of any follow-up correspondence.
 - i. Amounts and dates of any prior collections (and the accounting classification credited). Include a copy of the collection voucher when the collection was not processed through salary offset.
 - j. The debtor's branch of service or agency where formerly employed.
 - k. The debtor's, sponsor's, or beneficiary's Social Security number.
 - l. Military status and date of separation for members or employees whose period of service or employment ended with indebtedness.
 - m. Copy of DD Form 139, if available.
 - n. Copy of DD Form 2481, if available.
 - o. Any other relevant documentation or information regarding the debt.
6. Include in each transmittal package a statement certifying that the amounts of the debts being referred are correct and that the debts are delinquent, valid, and legally enforceable. DCOs referring debts electronically will also submit a certification statement. [Refer to Figure 28-1](#) of this chapter for a sample certification statement.
7. Assign a unique 9-digit transmittal number to each transmittal letter. Create transmittal numbers using the date of the transmittal letter and [a unique number for each transmittal letter on that date \(i.e. the time stamp as a component of the transmittal number\)](#).
8. Correct any errors in debt packages returned by DCMO for correction/additional action and send the debt package back to DCMO using a new transmittal number.
9. Coordinate with their supporting accounting office to ensure that accountability for the referred debts is removed from its records in accordance with procedures in Volume 4, Chapter 3 upon receipt of the duplicate copy of the transmittal letter.
10. Maintain names, official addresses, and contact information for all witnesses to the events leading to the debt and copies of and location of physical evidence (documentation and other evidence) relating to the debt for payroll debts involving fraud, misrepresentation, or credibility, and for all non-payroll debts. This information is necessary in

the event that the debt must be referred to DOJ for litigation.

11. Follow up with DCMO to obtain the status of the referred debt when 60 days have elapsed from receipt of the duplicate copy of the transmittal letter and no additional information has been received.

12. Mail payments received from a debtor after the debt was referred to DCMO to DCMO, DFAS-IN, Department 3300 (ATTN: Case Management), 8899 E. 56th Street, Indianapolis, IN 46249-3300. Include the debtor's name and Social Security number so the proper account can be credited.

B. DCMO Responsibilities. DCMO will:

1. Assist DCOs in the centralized management of debts, including automated, centralized processing, referral, reporting, and accounting of debts.

2. Return uncollectible debts, debts requiring additional DCO collection action, and debts with incomplete documentation to DCO with an explanation of the reason for the return.

3. Determine the effective date for entering the debts into DDMS, annotate the effective date on the duplicate copy of the transmittal letter, and return the duplicate copy of the transmittal letter to DCO.

4. Pursue collection action once debts are entered in DDMS. Actions include servicing, collecting, compromising, suspending, or terminating collection. A general overview of the individual out-of-service delinquent debt collection steps is illustrated in Figure 28-2 of this chapter. The procedures include referring delinquent debts to private collection agencies for collection, reporting to credit bureaus, and referring uncollectible delinquent debts to the Department of the Treasury Offset Program and to DOJ for possible litigation. Timelines indicated in Figure 28-2 of this chapter are based on the date that the debt is first referred to DCMO and do not reflect the actual age of the debt. In the case of deceased debtors, DCMO uses [DD Form 2840](#) (Request for Information Regarding Deceased Debtor) to seek information from state probate courts concerning the establishment of an estate and pursues collection of the indebtedness in this manner.

5. Provide the data recorded in DDMS monthly to DFAS departmental accounting offices.

6. Upon request, provide feedback regarding status of debt collection to the applicable DoD Component.

C. DFAS Departmental Accounting Offices. DFAS departmental accounting offices **must** use DDMS to establish and maintain accountability at the departmental level for all debts referred to DCMO. DFAS departmental accounting offices will report the transfer-out and transfer-in of these debts on Part I, Section A, Line 5.A, "Reclassified/Adjusted Amounts" on the

Treasury Report on Receivables (TROR), and provide the required footnote. Refer to Volume 4, Chapter 3 for specific reporting requirements.

280905. Collection Assistance for Military Pay System-Generated Individual Out-of-Service Debts

Uncollectible debts on the Master Military Pay Account (MMPA) for Active Component (AC) and Reserve Component (RC) service members due upon separation or retirement, as well as debts for offset from retired pay, or annuitant pay periodically are systemically referred to DCMO. Once these system-generated debts are entered in DDMS, they are treated the same as collection action(s) taken on installation-generated debts. Defense Retiree and Annuitant Pay System (DRAS) debts are created when payments are made after the entitlement has ended. Those debts are transferred each month by an interface between DRAS and DDMS.

2810 RECONSIDERATION AND HEARINGS FOR ADMINISTRATIVE OFFSETS

281001. General

A. Upon written request, a debtor is entitled to reconsideration or a hearing (when authorized by statute) regarding determination of a debt. Both, reconsideration and hearing, involve review of debt documentation. A debtor is entitled to only one hearing, either administrative or oral, per debt owed to DoD.

B. Reconsideration is an informal examination of internal debt records by DCO to validate the debt without appointment of a hearing official. Reconsideration does not include a determination of the credibility or veracity of the debt.

C. An administrative hearing is accomplished by a hearing official and **must** involve consideration of debtor-submitted statements and documentation as well as DCO internal debt files.

D. An oral hearing consists of an appearance by the debtor before a hearing official to present arguments regarding the debt. An oral hearing normally will be conducted when the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt involves an issue of credibility or veracity.

E. DCO will refer all requests for hearings received from DoD military members, DoD civilian employees, and NAFI employees to DFAS, DFAS/JFEA-IN, 8899 East 56th Street, Department 3300 (ATTN: Hearings), Indianapolis, IN 46249-3300.

F. When a debtor has requested and is entitled to a hearing in conjunction with administrative offset, DCMO **must** determine whether an administrative or oral hearing is appropriate. An oral hearing is not required with respect to determinations of indebtedness that do not involve issues of credibility or veracity and when DCMO has determined that review of the written record is an adequate means to discover and correct any prior mistakes. When a debtor has requested a hearing and DCMO determines that an oral hearing is not required, then

DCMO must provide an administrative hearing.

G. There are no provisions for review or appeal of debt determination decisions rendered with regard to administrative offset; however, DCOs, DCMO, and debtors may exercise any other collection, appeal, waiver, remission, or review right that may be provided by other statute or regulation with regard to the debt.

281002. Debtor Responsibilities

A. Debtors **must** indicate, in their initial written response to a notice of administrative offset, their desire for a reconsideration of the debt or a hearing. The debtor **must** furnish, by the date specified in the notice of administrative offset, any facts and reasons why they believe that the debt is erroneous.

B. Debtors afforded an oral hearing on the existence or amount of the debt may petition for an administrative hearing in lieu of an oral hearing. Debtors who elect an administrative hearing in lieu of an oral hearing waive any right to an oral hearing and **must** agree to accept the administrative hearing decision as final as part of their written petition. Once approved by DCMO, the debtor cannot revoke his or her petition for an administrative hearing.

C. At least **3** working days before an oral hearing, the debtor **must** give the hearing official and DCMO the name of his or her representative, if one is selected, copies of any records that he or she plans to introduce if the records are different from those in the possession of DCMO, and a list of any witnesses, along with a summary of their anticipated statements.

D. Debtors, their representatives, and witnesses are responsible for their expenses incident to inspecting and copying government records and attending oral hearings.

E. If the debtor fails to submit a request in writing **to** DCO for a reconsideration or hearing by the date specified in the administrative offset notification letter, fails to appear on time at a scheduled oral hearing, or fails to file required documentation with DCO or hearing official by the specified due date, then DCO may grant the request if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

F. During oral hearings, debtors may not raise any issues not previously raised with the hearing official and DCMO nor may they introduce any facts or records not previously submitted.

281003. DCO and DCMO Responsibilities

A. DCO Responsibilities

1. When the debtor requests reconsideration and DCO determines that the request is appropriate, DCO will issue a response to the debtor within 60 days after receiving the request. The response **must** advise the debtor that the basis for the debt and amount

were reconsidered, indicate whether the debtor's contentions were accepted in whole or in part, specify the debt amount now owed, and, if applicable, reaffirm DCO's intent to collect the debt by administrative offset.

2. When the debtor requests a hearing, DCO will forward the request to DCMO. Refer to paragraph 281001.E.

B. DCMO Responsibilities

1. When an administrative hearing is requested and deemed appropriate, DCMO will issue a response to the debtor within 60 days after receiving the request. The response **must** advise the debtor that the basis for the debt and amount were reviewed, indicate whether the debtor's contentions were accepted in whole or in part, specify the debt amount now owed, and, if applicable, reaffirm DCMO's intent to collect the debt by administrative offset.

2. When an oral hearing is requested and deemed appropriate (refer to subparagraphs 281001.D and F), DCMO will, within 20 working days after receiving the debtor's request, notify the debtor of the time, date, and location of the oral hearing and provide a list of any additional submissions required of the debtor and the mailing address for the submissions. Whenever feasible, DCMO will schedule an oral hearing site, time, and date convenient for the debtor. Also, at least 3 working days before an oral hearing, DCMO will forward to the debtor and hearing official a package containing copies of debt records in the possession of DCMO, a statement supporting the basis for the debt, the amount of the debt, and names of DCMO witnesses and their anticipated statements. DCMO will document all significant matters discussed at the oral hearing.

3. Upon the written request of a debtor, DCMO will change oral hearings to administrative hearings if the request is received at least 3 working days before established oral hearing dates and if all submissions will be available to hold the administrative hearing at the already established time and site.

281004. Administrative Offset Reconsideration or Hearing Officials

A. General. Personnel eligible to reconsider debt determination issues or officiate over hearings include, but are not limited to, supervisors, management personnel, and other employees who are assigned to offices performing functions associated with matters pertaining to debt management, debt collection, debt servicing, claims examination, military pay, vendor or contract pay, or contracting. Other eligible personnel include grievance and appeals examiners, attorney advisors, judge advocates, and similar personnel who have been trained in or are qualified to perform hearing officer duties.

B. Reconsideration or Hearing Officials Under 31 U.S.C. 3716. Title 31, U.S.C., section 3716 specifies that reconsiderations or hearings will be performed within the agency. In most instances personnel assigned to DCO **must** be available to accomplish any debtor requested reconsiderations regarding debt existence or amount. In accordance with

subparagraph 281001.E of this chapter, all requests for hearings will be forwarded to DCMO.

C. Hearing Officials Under 5 U.S.C. 5514. Hearing officials will be appointed according to guidance in Table 28-2.

281005. Hearing Official Responsibilities

Hearings **must** be held according to the following requirements:

A. An administrative hearing **must** consist of a thorough examination of the regulations, records, documents, and facts underlying the debt.

B. An oral hearing **must** consist of an informal conference between the debtor and the hearing official for the presentation of documents, witnesses, and arguments.

C. Except for oral testimony, the only evidence permitted at oral hearings **must** be that already furnished as prehearing submissions.

D. Debtors **must** not raise any issues at oral hearings not previously raised with DCMO.

E. The hearing official **must** issue a written decision to the debtor within 30 days after the date of the hearing. The hearing official may extend this deadline. A hearing official's decision **must** be final for the purposes of 31 U.S.C. 3716 and **must** discuss the basic facts documenting the debt and will include conclusions concerning the basis and amount of the debt.

F. Hearing officials will review debtors' submissions received not later than **three** working days after the due date to determine if debtors forfeited their hearing right. If debtors show good cause, then this right will not be forfeited due to minor submission delays.

2811 BANKRUPTCY DEBTS

281101. Bankruptcy Petition Filed

Upon learning that a bankruptcy petition has been filed with respect to a debtor, before taking any further collection action, DCO **must** obtain legal advice concerning the impact of the Bankruptcy Code (Title 11) on any pending or planned collection action. In most cases, collection action should stop immediately unless it is determined that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect.

281102. Proof of Claim

After obtaining legal advice, a proof of claim in most cases should be filed with the bankruptcy court or the trustee. Attorneys should be aware of and provide advice, as necessary, relating to the consequences on sovereign immunity of filing a proof of claim under the

provisions of [11 U.S.C. 106](#).

281103. Relief from Automatic Stay

A secured creditor may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

281104. Offset and Recoupment

Offset is stayed in most cases by the automatic stay. DCOs **must** seek legal advice regarding initiation of action to freeze payments to the debtor and payments to other agencies available for offset pending relief from the automatic stay from the bankruptcy court. DCOs also **must** seek legal counsel regarding the possibility of recoupment.

2812 DEBT REFERRALS OUTSIDE THE DEPARTMENT OF DEFENSE

281201. Referrals to DOJ

A. General. After taking aggressive collection action, DCOs **must** promptly refer to DOJ for litigation all uncollectible delinquent debts greater than \$2,500, exclusive of interest, penalties, and administrative charges, that cannot be compromised, suspended, or terminated. In addition, DCOs **must** promptly refer any debt based in whole or in part on conduct in violation of the antitrust laws or any debt involving fraud, the presentation of a false debt, or misrepresentation on the part of the debtor or any party having an interest in the debt to DOJ. DCOs **must** refer debts with a principal amount over \$1,000,000, exclusive of interest, penalties, and administrative charges, to the responsible DOJ litigation division in Washington, D.C. Debts with a principal amount of \$1,000,000 or less, exclusive of interest, penalties, and administrative charges, **must** be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. DCOs **must** promptly refer debts within the statute of limitations period for initiating lawsuits against debtors, and generally within **one** year of the date that the debt last became delinquent.

B. Documentation

1. DCOs will use a CCLR and include a signed Certificate of Indebtedness to refer all uncollectible debts to DOJ for litigation or approval for compromise, suspension, or termination. **Refer to** section 2813 of this chapter for additional information on compromise, suspension, and termination.

2. A blank CCLR and instructions for completion of CCLR are **located at the FMS website**, Managing Federal Receivables, [Appendix 10-B](#). Forward CCLR to Director, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044.

3. DCO **must** complete all sections of CCLR appropriate for the debt being referred and furnish such other information as required by DOJ. Include as attachments to

CCLR a completed checklist or brief summary of actions taken to collect or resolve the debt and an explanation for the omission of any administrative collection action required by FCCS, or this chapter. If a debtor's address is unknown, then include a list of the debtor's prior known addresses and an explanation of actions taken to locate the debtor. Include with the debt referral the debtor's latest credit history data, such as a commercial credit report, balance sheet, or financial statement submitted by the debtor. Also indicate whether there is reasonable prospect of enforcing debt collection.

4. Credit data may be omitted from CCLR if a debtor is bankrupt, in receivership, or if the debtor's liabilities are fully covered by insurance. If applicable, then include the identity and address of the insurer, and the type and amount of insurance. Credit data also may be omitted if credit history is not available, such as may be the case for a state or local government unit.

5. Indicate clearly on CCLR the DOJ litigation action being sought (e.g., enforced collection or judgment lien) with respect to the underlying debt.

C. Notification to Debtor. Before a delinquent debt can be referred to DOJ, DCOs **must** notify the debtor that litigation may be initiated if the debt cannot be collected using administrative procedures. This notification can be issued either as part of the demand letter described in paragraph 280402 of this chapter or in a separate notice. When referring a debt for litigation, give evidence to DOJ that this notification has been provided to the debtor.

D. Minimum Amount for Referral. Generally, only non-fraud debts with a principal balance greater than \$2,500 are eligible for referral to DOJ. After consultation with the Financial Litigation staff attorneys of DOJ, DCOs may refer debts under \$2,500, exclusive of interest, penalties, and administrative charges, to DOJ for acceptance under the following circumstances:

1. Litigation to collect such smaller debts is important to ensure compliance with policies or programs.

2. Referral is for the purpose of securing a judgment against the debtor that will be filed as a lien against the debtor's property pursuant to [28 U.S.C. 3201](#), and returned to the referring office for enforcement.

3. The debtor has the ability to pay the debt and the Government effectively can enforce payment with due regard for the exemptions available to the debtor under federal and state law and the judicial remedies available to the Government.

E. Preservation of Evidence. Preserve all debt files and records that may be needed by DOJ to prove its case in court. Include certified copies of the documents that form the basis for the debt in the debt referral package. Provide originals of the documents if requested by DOJ.

F. Contact With Debtor After Referral. Once a debt has been referred to DOJ, DCO personnel **must** refrain from contact with the debtor regarding the debt. DCOs **must**

refer debtors raising questions to the appropriate DOJ office and **must** notify DOJ immediately of any payments received by DCO on referred debts in accordance with DOJ guidance.

G. Suspension or Termination of Collection Action. DOJ has exclusive jurisdiction over the debts referred to DOJ. DCOs will terminate the use of any administrative collection actions on debts referred to DOJ for litigation. [Refer to](#) 31 C.F.R. 904.1.

281202. Debt Referrals to Private Collection Agencies

A. Authority to Use Private Collection Agencies. Designated DCOs may utilize private collection agencies to supplement their debt collection programs.

B. Contracts for Private Collection Agency Services. Federal agencies generally are required to use government-wide contracts to obtain services provided by private collection agencies. Contracts with private collection agencies to locate delinquent debtors and recover delinquent debts will define the services available that generally will conform to the following terms agreed to between the Federal Government and the collection agency.

1. The referring DCO **must** retain the authority to resolve disputes, compromise debts, suspend or terminate collection activity, refer debts to credit bureaus, and refer debts to DOJ for litigation.

2. The collection agency is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the collection agency's fee unless the collection agency is granted authorization by DCO in advance of granting such an offer.

3. The collection agency is subject to the "Privacy Act of 1974" to the extent specified in [5 U.S.C. 552a](#) and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to, the Fair Debt Collection Practices Act ([15 U.S.C. 1692](#)).

4. The collection agency is required to account for all amounts collected.

5. The collection agency **must** comply with other requirements, as appropriate, with regard to locating and contacting debtors, accepting installment payments, processing late payment charges, and returning uncollectible debts to the referring DCO.

6. The debts cannot be subject to the requirement to transfer debts to the Department of the Treasury. [Refer to](#) 31 U.S.C. 3711(g) and 31 C.F.R 285.12(e).

C. Funding Private Collection Agency Contracts. Contracts with private collection agencies may be funded in accordance with either of the following:

1. Fixed Fee. Payment to the collection agency is a set fee

determined without regard to the amount actually collected under the contract, but only to the extent that funds are made available in advance in appropriations.

2. Contingent Fee. Payment to the collection agency is based on a provision in the contract permitting the collection agency to deduct a fee, consistent with prevailing commercial practice, based on a percentage of the amount collected under the contract.

281203. Debt Reporting to Credit Bureaus

A. Authority to Report Debts. DCOs **must** develop and implement procedures for reporting delinquent debts to credit bureaus and other automated databases. DCOs also **must** develop procedures to report nondelinquent debts to credit bureaus. Procedures **must** comply with the “Bankruptcy Code” and the “Privacy Act of 1974” (5 U.S.C. 552a), as amended. Provisions of the “Privacy Act” do not apply to credit bureaus. Consumer debt reporting **must** be consistent with due process and other requirements in 31 U.S.C. 3711(e). Effective March 1, 2007, in accordance with 10 U.S.C. 2780(b), debts incurred by military members will not be reported to credit bureaus during the time that a decision regarding waiver or remission/cancellation of the debt is pending.

B. Due Process. Before reporting debts to credit bureaus, DCOs **must** ensure that the due process requirements have been met. Duplication of previously provided due process notice(s) or opportunity for review with respect to a particular debt is not required prior to reporting the debt to the credit bureau as long as the following requirements have been met:

1. Information comes from a system of records for which the Privacy Act notice indicates that information in the system may be disclosed to a credit bureau.

2. DCO has decided that the debt is valid and overdue.

3. DCO has notified the debtor in writing:

a. That payment of the debt is overdue;

b. That, within not less than 60 days after sending the notice, DCO intends to disclose to a credit bureau that the debtor is responsible for the debt;

c. Of the specific information to be disclosed to the credit bureau; and

d. Of the rights the debtor has to a complete explanation of the debt, to dispute information in the records of the DoD Component or DCO regarding the debt and to administrative repeal or review of the debt.

4. Debtor has not:

a. Repaid or agreed to repay the debt under a written

repayment plan that the debtor has signed and the DoD Component or DCO has agreed to; or

- b. Filed for review of the debt under section 2810.
5. DCO has established procedures to:
 - a. Disclose promptly, to each credit bureau to which the original disclosure was made, a substantial change in the condition or amount of the debt;
 - b. Verify or correct promptly information about the debt on request of a credit bureau for verification of information disclosed; and
 - c. Get satisfactory assurances from each credit bureau that the credit bureau is complying with all laws of the United States related to providing consumer credit information.
 6. Information disclosed to credit bureaus is limited to:
 - a. Information necessary to establish the identity of the debtor, including name, address, and taxpayer identification number;
 - b. The amount, status, and history of the debt; and
 - c. The DoD Component or program under which the debt arose.

C. Maintaining Reported Debts Current. Once a debt is reported to a credit bureau, DCO **must** make prompt disclosure to that credit bureau of any substantial change in the condition or amount of the debt. DCO also **must** verify or promptly correct information about a debt when required and when requested by a credit bureau.

D. Maintenance of Debt Records. The credit bureau must remove accurate, negative information from a credit report only if it is over 3 years old. Bankruptcy information can be reported for 10 years. DCOs **must** retain records for debts reported to credit bureaus in accordance with guidelines of the National Archives and Records Administration General Records Schedule.

281204. Referral to Department of the Treasury

A. Treasury Offset Program

1. FMS, Department of the Treasury, has broad administrative offset collection responsibilities for delinquent debts based on the “Debt Collection Improvement Act of 1996,” as expressed in 31 C.F.R. 285.7. FMS established TOP to accomplish centralized administrative offsets of federal tax and nontax payments to collect federal delinquent debts government-wide. Under TOP, a database of certified delinquent debts submitted by

government creditor organizations is maintained and updated. Before FMS disburses a payment, it makes a comparison to determine whether the payment should be offset to satisfy a payee's delinquent debt. As necessary, the Department of the Treasury determines, in the best interest of the United States, how funds collected **must** be applied to multiple debts. Additional information on TOP can be found at <https://www.fms.treas.gov/debt/top.html>.

2. Some payments are prohibited by law from being offset and are exempt from centralized administrative offset. For example, certain payments under the "Social Security Act," "Black Lung Benefits Act," and "Railroad Retirement Board Act" are generally exempt, unless the Department of Treasury issues regulations permitting offset. In addition, the Department of the Treasury can exempt offset of means-tested benefit payments (programs wherein eligibility for beneficiary payment is based on the need to maintain a certain standard of living) and other classes of payments based on a determination that offset would not be in the best interest of the United States. An example would be administrative offset to collect a debt where the offset would tend to interfere with or defeat the purpose of a government payment program.

B. Cross-Servicing. Cross-Servicing is the collection of debt by one agency on behalf of another agency in accordance with 31 U.S.C. 3711(g). Additional information on Treasury Cross-Servicing can be found at <http://fms.treas.gov/debt/crossserv.html>.

C. Delinquent Individual Debt. In accordance with 31 U.S.C. 3711, DoD is required to refer individual debt that has been delinquent for 180 days to FMS, Department of the Treasury for continued collection action. Prior to referral to FMS, DCOs **must** consider the out-of-service debt program and procedures in section 2809 of this chapter to determine whether the out-of-service program offers more cost-effective services and debt management controls and reporting. DCO **must** send any required offset correspondence to debtors at the most current address as maintained in the DoD Component's files, regardless of source. FMS is authorized to charge fees to cover the costs of debt collection and administrative offset programs are authorized and FMS deducts such fees from the amount offset before the residual amount is transmitted to referring DCO. These offsets are not subject to any type of verification by the paying activity, so any action by a debtor to recover an offset will be referred to DCO. Although FMS will not identify the source of the offset to DCO, any tax information that may be known by any means is confidential and its use is restricted and governed by 26 U.S.C. 6103.

D. Offsets for State Debts. Under 31 U.S.C. 3716(h), the Department of the Treasury may enter into reciprocal agreements with states for federal disbursing officers to collect state debts through offset of federal payments and for state disbursing officers to collect federal debts through offset of state payments. Thus, as a result of Department of the Treasury and state government agreements and implementing regulations, offsets of state debts certified to Department of the Treasury may be paid to states and DoD may receive requests from Department of the Treasury to offset payments to satisfy debts due to states.

E. Computer Matching. In accordance with 31 U.S.C. 3716(f), the Department of the Treasury may waive the provisions in the "Computer Matching and Privacy Protection Act of 1988" concerning matching agreements and post-match notification and

verification (5 U.S.C. 552) for administrative offset under this paragraph upon receipt from a DCO that the due process requirements in subparagraph 280808.B have been met. The certification of a debt in accordance with subparagraph 280904.A.6 will satisfy this requirement. If the Department of the Treasury grants such a waiver, then only the Department of the Treasury Data Integrity Board is required to oversee any matching activities in accordance with 31 U.S.C 3716(f).

2813 DEBT COMPROMISE, SUSPENSION, AND TERMINATION

281301. General

FCCS provides agencies authority to compromise, suspend, or terminate collection action. Requests for compromise, suspension, or termination of collection action may be prepared and submitted by DCO, DCMO, Accounts Receivable Office (ARO), fund holder, or other entity involved in individual debt management.

281302. Determining Debt Amount for Compromise, Suspension, and Termination

Debts **must** not be subdivided to avoid monetary ceilings for debt compromise, suspension, or termination of collection actions. A debtor's liability arising from a particular transaction **must** be considered a single debt in determining if a debt is greater than \$100,000, between \$100,000 and \$500,000, or over \$500,000 for purposes of compromise, suspension, or termination. The amounts are exclusive of interest, penalties, and administrative costs.

281303. Compromise

A. General. Compromise is the acceptance of less than the full amount of the debt in satisfaction of the entire amount of the debt. Any debt based in whole or in part on conduct in violation of the antitrust laws, or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the debt, will not be compromised. Refer these debts promptly to DOJ. DCOs will take no further action on debts referred to DOJ. If such debt is otherwise below the threshold for DOJ referral, then DOJ may retain the debt or may return the debt with instructions for further handling. [Refer to 31 C.F.R. 902](#) for additional guidance on when a compromise may be approved.

B. Approval Authorities

1. DFAS has authority to approve compromises for debts referred to DFAS when the principal amount does not exceed \$100,000. DFAS will coordinate with the fund holder as part of carrying out these responsibilities.

2. DoD Components have authority to approve compromises for debts not referred to DFAS when the principal amount does not exceed \$100,000.

3. DOJ has delegated to the Department of the Treasury authority to approve compromises for debts less than or equal to \$500,000 when the debt is being serviced by

the Department of the Treasury in its cross-servicing program.

4. DOJ has authority to compromise debts exceeding \$100,000 when the debt is not serviced by the Department of the Treasury in its cross-servicing program and also has authority to compromise all debts greater than \$500,000. Only DOJ can consider noncash compromise offers for debts exceeding \$100,000.

5. DFAS and the DoD Components cannot approve a compromise on a debt referred to DOJ for litigation unless the debt is returned to DoD for disposition.

C. Referring Compromise Offers to DOJ. Acceptable offers of compromise exceeding \$100,000 that are not being serviced by the Department of the Treasury in its cross-servicing program and all offers exceeding \$500,000 must be referred to DOJ using a CCLR. See paragraph 281201 of this chapter for guidance on preparation and submission of the CCLR. The referral **must** include appropriate financial information and a recommendation for the acceptance of the compromise offer by DOJ. DOJ approval is not required if a decision is made to reject a compromise offer.

D. Review of Compromise Offers by DOJ. If DFAS or the DoD Component is uncertain whether or not to accept a firm, written substantive compromise offer on a debt within the delegated compromise authority of \$100,000 or less, then DFAS or the DoD Component may refer the compromise to DOJ. Use CCLR to refer the offer along with supporting data and particulars concerning the debt. DOJ may act upon the offer or return it with instructions or advice for further action.

E. Reasons for Compromise. Debts may be compromised for any one or a combination of several valid reasons. When assessing the merits of a compromise proposal, it may be beneficial to obtain a current financial statement from the debtor and a credit report or other financial information to aid in evaluating the debtor's assets, liabilities, income, and expenses. Possible grounds for compromise include the following:

1. Compromise Because of Litigation Risks. If there is significant doubt concerning the government's ability to prove its case in court for the full amount of the debt, then a compromise may be appropriate. The amount accepted in a compromise agreement should reflect such factors as the complexity of the legal issues, the probability of a bona fide dispute as to the facts, the availability of witnesses and supporting evidence, and the probability of successful prosecution. In determining the litigation risks involved, DFAS or the DoD Component **must** consult with agency counsel and DOJ to consider the probable amount of court costs and attorney fees that may be imposed against the government if litigation is unsuccessful.

2. Compromise Because of Debtor Inability to Pay Full Amount. DFAS or the DoD Components may compromise debts if the debtor is unable to pay the full amount due in a reasonable time or if the full amount due could not be collected in a reasonable time using enforced collection. Consider, as a minimum, the following factors, in determining a debtor's ability to pay the full amount of the debt:

- a. Current financial statement from the debtor;
- b. Credit reports and other financial information;
- c. Debtor's age and health;
- d. Debtor's present and potential income;
- e. Debtor's inheritance prospects;
- f. The possibility that assets have been concealed or improperly transferred by the debtor; and
- g. The availability of assets or income that may be realized by enforced collection proceedings.

3. Compromise Because Collection Costs Exceed Amounts Recoverable or Collection is not Anticipated. DFAS or a DoD Component may compromise a debt if the cost of collection does not justify the enforced collection of the full amount. Collection costs may be a substantial factor in the compromise of smaller debts. An amount accepted in compromise may reflect a discount for the administrative and litigation costs of collection along with consideration for the time involved to effect collection. In determining whether the cost of collection justifies enforced collection of the full amount, DFAS or the DoD Component **must** consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcing principle, such as the willingness to aggressively pursue defaulting or uncooperative debtors.

F. Compromise With Joint and Several Liability. When two or more debtors are jointly and severally liable, collection **must** be pursued against all debtors, as appropriate. Do not attempt to allocate payment of the debt between debtors, but proceed to liquidate the debt as quickly as possible. A compromise agreement with one debtor will not release the indebtedness with the remaining debtors. The amount of a compromise with one debtor should not be considered a precedent or binding in determining the amount that would be required from other jointly or severally liable debtors.

G. Compromises Payable in Installments. Installment payment of compromised debts generally should not be accepted since this is not an advantageous form of compromise in terms of time and administrative expense. If installment payment of a compromise is necessary, however, then DFAS or the DoD Component **must** obtain a legally enforceable written agreement that stipulates immediate payment of the original debt, less sums already paid, in the event of default. Whenever possible, obtain security for installment repayment agreements.

H. Enforcement Policy. Accidental or minor violations of regulations that result in indebtedness may be treated less severely than willful and substantial violations. Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel

compliance may be compromised so long as no present or future harm is done to standards for enforcement, deterrence, or compliance.

I. Tax Consequences to the U.S. Government. In negotiating a compromise, consider the tax consequences to the government. In this situation, consider requiring a waiver of tax loss carry-forward and tax loss carry-back rights of the debtor in the compromise agreement and furnish a copy to the Internal Revenue Service.

J. Mutual Releases of the Debtor and the U.S. Government. In appropriate circumstances, implement an accepted compromise by means of a mutual release, whereby the debtor is released from further nontax liability on the compromised debt in consideration of payment in full of the compromise amount, and the government and its officials, past and present, are released and discharged from any and all claims that the debtor may have against them arising from the same transaction.

281304. Suspension of Collection Action

A. General. Suspension of collection action is a determination to temporarily cease collection action. Any debt, based in whole or in part on the violation of antitrust laws **must** be referred promptly to DOJ for a decision on the disposition of the debt. Likewise, any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the debt, will not be suspended, but will be promptly referred to DOJ for a decision on the appropriate disposition of the debt. DCOs will take no further action on debts referred to DOJ. DOJ may retain the debt for processing or may return the debt with instructions for further handling. Refer to 31 C.F.R. 903 for additional guidance on when suspension of collection action is appropriate.

B. Approval Authority

1. DFAS has authority to suspend collection action on debts referred to DFAS when the principal amount does not exceed \$100,000. DFAS will coordinate with the fund holder as part of carrying out these responsibilities.

2. DoD Components have authority to suspend collection action on debts not referred to DFAS when the principal amount does not exceed \$100,000.

3. DOJ has delegated to the Department of the Treasury authority to approve suspension of collection action on debts with a principal amount of \$500,000 or less when the debt is being serviced by the Department of the Treasury in its cross-servicing program.

4. DOJ has authority to approve suspension of collection action on debts with a principal balance exceeding \$100,000 when the debt is not serviced by the Department of the Treasury in its cross-servicing program and approval to suspend collection action on all debts greater than \$500,000.

C. Suspension of Collection Action. Suspend collection action on a debt when any of these conditions arise:

1. The debtor cannot be located;
2. The debtor's financial condition is expected to improve;
3. The debtor has requested a waiver or review of the debt and suspension of the debt is appropriate under subparagraph 281304.D; or
4. The debtor's current financial condition or future financial prospects justify retention of the debt for periodic review and collection activity based on any of the following factors:
 - a. The applicable statute of limitations has not expired; or
 - b. The debtor agrees to pay interest on the suspended debt amount and the suspension is likely to enhance the debtor's ability to pay the full debt principal amount at a later date with interest.

D. Suspension During Waiver, Remission, or Review. Do not suspend collection activity if it is determined that a request for waiver, remission, or review is frivolous or made primarily to delay collection. Suspend collection activity during the time required for consideration of a debtor's good faith request for waiver, remission, or review of the debt if any of the following factors apply:

1. The statute under which the request is sought prohibits collection activity during that time;
2. The amount collected during that time cannot be refunded under the applicable statute;
3. There is reasonable possibility that the debtor will prevail; or
4. There is reasonable assurance that the debt could be collected if the debtor does not prevail.

E. Suspension for Bankruptcy. When a bankruptcy petition has been filed with respect to a debtor, collection activity on a debt must be suspended pursuant to 11 U.S.C. 362, [1201](#), or [1301](#), unless it can be clearly established that the automatic stay has been lifted or no longer is in effect. With the coordination and assistance of the supporting legal office, seek action to prevent disbursement of funds to the debtor until relief from the automatic stay is obtained.

F. Consideration of Delay of Collection Action. As amended by section 661 of the [Fiscal Year 2010 National Defense Authorization Act \(NDAA\)](#), 37 U.S.C. 1007(c)

provides that military members subject to deductions from pay under that section may request a delay in the start of the repayment requirement to recover the indebtedness. Before beginning deductions from pay, DCO will consider the reasons provided by the military member for the requested delay, including the financial ability of the service member to repay the indebtedness, and the hardship that immediate collection would impose on the military member and the military member's dependents.

G. Suspension of Collection of Overpayments to Wounded or Injured Military Members

1. The policy contained in this paragraph is applicable to overpayment of pay or allowances made to military members after October 28, 2009.

2. In accordance with section 661 of the Fiscal Year 2010 NDAA, if a military member, through no fault of his/her own, incurs a wound, injury, or illness while in the line of duty in a combat operation or combat zone designated by the President or the Secretary of Defense and is overpaid pay or allowances while recovering from the wound, injury, or illness, then collection of that overpayment may not be deducted from the military member's pay until:

- a. the military member is notified of the overpayment; and
- b. the later of the following occurs:

(1) the end of the 180 day period beginning on the date of the completion of the military member's tour of duty in the combat operation or combat zone; or

(2) the end of the 90 day period beginning on the date of the military member is reassigned from a military treatment facility or other medical unit outside of the theater of operations.

3. The provisions of subparagraph 281304.G.2.b do not apply if the military member after receiving notification of the overpayment, requests or consents to collection of the overpayment at an earlier date.

H. Referral to DOJ for Approval to Suspend Collection Action. DOJ may suspend collection activity on a debt with a principal balance exceeding \$100,000 that is not being serviced by the Department of the Treasury in its cross-servicing program and all offers exceeding \$500,000. If suspension is appropriate, then DFAS or the DoD Component **must** refer such debts to DOJ using a CCLR and specifying the reasons for referral. **Refer to** paragraph 281201 for guidance on preparation and submission of the CCLR.

281305. Termination of Collection Actions

A. General. Termination of collection action is a determination to cease collection action with no intention to resume collection action at a later date. Any debt, based in whole or in part on the violation of antitrust laws **must** be referred promptly to DOJ for a decision on the disposition of the debt. Likewise, any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the debt, will not be terminated, but will be promptly referred to DOJ for a decision on the appropriate disposition of the debt. DCOs will take no further action on debts referred to DOJ. DOJ may retain the debt for processing or may return the debt with instructions for further handling. Refer to [31 C.F.R. 903.3 and 903.4](#) for additional guidance on the termination of collection action.

B. Approval Authorities

1. DFAS has authority to terminate collection action on debts referred to DFAS when the principal amount does not exceed \$100,000. DFAS will coordinate with the fund holder as part of carrying out these responsibilities.

2. DoD Components have authority to terminate collection action on debts not referred to DFAS when the principal amount does not exceed \$100,000.

3. DOJ has delegated to the Department of the Treasury authority to approve termination of collection action on debts with a principal amount of \$500,000 or less when the debt is being serviced by the Department of the Treasury in its cross-servicing program.

4. DOJ has authority to approve termination of collection action on debts with a principal balance exceeding \$100,000 when the debt is not serviced by the Department of the Treasury in its cross-servicing program and approval to terminate collection action on all debts greater than \$500,000.

C. Reasons to Terminate Collection Action. Active collection of a debt may be terminated after all appropriate means of collection have been pursued and a determination is made, based upon the results of collection activity, that the debt cannot be collected. Termination results in removal of the debt from the active collection files and write-off from the accounting records generally follows. Terminate collection activity when a determination is made that any of the following conditions apply:

1. No substantial amount can be collected using all tools available;
2. The debtor cannot be located;
3. Costs of collection are anticipated to exceed amounts recoverable;
4. The debt is legally without merit;

5. Enforced collection is barred by any applicable statute of limitations;
6. Documentation indicates that further collection action would be futile;
7. The debt cannot be substantiated; or
8. The debt has been discharged in bankruptcy.

D. Record of Terminated Accounts. Although a debt may be terminated for collection activity, DFAS or the DoD Component **must** retain a record of the debt for the purposes of:

1. Selling the debt, if the Department of the Treasury determines the sale is in the best interest of the United States;
2. Pursuing collection activity at a later date in case there is a change in the debtor's status or a new collection tool becomes available;
3. Offsetting against future income or assets not available at the time of termination of collection activity; and
4. Screening future applicants for prior indebtedness.

E. Termination for Bankruptcy. Generally, DFAS or the DoD Components **must** terminate collection activity on a debt that has been discharged in bankruptcy, regardless of amount. Subject to the provisions of the Bankruptcy Code, however, collection activity can continue for any debt payments specified under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy, and under some circumstances, debts also may survive the discharge. For example, the debt of a known creditor of a debtor may survive a discharge if the known creditor did not receive formal notice of the proceedings. As with other bankruptcy issues, the DoD Component **must** seek the counsel of the supporting legal office regarding debts or offsets that may survive the discharge of a debtor in bankruptcy.

F. Exception to Termination. When a significant enforcement policy is involved or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, debts may be referred to DOJ for litigation even though termination of collection action otherwise might be appropriate.

G. Referral to DOJ for Approval to Terminate Collection Action. DOJ may terminate collection activity on debts with a principal balance exceeding \$100,000 that are not being serviced by the Department of the Treasury in its cross-servicing program and may terminate collection activity on all debts exceeding \$500,000. If termination is appropriate for these debts, then DFAS or the DoD Component **must** refer such debts to DOJ using the CCLR

and specifying the reasons for referral. Refer to paragraph 281201 of this chapter for guidance on preparation and submission of CCLR.

281306. Suspension or Termination of Indebtedness From Deceased Debtors

Under 31 U.S.C. 3711 (f)(1), when deemed appropriate, the Secretary of Defense has the authority to suspend or terminate an action by the Secretary or by the Secretary of a military department to collect a claim against the estate of a service member who died while on active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy.

2814 STANDARDS FOR DETERMINING FINANCIAL POSITION OF DEBTOR

281401. General

Various actions within the debt collection process may require DCO to make decisions based on the financial position of the debtor.

281402. Information to be Considered

The following information may be considered when determining the financial position of the debtor:

- A. Income from all sources and expenses for the debtor, spouse, and dependents;
- B. The extent that assets of the debtor, spouse, and their dependents are available to meet the offset and essential subsistence expenses;
- C. Whether subsistence expenses have been reduced to minimum essential amounts;
- D. The extent to which a debtor or spouse can borrow money to meet the offset and minimum subsistence expenses; and
- E. The extent to which the debtor, spouse, and dependents have other exceptional expenses that should be taken into account and whether these types of expenses have been minimized.

2815 DEBT WRITE-OFF AND CLOSE-OUT

Refer to Volume 4, Chapter 3 of this for guidance on debt write-off and close-out.

2816 REMISSION AND WAIVER OF INDEBTEDNESS

281601. Remission of Indebtedness Due From Military Members

Title 10, [U.S.C.](#), sections [4837](#), [6161](#), and [9837](#) provide authority for the remission of indebtedness due from a military member. This process is not available to DoD civilian employees. Requests from Army and Air Force military members will be forwarded to their respective services for processing. Requests from Navy and Marine Corps military members will be submitted on a [DD Form 2789](#) (Waiver/Remission of Indebtedness Application) and will be forwarded to DFAS-IN, Department 3300 (Waiver/Remission), 8899 East 56th Street, Indianapolis, IN 46249-3300 for processing.

281602. Waiver of Indebtedness Arising From Erroneous Payments

[Title 5, U.S.C., section 5584](#), [10 U.S.C. 2774](#), and [32 U.S.C. 716](#) provide authority to waive an indebtedness which is the result of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses and allowances. All requests for waiver of indebtedness for DoD civilians (current and retired) and military members (active, reserve, retired and National Guard) will be submitted on a DD Form 2789 and will be forwarded to DFAS-IN, Department 3300 (Waiver/Remission), 8899 East 56th Street, Indianapolis, IN 46249-3300 for processing. Refer to [DoD Instruction 1340.23, "Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances,"](#) for additional guidance.

2817 REFUNDING PREVIOUSLY COLLECTED DEBTS AND LATE PAYMENT CHARGES

281701. General

Occasionally, because of post-collection clarification regarding a debt, monies collected for penalties, administrative costs, interest, and collection fees **must** be authorized for refund to the debtor by the DoD Component or DCO. Such refunds occur for a variety of reasons, but generally are based on a determination that the debt is invalid or should have been forgiven under applicable law or regulation. When making a refund payment, the DoD Component or DCO **must** prepare a Standard Form [SF 1034](#) (Public Voucher for Purchases or Services Other Than Personal), or other approved voucher and submit it for payment, along with documentation from the debtor or other source(s) that establishes the former debtor's claim against the Government. The DoD Component or DCO **must** retain a copy of the voucher and supporting documentation in the debtor's case file.

281702. Determination of Refund Amount

The amount collected from the debtor that is subject to refund usually includes penalties, administrative charges, and interest computed on the principal amount of the debt. Additional fees will have to be considered for inclusion in the refund if the debt was collected by the Department of the Treasury and/or a commercial collection agency. A debt refund might be applied against a part, or to the entire amount, of the debt. When a debt is collected, the principal debt amount is credited to the appropriation or other account owed the debt if the appropriation/account is still open. If the appropriation/account is closed, then the collection **must** be credited to receipt account 3200, "Collections of Receivables from Canceled Accounts."

A. Once DCO effects collection, the amounts received for penalty, administrative charges, and interest are credited to a miscellaneous receipt account that is prefixed by the appropriate departmental symbol (17, 21, 57, 96, or 97 for the Navy, Army, Air Force, Corps of Engineers, and Defense, respectively).

B. When collection is effected through TOP, the fee added to the debt is retained by the Department of the Treasury. The amount collected by offset (minus the amount retained by the Department of the Treasury) is deposited to the appropriate appropriations and accounts. If a refund is required, then the amount refunded to the debtor **must** be the total amount collected by offset even, though a portion representing the Department of the Treasury's administrative fees was not returned to referring DCO.

C. When collection is made by a commercial collection agency, the amount collected from the debtor includes an additional fee assessed on the total debt referred for collection. The collection agency retains its fees and remits the remainder of the amount collected from the debtor to DCO. The remaining amount represents debt principal, penalty, administrative costs, and interest referred to the collection agency. These amounts are credited to the appropriate appropriation(s) and account(s). If the debtor is entitled to a refund, then the amount refunded **must** be the total amount collected, including the collection agency fee.

281703. Funding the Payment of Collected Debt Refunds

A. The refund of the amounts collected for principal debt, interest, penalty, and administrative charges should be charged to the appropriation or account that was credited with the collection. Any amount to be refunded that was credited to an appropriation or account that subsequently has been closed, **must** be charged to the current fiscal year for the same appropriation or account as allowed by law. For example, if the original principal debt were collected into a military pay appropriation, the associated interest and administrative fees were collected into 3210 (General Fund Proprietary Receipts, Defense Military, Not Otherwise Classified), and the penalty was collected in 1099 (Fines, Penalties, and Forfeitures, Not Otherwise Classified), then the refund will be charged to these same accounts for the amounts originally collected.

B. The refund to the debtor for fees assessed and retained by the Department of the Treasury or private collection agencies, **must** be charged to the applicable DoD Component's current year operating funds.

Table 28-1. DoD Financial Management Regulation Volumes and Chapters on Debt Collection

**DOD FINANCIAL MANAGEMENT REGULATION
VOLUMES AND CHAPTERS ON
DEBT COLLECTION**

Category of Debtor	Volume and Chapter
General Guidance on Receivables	Volume 4, Chapter 3
Military Member (Active or Reserve) to include Retired and Out-of-Service	Volume 7A, Chapter 50 Volume 7B, Chapter 28 Volume 9, Chapter 8
Civilian Employee (paid from appropriated funds)	Volume 8, Chapter 8 Volume 9, Chapter 8
Civilian Employee (paid from nonappropriated funds)	Volume 13, Chapter 8
Contractor or vendor	Volume 10, Chapter 18
Foreign Indebtedness	Volume 6A, Chapter 12 Volume 15, Chapter 5

Table 28-2. Selection of Hearing/Reconsideration Officials for DoD Component Debts

SELECTION OF HEARING/RECONSIDERATION OFFICIALS FOR DOD COMPONENT DEBTS UNDER 5 U.S.C. 5514 (Note 1)			
	COLUMN A	COLUMN B	COLUMN C
R U L E	If the Creditor Component is the:	And the Debtor is employed by the:	Then obtain a hearing official from:
1	DFAS	DFAS	Any DoD Component
2	DFAS/DoD Component (Note 2)	DoD Component	Other DoD Component (Note 3)
3	DFAS/DoD Component (Note 2)	DFAS	Other DoD Component (Note 3)
4	DoD Component	DFAS	Other DoD Component (Note 3)
5	DoD Component	DoD Component	DFAS/Other DoD Component (Note 3)
6.	Other DoD Component	Other DoD Component	DFAS/Any DoD Component
7.	NAFI	NAFI, DFAS, DoD Component	DFAS, Any DoD Component, or Other NAFI (Note 4)
<p>Note 1. Contact DFAS-Indianapolis (DFAS-JFEA-IN) for guidance in cases with circumstances other than those included in this table.</p> <p>Note 2. DFAS and a DoD Component both are considered creditor Components in situations when one makes payment for the other using the other's appropriation. In this case, neither the paying nor employing Component can provide the hearing official.</p> <p>Note 3. Other DoD Component is one other than the creditor DoD Component identified in Column A as the Creditor Component.</p> <p>Note 4. Other NAFI is one other than the creditor NAFI identified in Column A.</p>			

Figure 28-1. Debt Certification Statement

DEBT CERTIFICATION STATEMENT

Pursuant to [Title 28, United States Code, Section 1746](#), I certify under the penalty of perjury that to the best of my knowledge and belief that the debts submitted herewith are delinquent, valid and legally enforceable in the amounts stated. The debts are not subject to any circumstances that legally preclude or bar collection, including collection by offset. Records available do not show that any debtor owing a debt has filed for bankruptcy protection.

Date

Signature of Debt Certifying Official

Print Name: _____

Title: _____

Office Symbol: _____

PREPARATION AND SUBMISSION INSTRUCTIONS

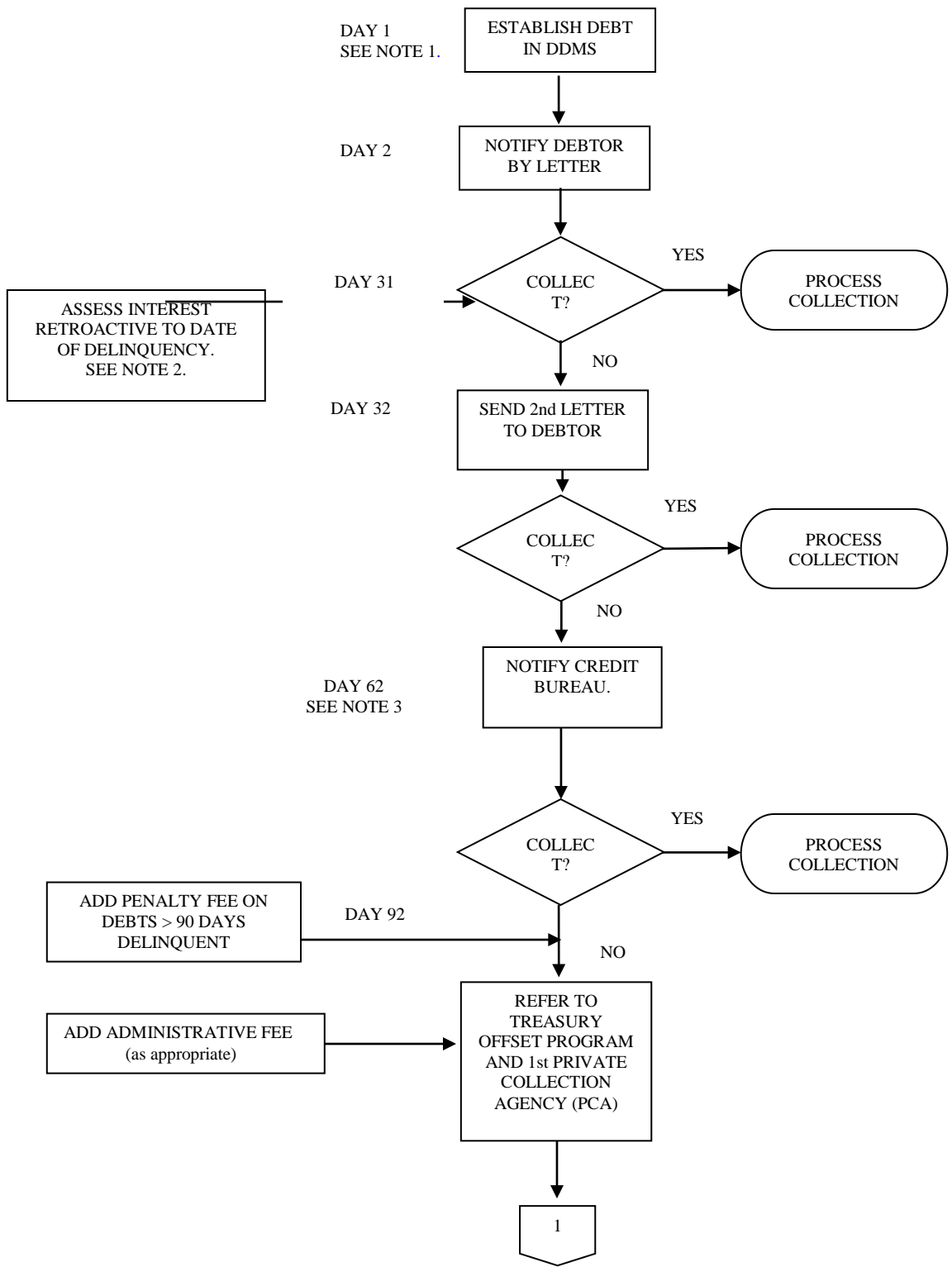
REQUIRED SIGNATORY: The submitting office's director, deputy director, or designee.

MANUAL DEBT SUBMISSION: Prepare and send a copy of the Certification Statement along with each manual submission of debts.

ELECTRONIC DEBT SUBMISSION: Prepare and mail a copy of the Certification Statement to cover the electronic submission of debts to: DCMO, DFAS-IN, Department 3300 (ATTN: Debt Establishment), 8899 E. 56th Street, Indianapolis, IN 46249-3300. Prepare and mail a new Certification Statement whenever the signatory changes. For those periodic electronic debt submissions when it is not necessary to reissue and mail a paper copy Certification Statement (i.e., no change in signatory), e-mail the Certification Statement to cover the electronically transmitted debts. Contact DCMO to obtain the current e-mail address for submission of e-mailed certifications.

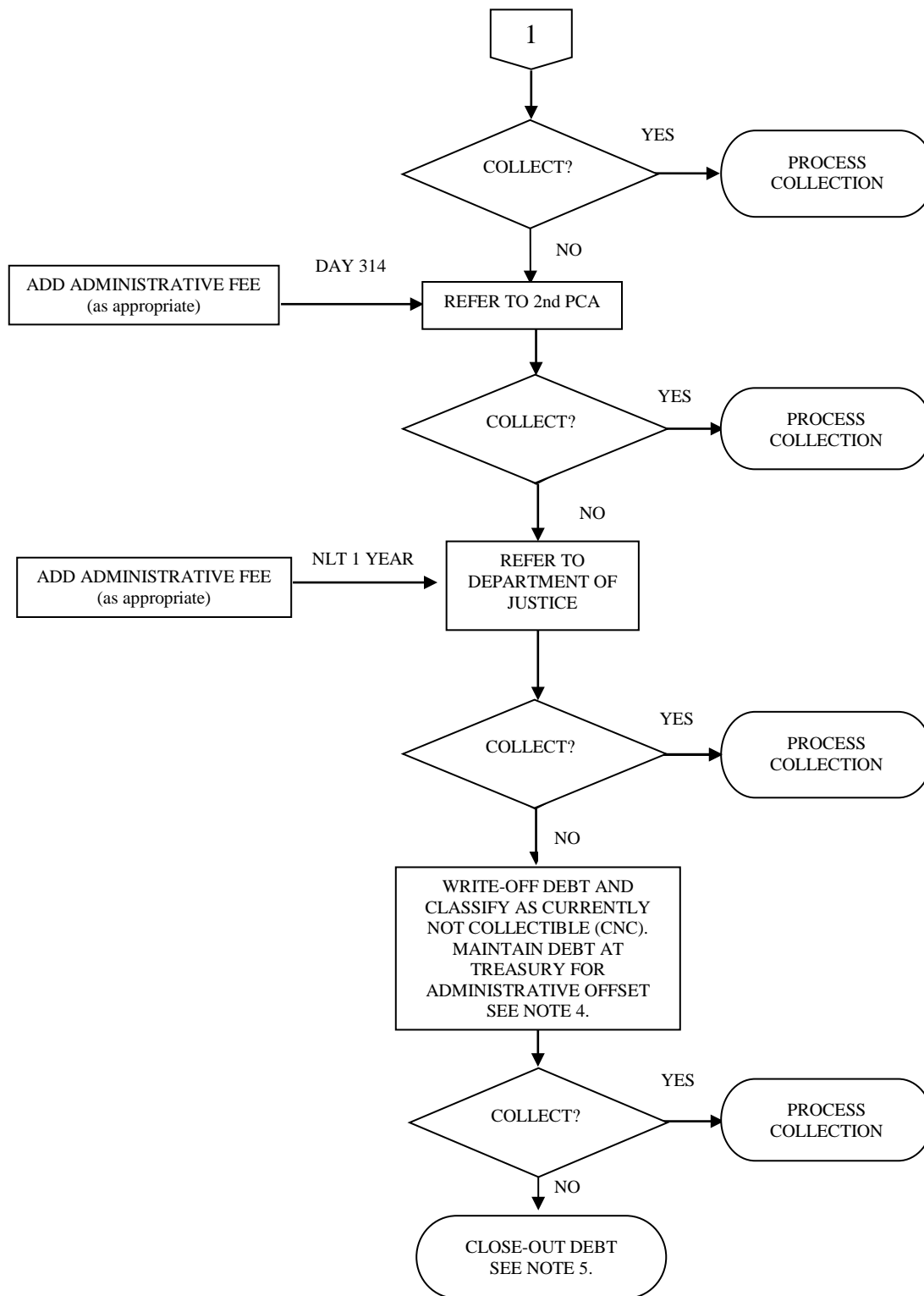
Figure 28-2. Defense Debt Management System (DDMS) Debt Processing Steps

DEFENSE DEBT MANAGEMENT SYSTEM (DDMS) DEBT PROCESSING STEPS



DEFENSE DEBT MANAGEMENT SYSTEM (DDMS) DEBT PROCESSING STEPS

(Continued)



DEFENSE DEBT MANAGEMENT SYSTEM (DDMS) DEBT PROCESSING STEPS

NOTES:

1. The number of days depicted in this chart reflects the approximate number of days that a debt has been recorded in DDMS.
2. Interest is accrued and assessed monthly throughout the life of a delinquent debt.
3. Debts are reported to credit bureaus no earlier than 60 days from date debtor is notified of the intention to report the debt to a credit bureau. DCMO includes this notice in the initial letter to the debtor (Day 2).
4. Refer to Volume 4, Chapter 3 for guidance on write-off and classification of debt as CNC.
5. Refer to Volume 4, Chapter 3 for guidance on close-out of debts.