



U.S. Department of
Transportation
Office of the Secretary
of Transportation

ORDER

DOT 2700.13D

Subject: DOT CURRENT AND DELINQUENT DEBT MANAGEMENT POLICY

1. **PURPOSE.** This Order establishes policy and responsibilities of Department of Transportation (DOT) Operating Administrations (OAs) and the Enterprise Services Center (ESC) in managing and collecting current and delinquent debt.
2. **CANCELLATION.** DOT 2700.13C, Cash, Credit and Debt Management, 05-10-96.
3. **BACKGROUND.** Agencies must service and collect debts, including defaulted loans and loan guarantees, in a manner that best protects the value of these assets and underlying taxpayer dollars. DOT has a responsibility to collect and record debt collections and provide accounting and management information for effective stewardship. A Federal entity should recognize a receivable on its books when it establishes a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date, or goods or services provided. If the exact amount of a receivable is unknown, agencies should utilize all available information to establish a good faith estimate, and to subsequently verify that estimate as expeditiously as possible. Recognition means the process of formally recording or incorporating a receivable of an entity to ensure accurate financial statement reporting. See Statement of Federal Financial Accounting Standards #1, Paragraph # 41.

Agencies should collect and review data on the status of their receivable portfolios to ensure accurate quarterly reporting. Federal regulations implementing the Federal Claims Collection Act of 1966 state that debts are delinquent when the debtor does not pay or resolve the debt by the date specified in the agency's initial written demand for payment as defined in 31 C.F.R. § 901.2 (b). DOT regulations on administrative collection of claims provide for the initial written demand for payment specify a date for payment to be 30 days from the date of the initial demand letter, see 49 C.F.R. § 89.21(b)(4). Under Office of Management and Budget (OMB) Circular A-129, Section V, Delinquent Debt Collection, direct loans are delinquent if a payment has not been made by the date specified in the agreement or instrument, unless other satisfactory payment arrangements have been made. Guaranteed loans are in default with the Federal Government when the Federal credit granting agency repurchases the loan or pays a loss claim or pays reinsurance on the loan.

4. REFERENCES. This Order is issued pursuant to the following provisions of law and regulations:

- Federal Claims Collection Act of 1966 (31 U.S.C. §§ 3701-3719), as amended by the Debt Collection Act of 1982 (Pub. L. No. 97-365)
- Debt Collection Improvement Act (DCIA) of 1996 (Pub. L. No. 104-134)
- OMB Circular No. A-129 (Revised), Policies for Federal Credit Programs and Non-Tax Receivables
- 31 C.F.R. Part 285 and Parts 900-904
- 49 C.F.R. Parts 89 and 92 (DOT regulations)
- Digital Accountability and Transparency Act of 2014 (DATA Act), Pub. L. No. 113-101, § 5, 128 Stat. 1146, 1153 (amending 31 U.S.C. § 3716(c)(6) (2012)).

5. DEFINITIONS.

- a. Claim or Debt: Under 31 U.S.C. § 3701(b) and 31 C.F.R. § 900.2(a), the term debt refers to an amount of money, funds, or property an official has determined to be due the United States from any person, organization, or entity, except another Federal agency. The terms claim and debt are synonymous and interchangeable. A claim includes, but is not limited to, direct loans, guaranteed loans, overpayments, fines, fees, and penalties. See 31 U.S.C. § 3701(b).
 - b. Delinquent Debt: Under 31 C.F.R. § 900.2(b), a debt is delinquent if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument, including a post-delinquency payment agreement, unless other satisfactory payment arrangements have been made. A debt becomes delinquent when a payment is not made by the due date or the end of the grace period as established in a loan or repayment agreement, if a debt is being paid in installments.
 - c. Administrative Offset: Under 31 § U.S.C. 3701(a)(l), the term administrative offset is the withholding of funds payable by the United States, including funds payable by the United States on behalf of a State government, to a person to satisfy a claim.
6. POLICY. This Order applies to all OAs of DOT including the Office of Inspector General per DOT Order 1320.16C. For example, this Order applies to program and financial functions that include grant, direct and guaranteed loan programs. Accounts payable and accounts receivable functions at both ESC and DOT OAs are also included. The terminology and concepts used in this Order are consistent with those set forth in OMB Circular A-129, revised January 2013, Policies for Federal Credit Programs and Non-Tax Receivables.

All debt, current and delinquent, must be actively collected using all available collection tools to maximize collections.

According to Treasury's Bureau of Fiscal Service, *Managing Federal Receivables*, Chapter 6, Delinquent Debt Collection, page 6-4, the date of the delinquency of a debt being repaid in installments, such as a loan, is the payment due date as established in the loan or repayment agreement. For administrative debts including fines, fees, penalties, and overpayments, the date of delinquency of a debt is generally thirty (30) days after the agency mailed the initial billing notice unless agency regulation allows for a longer due date.

DOT regulations for collecting debts, including provision of due process rights prior to collecting an indebtedness owed to the United States through salary offset, are contained in 49 C.F.R. Parts 89 and 92.

DOT delinquent debt policy follows the DCIA which requires all Federal agencies to maximize collection of delinquent debt by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools while recognizing program needs and statutory authority.

The DCIA requires agencies to:

- a. Obtain Taxpayer Identification Numbers (TIN) from all persons owing debts to the United States and otherwise doing business with the United States, such as obtaining Federal credit or assistance, see 31 U.S.C. § 7701(c)(1);
- b. Include TIN on all payment vouchers, see Bureau of Fiscal Service, *Managing Federal Receivables*, Chapter Six, Delinquent Debt Collection, page 6-34 and 31 U.S.C. § 3325(d);
- c. Adopt rules and procedures for the collection of the OA's debts through the offset of Federal salaries and other payments using Treasury's Offset Program (TOP), see 31 U.S.C. § 3716(b)(1) and *Managing Federal Receivables*, Chapter Six, Delinquent Debt Collection, page 6-33; and
- d. Refer all eligible debts over 120 days delinquent to the Treasury for collection by offset through TOP, if not already being referred through Treasury's cross-servicing program; See 31 U.S.C. § 3716(c)(6)(A), 31 U.S.C. § 3720A, 31 C.F.R. Part 285, 26 C.F.R. § 301.6402, 31 C.F.R. Chapter II, Part 901.3, and Federal Acquisition Regulations, Subpart 32.6. Also, debts of deceased debtors, debts Federal agency and foreign governments, and debts in an administrative appeals process are not eligible to be referred to Treasury.

7. RESPONSIBILITIES.

DOT Chief Financial Officer (CFO): Establishes and maintains the policy contained in this Order.

DOT OA CFOs: DOT OA CFOs will review their Treasury Report on Receivables (TRORs) quarterly. DOT OA CFOs should be knowledgeable with the debts on their respective agency accounts receivable portfolio or aging. For any debts that are managed by OA program areas, especially direct loan and loan guarantee-type debt, OA CFOs should review these debt portfolios at least quarterly for changes in status, new

delinquencies, potential write-off, closeout and bankruptcy, and any other issues to ensure accurate quarterly TROR reporting. For accounts impacted by the Build America Bureau (Bureau) transition, the applicable OA that assumed the debt (in case of direct loan programs) or exposure (in the case of loan guarantee programs), the account will share responsibility with the Office of the Secretary (OST) CFO. DOT program offices or General Counsel's ability to maintain control over restructuring credit transactions will not be affected by this policy. DOT's credit programs are best suited to restructure their respective transactions. They are not required to refer debts for collection purposes to ESC or Treasury should they become delinquent. This policy affords the credit programs the discretion to transfer their delinquent debt to ESC or Treasury, since returns to the government are maximized when the credit programs are provided with the flexibility to restructure the complex transactions through negotiations with the borrower and other creditors.

DOT OA CFOs should respond to ESC inquiries on their debt portfolios within thirty (30) days of notification. For example, ESC inquiries to OAs on potential debt write-off or closeout should be responded to by OA staff within a 30 day timeframe. Debts that have been referred to Treasury that require more explanation or support should be responded to by ESC within 30 days. DOT OA CFOs shall create Standard Operating Procedures (SOPs) that require the OAs to address ESC inquiries within thirty (30) days.

DOT OA CFOs are also responsible for conducting an annual review of their respective OA Debt Management Service's (DMS) profiles to ensure all collection tools available are being utilized. ESC and DOT's Office of Financial Management (B-30) staff will assist the OAs in their annual DMS profile reviews. These collection tools include credit bureau reporting and TOP, for example. Each OA must comply with Treasury's 100% compromise authority unless there is a specific agency regulation that precludes it. Per 31 U.S.C. §§ 3711(g)(1)(B), 3711(g)(4), and 3711(g)(5), and the authority delegated to Fiscal Service by the Department of Justice (DOJ), Fiscal Service is authorized to take appropriate action to collect or compromise transferred debts. With regard to debts that have been transferred to Fiscal Service for debt collection services, Fiscal Service has the same authority available to the head of the creditor agency to compromise transferred debts or collect transferred debts in installments. See Treasury Financial Manual Chapter 4000, Section 4030.30, Fiscal Service Authority to Compromise Debts. The correct set-up of each OA's DMS agency profile is crucial in ensuring maximization of all Treasury collection tools available.

ESC: ESC will prepare the DOT OA's TRORs quarterly and present the reports to OA CFOs and B-30 for their approval. ESC will timely handle day-to-day operations of DOT OA accounts receivable which include due diligence functions and referral of debts to Treasury in compliance with the DATA Act. ESC will use OA accounts receivable aging reports to categorize receivables and delinquent debt by age as required for TROR reporting purposes. To prevent under and over-reporting errors, communication between ESC TROR preparers and DOT CFOs is essential prior to Treasury submission during the quarterly review process.

ESC will conduct administrative wage garnishment hearings on validity of debt requests from debtors identified by Treasury as potential Administrative Wage Garnishment (AWG) collection candidates. ESC will provide approved cases in an encrypted manner to B-30 within thirty (30) days of adjudication. For non-payroll DOT employee debts, ESC will use Department of the Interior (DOI) Interior Business Center (IBC) to collect debts such as travel overpayment where applicable on a case-by-case basis. ESC will notify the OAs monthly on the status of these debts. In addition, ESC will perform on behalf of the OAs reconciliations between Treasury's portfolios of the OA's referred debts compared to the OA's debt portfolio. ESC will also perform analysis on accruals to ensure information reported on OA TRORs reconciles to Treasury.

DOI IBC: IBC is the payroll provider for DOT. IBC, when requested by ESC, will collect non-payroll debts such as travel overpayments from a current DOT employee's pay. ESC is responsible for the notification to the employee of the debt. For payroll related debts and DOT's waiver process, please consult DOT Policy for Waiver of Claims for Overpayment of Pay and Allowances.

8. PROCEDURES.

Written Standard Operating Procedures (SOPs): DOT OAs shall establish procedures to implement this Order. OAs and ESC debt collection staff must establish written SOPs that execute this guidance in the processing and collection of their debts. These procedures should include:

- a. Performance of Due Process and Due Diligence on Debts: Due process requires an agency to provide debtors with notice of intent to collect and the opportunity to dispute a debt or intended debt action, see 31 U.S.C. § 3711 and 31 C.F.R. Part 285 and § 901.2 on notice requirements. DOT OAs and ESC's SOPs should document the due process requirements which include:
 - Notice must include the amount and type of debt owed and the actions to be taken by an agency to collect the debt, see 31 U.S.C. § 3711(e)(C)(iv). These may include the adding of interest, penalties, offset, garnishment, foreclosure of collateral property and credit bureau reporting, see OMB Circular A-129, Chapter 5 section D, Interest Penalties and Administrative Costs and 31 U.S.C. § 3717(e) and (g).
 - The debtor must be given the opportunity to dispute the debt or adverse collection action. At a minimum, the debtor must be granted an opportunity to challenge the existence of the debt and/or whether the agency has met their statutory or regulatory prerequisites for using the collection action documented in the notice, see 31 U.S.C. §3711(e)(C)(iv).
- b. Administrative Actions and Procedures in the Collection of Delinquent Debt: As required by 31 U.S.C. § 3716(c)(6), all eligible non-tax debts must be referred to Treasury or a Treasury designated debt collection center when more than 180 days delinquent, unless there is an exception to be referral as identified in 31 U.S.C. §

3711 (g)(2). ESC is responsible for referring debt to Treasury on behalf of the OAs. ESC should refer debts to Treasury prior to 180 days when feasible to ensure efficient debt collection. Generally ESC does not need the express permission of the OAs to refer eligible debt to Treasury. ESC will determine which debts are referred. This Order encourages good communication between ESC and the DOT OAs if a particular debt may not be eligible for referral. For example, if ESC determines that a debtor cannot be contacted due to a returned demand letter, ESC should refer the debts at the time when all debtor notification due diligence has been exhausted. SOPs in the administration of delinquent debt should include the following:

- (1) Demand Letters: Under 31 C.F.R. § 901.2, a demand letter should be prepared and mailed to a debtor as soon as a debt comes into existence and is booked as a receivable for tracking purposes. For administrative debts, payment is due on a debt on the day the notice is mailed. OAs should provide a grace period in which the debtor should make payment to avoid late charges and enforced collection (30 days from the date the demand letter is mailed). For example, an agency dates and mails a demand letter on January 01 and informs the debtor they must pay the debt in full by January 30 to avoid late charges and enforced collection. If the debtor fails to pay the debt by January 30, the debt is considered delinquent. Therefore, a debt is "delinquent" if it has not been paid by the date specified in the agency's initial written demand for payment (31 C.F.R. § 901.2 Demand for Payment).

ESC will generally send the demand letters on behalf of the OAs as described in the ESC Service Level Agreement. However, in some instances, most likely in direct loan and loan guarantee programs, an OA will perform due diligence functions on debts, which would include sending demand letters. ESC and OAs should ensure that demand letters are either mailed first class or hand-delivered on the same day they are dated. ESC should also respond promptly to communications from debtors, within thirty (30) days whenever feasible, and advise debtors who dispute debts to furnish available evidence to support their contentions.

For consumer accounts, the first demand letter or initial billing notice should include the sixty (60) day notification requirement of the agency's intent to refer to a credit bureau if the debt remains unpaid or no payment arrangement has been made. A credit bureau, also known as a credit reporting agency, is a business that maintains historical information pertaining to credit experience on individuals or businesses. Widely known credit bureaus include Equifax, Experian, and Trans Union. Once the sixty (60) day period has passed, the agency should initiate credit bureau reporting if the account has not been resolved. This will also enable uninterrupted reporting to credit bureaus by cross-servicing agencies. The sixty (60) day notification of intent to refer to a credit bureau is not required for commercial accounts (or accounts with state, tribal, or local governments) (See A-129, Chapter 5, Section 2 (a.) and Bureau of Fiscal Service *Guide to the Federal Credit Bureau Program*). Generally, one letter will suffice as the demand letter

and as the Notice of Intent to Report to Credit Reporting Agencies required under the DCIA. There is no prescribed format for demand letters. However, demand letters must inform the debtor of the following:

- The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;
- The applicable standards for imposing any interest, penalties, or administrative costs;
- The date by which payment should be made to avoid charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than thirty (30) days from the date that the demand letter is mailed or hand-delivered
- The name, address, e-mail address, and phone number of a contact person or office at ESC or at the DOT OA; and
- The initial billing notice should include the sixty (60) day notification requirement of the agency's intent to refer to a credit bureau if the debt remains unpaid or no payment arrangement has been made.

(2) Employee Administrative Offset: If an OA is making a payment to a current employee who owes a debt, the OA may use internal offset to collect on the delinquent debt. For delinquent debts owed by an OA's employees, payments made may also be offset in accordance with Office of Personnel Management (OPM) statutes and regulations. For example, if a DOT employee has a debt that is the result of a travel overpayment, and the debt becomes delinquent, ESC can ask IBC to collect from the employee's pay. SOPs on internal employee administrative offset should include:

- Sending the debtor written notice of the type and amount of the debt, the intention of the OA to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. § 3716. See also 31 C.F.R. § 901.3(b)(3);
- Allowing the debtor an opportunity to inspect and copy OA records related to the debt;
- Allowing the debtor an opportunity for a review within the OA of the determination of indebtedness; and
- Allowing the debtor an opportunity to make a written agreement to repay the debt (e.g. installment payment agreement).

(3) Assessing Interest, Penalty and Late Charges: The Debt Collection Act of 1982, as amended, requires DOT to assess a minimum annual rate of interest on outstanding debts and to assess a penalty charge and handling costs on delinquent claims, except when prohibited by statute, see 31 U.S.C. § 3717 (e) and (g) and OMB Circular A-129, section V, Delinquent Debt Collection, (D) Interest, Penalties and Administrative Costs. Based on 49 C.F.R. § 89.23(a), DOT shall charge late payment penalty at a rate of six percent a year on any portion of the debt that is more than 90 days past due.

DOT OA CFOs in conjunction with their respective General Counsels should create SOPs that document how interest, penalties, administrative costs and handling fees are accrued to ensure consistency across DOT. SOPs should also document:

- Fees such as those charged by Treasury in the Cross-Servicing program, by the DOJ for collections from litigation cases, or by a collection contractor, if applicable, shall be added to the amount of the outstanding principal Treasury/Fiscal Service *Managing Federal Receivables*, Chapter 6, Administrative Costs, page 6-18.
- When a debt is paid partially or by installment payments, amounts received by DOT shall be applied first to any contingency fees, second to outstanding penalties, third to administrative costs, fourth to interest, and last to principal based on 31 C.F.R. § 901.9.

(4) Compromises and Waivers of Interest, Penalties, and Administrative Costs: DOT OAs are required to waive interest and administrative costs on a debt paid within thirty (30) days of the date of delinquency, see 49 C.F.R. § 89.23(c). DOT OAs also have the discretion to waive interest, penalties, and administrative costs on debts in accordance with 49 C.F.R. § 89.23 (e), either (1) pursuant to a compromise or settlement agreement under standards set forth in 4 C.F.R. § 103.2, or (2) when collection of interest, administrative charges, or penalties will jeopardize collection of the principal of the debt or (3) when collection of these charges is against equity and good conscience or is not in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect. For example, a waiver may be appropriate when an agency cannot conduct a hearing within the statutorily required time frame (e.g. 60 days for salary offset). In instances where an installment agreement is in effect or an offset is in place, DOT OAs are given discretion to waive interest, penalties and fees on the debt principal. A waiver may be in whole or in part for each separate type of charge. See Fiscal Service's *Managing Federal Receivables*, Chapter 6, Waiver of Interest, Penalties and Administrative Costs, page 6-18.

- c. Collection of Delinquent Debt more than 120 Days Old: All legally enforceable nontax debt owed by a person shall be referred to Fiscal Service at 120 days of delinquency, see DATA Act update to 31 U.S.C. § 3716(c)(6). ESC will refer debts to Treasury for the DOT OAs.

ESC and the OA's SOPs should ensure their respective TRORs are reported accurately. The OAs and ESC should review of their debt portfolios at least quarterly which include delinquent debts not eligible for referral to Treasury. OMB Memorandum M-04-10, *Debt Collection Improvement Act Requirements*, requires agencies to accurately and timely report on receivables. OAs must report, certify, and verify all required data on the TROR, in accordance with instructions issued by the Department of the Bureau of Fiscal Service.

Once a debt is referred to Treasury for collection, Treasury will take appropriate action to collect or compromise the transferred debt. DOT will suspend or terminate all collection action once a debt is referred in accordance with statutory and regulatory requirements, see Bureau of Fiscal Service's *Managing Federal Receivables*, Chapter 6, page 6-30. Upon transfer of debts to Treasury, all ESC and OA collection efforts shall be discontinued. For accounting and reporting purposes, the debt remains on the books and records of the OA that transferred the debt.

The types of payments Treasury will offset include certain benefit payments, Federal retirement payments, salaries, vendor payments, and tax refunds. Treasury's debt collection tools in attempting to collect delinquent debt may include:

- Demand Letters
- Telephone Calls
- Treasury Offset Program
- Administrative Wage Garnishment
- Credit Bureau Reporting
- Private Collection Agencies Retained by Treasury Specializing in Delinquent Debt Collection

- d. Currently Not Collectible (CNC) and Delinquent Debt Write-off: CNC and write-off are classifications for writing-off the debt that indicate whether or not the agency will continue debt collection actions after write-off. CNC is an accounting action where the debt has no receivable value on the agency's financial statements. Write-off is an accounting procedure separate and distinct from the legal procedures of termination and suspension of collection. In OMB Circular No. A-129, Section V, Subsection E, *Termination of Collection, Write-off, and the Use of CNC*, at the time of write-off, an agency should classify the debt as CNC when it intends to continue cost effective debt collection action. Write-off should occur no later than two years from the date of delinquency.

ESC and OA SOPs should detail the CNC and closeout procedures that include accounting re-classifications of delinquent debt for financial statement and TROR reporting purposes. SOPs should document the closeout procedures for debts returned from Treasury, as well as debts referred to the DOJ, as uncollectible including their Form 1099-C process.

The tables below are sourced from the Bureau of Fiscal Service's *Managing Federal Receivable's* Chapter 7, Termination of Collection Action, Write-off and Closeout/Cancellation of Indebtedness. DOT OAs and ESC should use the following tables as guidance on CNC and write-off/closeout issues:

Debt Collection Process Action

	Description	Authority	Timing	Comment
TERMINATION/ SUSPENSION OF COLLECTION ACTION	<u>Termination</u> : Agency stops all active debt collection action; may continue passive collection action. <u>Suspension</u> : Agency is likely to resume active collection action at a future time.	31 USC 3711(a)(3); 31 CFR Part 903	Not tied to write-off, but must occur before closeout.	Agency decision to terminate/suspend must comply with Federal Claims Collection Standards (31 CFR Part 903). DOJ concurrence required for debts over \$100,000.

Accounting Action

	Description	Authority	Timing	Comment
WRITE-OFF	Agency reports debt as having no value on financial and management reports.	OMB Circular No. A-129	Usually no later than 2 years after debt delinquency; not tied to termination or suspension.	At time of write-off, agency must classify the debt as CNC or closeout.
CURRENTLY NOT COLLECTIBLE (CNC)	<u>A classification after write-off</u> when the agency has determined that debt collection efforts should continue.	OMB Circular No. A-129	Can only occur at the time the debt is written-off.	CNC classification does not affect agencies' statutory and regulatory responsibilities to pursue debt collection.
CLOSEOUT	<u>A classification after write-off</u> when the agency has determined that no further active or passive debt collection action will be taken.	OMB Circular No. A-129	Must occur after write-off <u>and</u> termination of collection action; can occur after CNC classification, if debt was initially classified as CNC at time of write-off.	Agency will not take any collection action after close out; if required by Internal Revenue Code and regulations, agency must report closed-out debt to Internal Revenue Service (IRS) on Form 1099-C as potential

Treasury will recommend write-off and termination of collection action for debts that have been referred to the cross-servicing program by returning the debts to ESC as uncollectible. ESC should report these debts to the IRS on Form 1099-C working in conjunction with the OAs. OAs must promptly write-off and closeout debts when they receive notice from Treasury by ESC. ESC will notify OAs of returned debts from Treasury within thirty days. OAs should be approving these write-offs timely to ensure accurate TROR quarterly reporting.

49 C.F.R. § 89.5(c) delegates to the OA Administrators from the Secretary a delegation not exceeding \$100,000 (excluding interest) to suspend and terminate collection action for claims arising out of activities of such OA. Any OA debts where the principal is greater than \$100,000 that is ready for write-off and closeout must be

approved by the Secretary. B-30 directs the OAs to create a write-off packet that must come to OST-Budget for clearance prior to going to the Secretary for approval. The write-off packet at minimum should include the original documents that support the debt. Also, an OA General Counsel memorandum recommending write-off that clearly expresses virtually no possible way for any further collection of money on the debt should be included. Any other corroborating documents that support the debt write-off should be included. B-30 recommends that OA Administrators delegate their authority to write-off debts to their CFOs via delegation memorandum up to the \$100,000 maximum.

- e. Administrative Wage Garnishment (AWG): On August 12, 2009, DOT adopted Treasury's final rule on the regulations regarding AWG. DOT's regulations at 49 C.F.R. § 89.11, adopts Treasury's regulations at 31 C.F.R. § 285.11 in its entirety. By DOT adopting these regulations, it allows DOT to participate in Treasury's Cross-Servicing AWG collection tool. DOT is required to designate a hearing official to oversee hearings where a debtor challenges the validity of a debt. DOT's hearing official will be a Federal employee at ESC. All AWG hearings will be held at ESC.

Treasury will notify ESC if there is a debt that qualifies for AWG. At least 30 days before the initiation of garnishment proceedings, Treasury will give the debtor written notice informing him or her of the nature and amount of the debt, the intention to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

Treasury will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. Treasury will contact ESC on data requests or if a hearing is requested. The ESC hearing official shall issue a written opinion stating his or her decision no later than sixty (60) days after the date on which the request for such hearing was received by the agency (see 31 C.F.R. § 285.11(f)(10)).

If the debtor does not request a hearing, Treasury will send a wage garnishment order to the employer of the delinquent debtor, directing that the employer pay a portion of the debtor's wages to the Federal Government. The employer is required to certify certain payment information about the debtor. Employers are not required to vary their normal pay cycles in order to comply with these requirements.

As provided in the DCIA, no more than 15% of the debtor's disposable pay for each pay period may be garnished, see 31 C.F.R. § 285.11(i). Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. A debtor may request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in

financial hardship. Treasury is adjudicating all hardship AWG hearings on behalf of the Executive Branch agencies.

SOPs and hearing procedures regarding AWG should be documented to ensure consistency in its application throughout DOT. SOPs should document the steps ESC takes from the time of Treasury notification of a potential AWG debt through the adjudication process. All approved AWG cases must be sent to B-30 via encrypted e-mail for redaction and posting to the OST Reading Room on www.transportation.gov, see 5 U.S.C. § 522(a)(2) for reading room requirements.

- f. Bankruptcy Debts: Debts that are in litigation, bankruptcy, or foreclosure do not meet eligibility requirements for referral to Treasury and should be monitored by OAs with ESC's assistance and reviewed on a quarterly basis to ensure accurate TROR reporting of their status. See 31 U.S.C. § 3711(g)(2).

For debts that were referred to Treasury and returned to the agency because the debtor is in bankruptcy, ESC will notify the respective OA of the returned debt within thirty (30) days. The OA's Chief Counsel should follow up on the status of the debt's bankruptcy quarterly to ensure the accurate reporting and status of the debt. When a debtor files for bankruptcy protection, all creditors including federal agencies are generally prohibited from pursuing further collection action while the bankruptcy is pending because the debtor is protected by an automatic stay. The stay is an automatic injunction that halts actions by creditors to collect debts from a debtor who has declared bankruptcy. The automatic stay is effective as of the date of the filing of a bankruptcy. In most cases, an agency will not be able to recover funds from a debtor during the pendency of a bankruptcy proceeding. However, the relevant OA should work with its Chief Counsel's Office and the DOT General Counsel's Office to ensure that the appropriate claims, including proofs of claim, are filed in the bankruptcy proceeding to protect DOT's ability to recover some or all of the debt owed from the debtor's bankruptcy estate. DOT OAs should work with their Chief Counsel, to monitor, on a quarterly basis, the status of their outstanding debts owed by a debtor in bankruptcy. See Bureau of Fiscal Service, *Managing Federal Receivables*, Chapter 6, Bankruptcy, page 6-56. In addition, if there is a guarantor on the debt that is jointly and severally liable and is not in bankruptcy, the agency should pursue collection of the debt from the relevant guarantor(s) based on 31 C.F.R. § 902.4 and Bureau of Fiscal Service's *Managing Federal Receivables*, Chapter 6, page 6-25.

- g. Training Requirements: DOT OAs and ESC debt collection staff must be adequately trained to perform debt collection duties. Training for staff involved in debt activities will ensure clear understanding of the standards, guidelines, and procedures for successfully managing these activities, which can range from an agency's extending credit or financial assistance to closing out uncollectible debts.

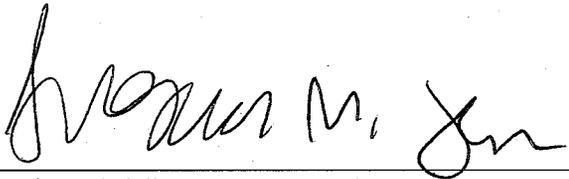
OST B-30 will arrange for Treasury's Bureau of Fiscal Service to train DOT OA staff on TROR and debt collection issues on an annual basis. Managers and staff who

participate in debt collection activities must attend this annual training. This training requirement applies to any staff working in an accounts receivable role in smaller offices without dedicated debt collection positions. DOT OAs and ESC may at their own discretion utilize Bureau of Fiscal Service staff to train independently of B-30's annual training initiative.

ESC and DOT OAs must document training requirements within their SOPs for employees assigned to debt collections duties, annual refresher training, and updates to applicable laws, regulations, and policies. ESC and DOT OAs shall provide an annual certification that all employees assigned debt collections duties have completed the training requirements. ESC and DOT OAs must provide the assertion to the Assistant Secretary for Budget and Programs/Chief Financial Officer, Attention: B-30 by December 31st of the calendar year.

9. IMPLEMENTATION. Upon issuance, copies of SOPs issued by the OAs to implement the provisions of this Order will be forwarded to the Chief Financial Officer/Assistant Secretary for Budget and Programs, Attention: B-30.

FOR THE SECRETARY OF TRANSPORTATION:



Shoshana M. Lew
Chief Financial Officer and Assistant Secretary
For Budget and Programs

1/11/17
Date