



USAID
FROM THE AMERICAN PEOPLE

Agreement Officer's Role in Debt Collection

An Additional Help for ADS Chapter 303

New Edition Date: 08/22/2013
Responsible Office: M/OAA/P
File Name: 303san_082213

1. PURPOSE:

This additional help document provides guidance to Agreement Officers (AOs) on their responsibilities in collecting debt owed by recipients of U.S. Government funds.

2. BACKGROUND:

Debt Collection Improvement Act of 1996 (DCIA)

Congress passed the DCIA in response to a steady increase in the amount of delinquent debt owed to the United States, and a concern that appropriate aggressive actions were not being taken to collect this delinquent debt. This law mandated Agencies to comply with standard, government-wide debt collection procedures, centralized the government-wide collection of delinquent debt, and gave the Department of Treasury significant new responsibilities in this area. The requirements of the DCIA as they apply to debts owed to the government by contractors were incorporated in [FAR Part 32.6](#). While there is no similar coverage regarding debts owed by recipients of grants or cooperative agreements, the same basic requirements apply.

USAID policy to comply with the DCIA requirements is incorporated in [22 CFR 213 – Claims Collection](#) and [ADS 625, Administrative Accounts Receivable](#).

3. GUIDANCE:

This document provides a summary of the applicable regulations and policy, but does not contain any new policy. Agreement personnel are encouraged to become familiar with [22 CFR 213](#) and [ADS 625](#), and to review them before issuing a demand for debt. Note that while the FAR only applies to contracts, the guidance in the CFR, ADS and its attachments apply to all government debt, including assistance. In the case of a conflict between this guidance and the CFR and ADS, the CFR and ADS take precedence. If there is a conflict between the guidance in the CFR and the ADS, consult with your legal advisor.

In accordance with [ADS 625](#) the AO is responsible for determining if a debt is owed as a result of disallowed costs billed under a grant or cooperative agreement ([ADS 625.3.4.1 Claims Originating Under Acquisition and Assistance Instruments](#)) or questioned costs under financial audits ([ADS 625.3.4.2 Claims Originating Under Financial Audit](#)), and the amount of the debt. The AO is not responsible for collection of debts; collection of the debt is the responsibility of the paying office. Also, the AO must not agree to liquidate debts (e.g., offset the amount of the debt against existing unpaid bills due the recipient, or allow recipients to retain the debts to cover amounts that may become payable in future periods).

A. Issuance of Demands

As soon as the AO has determined the amount due, the AO must issue a demand letter for payment. Preferably, the amount of the debt will be determined by a negotiated settlement

between the AO and the recipient. However, if the parties do not agree on the amount, the AO must unilaterally determine the amount of the debt.

The demand letter must include the following:

- (1) A description of the debt, including the debt amount, a distribution of the principal amount of the debt by line(s) of accounting, and the basis for and amount of any accrued interest or penalty. If the AO does not know the full amount of the debt owed, the AO must demand the amount known to be owed, and state that the remainder of the debt will be demanded once the full amount is determined.
- (2) Notification that payment is due within 30 days, and that any amounts not paid within 30 days from the date of the demand will be considered delinquent and will bear interest from the date of the demand, or from any earlier date specified in the agreement, at the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. Additionally, fees or administrative costs may be included.
- (3) Notification that the recipient may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is appealed. Include a statement that if the recipient appeals the demand, the recipient may provide evidence supporting its position, which will be considered by the Deputy Assistant Administrator for Management in accordance with [22 CFR 226.90](#) for U.S. recipients, and the Assistance Executive in accordance with the "Disputes and Appeals Provision" in agreements with non-U.S. recipients.
- (4) Notification that, unless a deferment is authorized, if payment is not received within 30 days from the date of the demand, USAID intends to use non-centralized administrative offset to collect the debt plus any additional administrative expenses if appropriate. If collection cannot be accomplished by offset, that no later than 90 days after the date of the demand letter, the Bureau for Management, Office of the Chief Financial Officer, Washington Financial Services (M/CFO/WFS) will transfer the debt to the Financial Management Service (FMS) in the Department of Treasury, which will collect the amount owed to USAID plus their Treasury processing and administrative costs from the debtor in addition to the amount owed to USAID, and will use all means available to the Federal government for debt collection, including the possibility of referral to the Department of Justice for litigation if the debt cannot be collected.
- (5) A notification that the recipient may inspect and copy any USAID records related to the debt.
- (6) The name, address and telephone number of the AO designated to determine the amount and discuss the debt and instructions for making electronic payments and the contact information for the paying office for its collection. The

paying office generally is the billing office responsible for collection of the debt. Overseas, this is the Mission Controller. In Washington, it is the M/CFO/WFS.

Even if the debt is or will be the subject of a bilateral modification or the recipient has agreed to repay the debt, the AO must issue a demand letter as soon as the AO has determined that an actual debt is due.

The AO must send a copy of each demand letter to the billing office immediately upon issuance, and request acknowledgement of receipt.

B. Dispute or Deferment of Collection

If the recipient disputes the validity of the debt or disagrees with the AO's decision to demand payment, it may, within 30 days of the decision, appeal the demand for payment. For U.S. nongovernmental organizations, these appeals are decided by the Deputy Assistant Administrator for Management, in accordance with [22 CFR 226.90](#); for non-U.S. nongovernmental organizations, the Assistance Executive decides appeals, in accordance with the "Disputes and Appeals" mandatory standard provision.

In such a case, the AO must provide a final decision within the time frames of the disputes and appeals provision of the agreement. If the recipient challenges the AO's determination through a formal dispute process, the Mission Controller or M/CFO, in coordination with the AO, may determine to suspend collection, in accordance with [22 CFR 213.30](#).

When a recipient appeals the AO's final decision, the calculation of interest on the debt may be suspended pending resolution of the appeal. If the recipient is not successful in its appeal, interest will be calculated based on the initial demand.

If the AO receives a written request for a deferment of payment based on the recipient's financial condition, the AO must promptly notify the paying office of the request and review the recipient's financial condition to prepare a recommendation to M/CFO on the deferment request, considering the effect on the recipient's operations if it were to make an immediate full payment. Based on the AO's recommendation, M/CFO may then authorize a deferment of collection and prepare a deferment agreement.

C. Collection

Collection is the responsibility of the billing office (Mission Controller or M/CFO/WFS).

Payment may be made either by a lump sum cash payment, a negotiated installment schedule, or by credit against unpaid bills due to the recipient. If the debt is collected through offset and the amount immediately available is not sufficient to cover the full debt, the recipient is still in debt for the remainder and interest still accrues. The payment is first applied to accrued interest, then to any additionally charged fees, and the remainder is applied against the indebtedness.

If the AO receives the recipient's check, the AO must immediately send the check to the payment office, with a request for confirmation of receipt. In Washington, the check must be sent to the cashier in the Bureau for Management, Office of the Chief Financial Officer, Central Accounting and Reporting Division (M/CFO/CAR).

If the M/CFO does not agree to deferment of payment of the debt, the DCIA requires Federal agencies to refer non-tax debts that are over 180 days delinquent to FMS at the Department of Treasury for collection. Eligible debt may in fact be transferred to the Department of Treasury as soon as the debt is determined to be delinquent. Agency policy requires that M/CFO/WFS transfer delinquent debts to Treasury not later than 90 days after the date of the demand letter. The Agency's policy on debt transfer to Treasury for collection is included in [ADS 625.3.9 Automatic Transfer to Treasury for Continued Collection](#).

The types of debts referred to FMS include vendor debt, unpaid loans, overpayments or duplicate payments made to Federal salary or benefit payment recipients, misused grant funds, and fines, penalties or fees assessed by Federal agencies. FMS sends demand letters to debtors on Treasury letterhead, and enters into repayment arrangements with debtors.

D. Process for the Collection of Debt Related to Audits

The audit events that are mandatory tasks for establishing and completing the Accounts Receivable process are as follows:

1. Audit Reports from audits conducted on USAID recipients organizations are received by the Agency's Office of the Inspector General (OIG) or the Regional Inspector General (RIG). OIG or RIG forwards the reports to the Bureau for Management, Office of Acquisition and Assistance, Contract Audit Support (M/OAA/CAS) Team for resolution of USAID/Washington funded awards and to the respective Mission for resolution of Mission funded awards.
2. The M/OAA/CAS team or the designated office in the Mission notifies the recipient of questioned costs noting areas in question and requesting data in order to make a management decision within six months.
3. If questioned costs remain, the AO must issue an AO's Final Determination as part of the demand letter. A copy of the demand letter must be sent to the Mission Controller or M/CFO/WFS for establishment of Accounts Receivable.
4.
 - (a) In the event questioned cost cannot be resolved in six months, the AO must issue a Management Decision based on the information available at that time, and continue to negotiate a resolution of the questioned costs. The AO must forward a copy of the Management Decision to the M/CFO or Controller to establish and suspend the Accounts Receivable. The Accounts

Receivable will remain suspended until the AO renders a Final Determination.

(b) At the conclusion of negotiations, the AO must issue a revised Management Decision reflecting the Final Agreement Officer Determination. The AO must issue a Final Determination letter to the recipient.

(c) The AO must send a copy of the Final Determination Letter, under separate cover, to the M/CFO or Controller along with the revised Management Decision requesting removal of the suspension from the Accounts Receivable.

5. When the M/CFO or Controller receives payment of the unallowable questioned costs, the M/CFO or Controller must notify the M/OAA/CAS team for USAID/Washington awards or the Mission AO for Mission awards, by e-mail that Accounts Receivable has been satisfied.

303san_082213