



Recommendation 87-9

Dispute Procedures in Federal Debt Collection

(Adopted December 17, 1987)

The Debt Collection Act of 1982 (DCA)¹ was passed in response to concern over the vast amount of delinquent debt owed to the federal government and the haphazard collection record of many agencies. While Congress appears to have been concerned mainly with various mass loan and loan guarantee programs, most conspicuously the student loan programs, the effects of the Act extend well beyond such programs. The Act included about a dozen provisions designed to facilitate collection, in many instances by removing obstacles created by other federal statutes and case law. It also contained provisions authorizing the use of collection agencies,² charging of interest and penalty fees, reporting of delinquent debtors to credit bureaus, and use of IRS information to locate debtors.

While the purpose of the DCA was to enhance collection efforts, Congress was also concerned about the due process rights of debtors against whom the government was to take action. In adopting provisions for collection by offset against salaries and other money owed by the federal government, Congress provided for pre-offset opportunities for debtors to contest the relevant debts. Agencies implementing the offset authority under the DCA have used advantageously the latitude afforded under the DCA to develop a range of procedures. The Act provides two basic forms of debt collection by offset—"salary" offset and "administrative" offset—with differing procedures for each. A proceeding with an independent decisionmaker and adversary factfinding has been required in most salary offsets, and by a few agencies elsewhere. A range of less formal models, in which collection offices simply reconsider their decisions based on debtor-supplied data and other available information, has been employed in administrative offsets, i.e., those not involving the salaries of government employees.

The framework for offset dispute resolution established by the DCA, Federal Claims Collection Standards (issued jointly by the General Accounting Office and Department of Justice), and the Office of Personnel Management's Pay Administration Standards make possible reasonably adequate evaluation of disputes without seriously impeding collection of

¹ 5 U.S.C. 552a (b) and (m), 5514; 18 U.S.C. 2415(i); 31 U.S.C. 3701, 3711(f), 3716-3719; Pub. L. No. 97-365.

² The Act was later amended to authorize, on an experimental basis, contracting with private attorneys to bring collection actions.



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general government debts. No major changes are needed. However, the procedural requirements of the DCA and the OPM Standards are overly burdensome when applied to routine pay adjustments. Moreover, some advice to agencies on implementing their dispute processes, reducing uncertainty over the relationship of the DCA to other statutes (e.g., the Contract Disputes Act) affecting government claims, and some other issues raised by the DCA's attempt to integrate due process with effective debt collection may be useful as agencies make greater use of their authority to collect debts.

Recommendation

1. Agency Procedures Under the Debt Collection Act

a. In connection with salary offsets, the General Accounting Office and Department of Justice should amend the Federal Claims Collection Standards³ and the Office of Personnel Management should amend the Pay Administration Standards⁴ so as to reduce the formality of procedures for handling routine adjustments of pay and travel allowances. Informal forms of review, including review on a "class" basis where a single error has a broad effect, should suffice in most cases involving computer errors, simple miscalculations, and similar kinds of mistakes or adjustments.

b. In connection with administrative offset, informal types of intra-agency review procedures appear consistent with the purposes of the DCA, and can provide a satisfactory balance between protecting debtors and assuring effective collection.⁵ However, agencies should ensure, where possible, that the reviewer does not participate in the initial claims determination, particularly where a dispute involves substantive issues that go beyond allegations of mechanical or other simple kinds of error.

c. Procedures with an independent decisionmaker and adversarial factfinding may occasionally be desirable in administrative offset cases where a debtor raises relatively complex legal or factual issues or where assessments of credibility are required. However, these

³ 4 CFR parts 101-105.

⁴ 5 CFR 550.1101-.1106.

⁵ This recommendation should not be read as detracting from the procedures for resolving disputes relating to federal grants that were recommended by the Conference in Recommendation 82-2. 1 CFR 305.82-2. Where administrative offset issues are addressed at the same time as post-award grant disputes, the proceedings should include a notice, an impartial decisionmaker, an opportunity to present significant evidence and argument, and a written decision, as called for in Recommendation 82-2.



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procedures may be needlessly burdensome for agencies even in some procedurally complex situations, such as where other proceedings with respect to the claim may be occurring and preservation of the government's flexibility is necessary. Taking into account these factors, agencies should consider whether to make use of such procedures even though apparently not required to do so by the DCA.

d. Agencies should take steps to enhance the awareness of, and access to, offset dispute procedures by debtors with limited ability to present a case in writing or otherwise cope with offset procedures. These steps may appropriately be confined to measures that are inexpensive and do not significantly interfere with efficient collection activity. Examples might include follow-up telephone calls to debtors with vague or inadequate written submissions, review of agency records to see if they support debtor allegations, and use of telephone hearings. In connection with salary offset disputes, these steps should be taken by independent hearing officials (or persons associated with them) as well as by collection staff. Experience should be monitored to see if measures to enhance accessibility of the dispute process in fact result in more debtors asserting meritorious defenses.

e. Some techniques that have been employed and should be considered to keep offset procedures expeditious and efficient are:

(i) Adoption of objective criteria to assist in making decisions respecting hardship and other potentially nebulous matters; and

(ii) Avoiding the need for oral hearings on issues of credibility by treating debtors' factual allegations as proven where

(a) Circumstances do not give rise to significant doubts as to reliability and

(b) Either the amount in dispute is small or the issue of credibility is not critical to the disputed facts.

2. Clarifying the Act's Relation to Offsets in Government Contracts

a. Congress should clarify the applicability of the DCA provision on administrative offset (31 U.S.C. 3716) to make clear that government acquisition contracts are not covered, but that the government retains the right of offset to collect debts in such cases. At the same time, Congress should ensure that, under relevant agency procedures, before a contracting officer's decision can serve as the basis for offset under any other authority,



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(i) The contractor receives notice of the proposed government claims and the basis for them and an informal opportunity to present its position, and

(ii) The decision is informally reviewed by an agency official not directly connected with administering the contract.

b. The withholding of funds in connection with a single contract, where final payment has not occurred, should continue to be governed by existing law.

Citations:

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