

DEBT COLLECTION

Policy #ES-06

Implemented: June 1996
Updated: April 2016
Authoring Agency: Bureau of Administration

I. PURPOSE STATEMENT

This policy was established by the Bureau of Administration in order to ensure proper documentation and processing of the debt collection policy.

II. POLICY REQUIREMENTS

Effective April 1, 2016, each executive branch agency shall have 90 days to collect accounts that are past due. Past due means 30 days have passed since the debt was incurred. Any past due account shall be charged interest by the agency as provided in §54-3-4, unless otherwise required in statute, plus any and all costs. The interest and agency costs should appear on all statements and notices after the first statement. All debts older than 90 days are to be considered delinquent. Delinquent debts of \$25 or more are to be referred to the Obligation Recovery Center (Center) for collections no sooner than 14 days after final notice has been given to the debtor. When referring the account to the Center for collection, include interest-to-date.

The procedures below apply to all state government entities that utilize the Center for the collection of debt, except that the Unified Judicial System, Board of Regents, and constitutional offices may establish their own requirements for collection of debt prior to providing final notice to a debtor that debt is being referred to the Center.

Procedure:

Day 1 to 30. Debt is incurred. First statement is sent to debtor.

Day 31 to 60. Second statement is mailed to debtor including the following information:

- The name of the agency requesting payment;
- Contact information for the agency;
- The name of the debtor;
- The nature of the debt;
- The principal amount of the debt;
- The amount of any penalties, fees and interest;
- The total amount due; and
- A statement that the debt is past due and may be referred to the Center if payment is not received.

Day 60 to 90. Third statement is mailed to debtor and shall include the same information required in the second statement plus any additional principal, penalties, fees and interest due as part of the debt.

Day 91-105. Final notice is mailed to debtor and shall include the same information required in the second and third statements in addition to the following:

- A statement that the debt will not be turned over to the Center for collection until at least 14 days after the date the final notification is sent to the debtor; and
- A statement that if the debt is turned over to the Center, a cost recovery fee of twenty percent of the principal, and stating the exact amount of the calculated fee, will be added to the total debt owed by the debtor to the referring agency.

Within twenty-two (22) days of sending the final notice to the debtor, the agency will refer the debt to the Center for collection by providing detailed debt information as required by the Center, including principal, penalty and interest information (if applicable) along with full names, mailing addresses, social security numbers (if available), federal employer identification number (if available), judgment amounts, dates of birth (if available), and all other debtor information necessary to support recovery of the amount owed. The information will be transmitted electronically from the agency to the Center on a monthly basis in a format prescribed by the Center and following the established encryption guidelines. Once the agency has referred the debt to the Center for collection, all collection efforts by the agency shall cease.

All documentation surrounding the debt and who owes it needs to be maintained in the agency's office, including correspondence or other communications. Documentation must be maintained to verify the validity of the debt and to support the liability in case the debt is challenged. Documentation should be arranged in chronological order first and alphabetical order second. The agency must verify the debt owed by a particular person before referring the account to the Center for collection. By referring an account to the Center, the referring agency is certifying that the individual owes the debt and the referring agency will be responsible for providing documentation to the Center.

The Center will add a twenty percent (20%) cost recovery fee in addition to the debt referred for collection. The cost recovery fee shall be calculated by multiplying the principal amount of the debt referred to the Center by 20%.

When accounts are referred, there will be a contact person listed along with a telephone number from the referring agency to contact concerning the account, if any questions arise.

The Center and the agency shall execute a Memorandum of Understanding (MOU) prior to any debt referral. The MOU shall address any agency specific requirements regarding the debt collection process, including any settlement authority to be delegated by the referring agency to the Center. The Center shall provide a collection strategy summary document to the agency as part of the MOU, outlining the processes to be utilized by the Center on behalf of the agency. The Center shall collect all debts as authorized by SDCL 1-55.

An agency that has referred debt to the Center must notify the Center of any change in the status of a debt. This notification shall be made no later than ten calendar days from the occurrence of the change.

Change in status may come from payment of the debt or liability, invalidation of the liability, bankruptcy or other factors.

If a debtor disputes the validity of the debt after the debt has been referred to the Center, the Center will notify the agency contact in writing that the account is being disputed and provide all the information obtained from the debtor. Once the referring agency has researched the dispute, the referring agency will notify the Center if the debt is valid or if the debt should be adjusted or the collection case closed.

Vehicle Registration, License and Permit Enforcement Actions:

SDCL 1-55-12 prohibits state agencies from issuing, renewing, or allowing an individual to maintain any motor vehicle, motorcycle, or boat registration, driver license, hunting license, fishing license, state park permit, or camping permit, after receiving notice from the Center that the applicant, registrant, or licensee has a debt that is being collected by the center, unless the applicant, registrant, or licensee has paid the debt and cost recovery fee in full or the debtor has entered into a payment plan with the center and payment pursuant to the plan is current.

The Center will provide notice to the Department of Game, Fish and Parks that a debtor should be blocked from obtaining a hunting license, fishing license, state park permit, or camping permit only when a collection case meets the following criteria:

- It has been at least 60 days since the debtor was referred to the Center;
- The Center has made at least three attempts to contact the debtor;
- The debtor has not established or has not remained current on a payment plan; and
- The collection case balance is \$50 or greater.

The Center will provide notice to the Department of Revenue, Division of Motor Vehicles, that a debtor should be blocked from renewing their registration for a motor vehicle, motorcycle, or boat only when a collection case meets the following criteria:

- It has been at least 60 days since the debtor was referred to the Center;
- The Center has made at least three attempts to contact the debtor;
- The debtor has not established or has not remained current on a payment plan;
- The collection case balance is \$1,000 or greater.

The Center will provide notice to the Department of Public Safety that a debtor should be blocked from renewing their driver license only when a collection case meets the following criteria:

- It has been at least 60 days since the debtor was referred to the Center;
- The Center has made at least three attempts to contact the debtor;
- The debtor has not established or has not remained current on a payment plan;
- The collection case balance is \$1,000 or greater.

Due Process Hearing:

A person affected by any vehicle registration, license or permit enforcement action may request a due process hearing to dispute a determination by the Center that the applicant, registrant, or licensee has a debt that has been referred to the Center for collection. The Center may recommend that a state agency issue a temporary license, registration, certification, or permit to the applicant, registrant, or licensee pending final resolution of the due process hearing. If a due process hearing is requested, the Center shall notify the referring agency that shall ensure the following steps are taken:—

- Inform the Debtor that the request has been received and that a hearing will be conducted through the Office of Hearing Examiners (OHE). This notice is to be sent by the method most convenient for the Debtor, either USPS or e-mail;
- The Agency must compile all documentation that proves the Debtor has a debt with the Agency. The documentation must contain personally identifying information of the Debtor, including but not limited to, SSN, birthdate, and addresses of record. The Agency may also provide any documentation that shows the Agency's attempts to collect the Debt;
- The Agency will send these documents to the OHE, Debtor and the Center with a request for hearing date;
- The OHE will assign a Hearing Examiner. The Examiner will work with the Agency to schedule a telephonic hearing at a time convenient to the parties. This hearing will take place between the hours of 9am and 4:30pm, Central Time;
- The testimony given by the parties to OHE will be recorded by OHE and the witnesses will testify under oath. Rules of Administrative Procedure and the South Dakota Rules of Evidence will be followed;
- The hearing will only determine whether due process was followed by the Agency and the Center when informing the debtor of the debt. The questions to be answered by the hearing are whether the debtor identified by the agency is the debtor who is being contacted by the agency or the Center and whether the debt has already been paid. The hearing will not ascertain the amount of principal debt or re-evaluate the initial determination that the debtor owes the Agency money;
- After the hearing takes place, the Hearing Examiner will render a written recommended decision to the agency within 10 business days. The Department Secretary of the referring agency may either adopt or reverse the decision of the OHE. The final decision from the referring agency will be sent to the parties and OHE within 10 business days of the receipt of the recommended decision. These time deadlines are not statutory and may be set aside due to extenuating circumstances;
- The agency shall implement the decision immediately.

When the Center has exhausted all avenues authorized by SDCL 1-55 to collect an agency's debt, the Center will return any outstanding balance to the agency for final disposition as required by SDCL 4-3-4.1.

Jeff Holden, Commissioner

Date

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