



BUREAU OF THE
Fiscal Service
U.S. DEPARTMENT OF THE TREASURY

Portfolio Management: Understanding Due Process

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Affirmative Duty to Collect

- ❑ Agencies are required to affirmatively and aggressively collect debts.
- ❑ Agencies are authorized by law to use certain debt collection tools to collect debts owed to them.
- ❑ Agencies are generally required to use one or more of the collection tools available to them.
 - Generally, agencies must refer debts to Cross-Servicing (and must authorize Cross-Servicing to use all debt collection tools, including TOP).

Due Process Prerequisites

- ❑ Prior to using most debt collection tools, agencies must provide the debtor with due process.
- ❑ Both individual and non-individual debtors are entitled to due process.

When Due Process Is Required

- ❑ Due process is generally required prior to depriving someone of property (e.g., taking an adverse debt collection action).
- ❑ For example, prior due process is required for:
 - Administrative and tax refund offset
 - Salary offset or administrative wage garnishment
 - Credit bureau reporting
- ❑ However, due process is generally not required for:
 - Sending demand letters
 - Placing collection calls

Constitution Requires Due Process

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

Fifth Amendment
to the U.S. Constitution

Why Provide Due Process?

- ❑ The Constitution requires due process.
- ❑ Statutes and regulations generally define what process is due.
- ❑ Provides for *fairness* in the process before an agency takes an adverse action.

How to Provide Due Process?

- ❑ The precise due process requirements may differ by:
 - Type of debt to be collected
 - Collection action to be used
- ❑ Generally, a single due process notice can cover notice requirements for all collection actions.

What is Due Process?

Notice and Opportunity to Dispute or Challenge

Most Debt Collection Tools Require Due Process

- Generally, the statute or regulation for each collection tool specifies its own due process requirements.

Most Debt Collection Tools Require Due Process

- ❑ Most statutes authorizing the use of a particular debt collection tool requires that the agency provide the debtor with **prior written notice** of the nature and amount of the debt and a **description of how the debtor can dispute** the debt or the proposed collection action.
- ❑ See, e.g., 31 U.S.C. §§ 3711(e) (credit bureau reporting), 3716(a) (administrative offset), 3720A(b) (tax refund offset), 3720D(b) (administrative wage garnishment); 5 U.S.C. § 5514(a) (salary offset).

Minimum Due Process Requirements

Debt Collection Tool	Notice	Opportunity to Dispute
Administrative offset (non-salary, non-tax)	Prior to offset, but no specific timeframe	Review with an agency official
Salary offset	30 days prior to offset	Hearing with hearing official <i>not under the control of the agency</i>
Tax refund offset	60 days prior to offset	Review with an agency official
Treasury Offset Program (TOP) (includes administrative, salary & tax refund offset)	60 days prior to debt submission to TOP	Review and/or hearing, as appropriate
Administrative wage garnishment	30 days prior to garnishment	Hearing with agency official or any qualified individual
Credit bureau reporting (consumer reporting only)	60 days prior to reporting	Review with an agency official

Due Process: Contents of Notice

- ❑ Notice should provide information regarding:
 - Amount and type of debt
 - Actions the agency might take to collect the debt
 - Opportunity to review agency records
 - Opportunity to dispute agency's determination
 - Opportunity to enter into repayment plan
- ❑ Notice should be clearly written.

Due Process: Delivery of Notice

- ❑ The notice letter must be sent to the debtor in a way that is “reasonably calculated” to reach the debtor.
- ❑ Generally, this means that the notice should be sent to debtor’s last address known to the agency.

Due Process: Delivery of Notice

- ❑ Actual receipt of notice is not required for due process requirements to be satisfied.
- ❑ If agency knows that debtor did not receive notice (e.g., letter was returned undelivered), agency should consider whether to obtain a better address.
 - ❑ Depends on age of debt, debtor population, obligation of debtor to keep agency informed, possibility that agency failed to update its address records properly, etc.
- To find updated address information:
 - ❑ Review available agency records.
 - ❑ Access IRS address information – 26 U.S.C. § 6103(m).
 - ❑ Research in commercial databases.

Due Process: Opportunity to Dispute

- A major purpose of the notice is to provide the debtor with the opportunity to dispute the proposed collection action(s).

Due Process: Opportunity to Dispute

- ❑ Debtor may dispute:
 - Existence or amount of debt
 - ❑ Includes correct identity of the debtor
 - Legality of a particular collection action
 - In some cases, the amount to be collected through a particular collection action
 - ❑ Example: wage garnishment; benefit offset; etc.

Due Process: Opportunity to Dispute

□ How to dispute?

- Debtor can request proof of debt
- Debtor can review file
- Debtor can request agency review (administrative review)
- Debtor can request a hearing for:
 - Federal salary offset
 - Administrative wage garnishment (AWG)

Due Process: Opportunity to Dispute

- ❑ Agencies are required to have procedures to:
 - Process requests for reviews and/or hearings.
 - Communicate results of requested reviews and/or hearings.

No Duplication of Due Process

- ❑ Generally, an agencies need not duplicate due process.
- ❑ Examples:
 - Agency provided AWG hearing on identity of the debtor. Agency issued hearing decision determining that it had identified the correct individual as the debtor. Several months later, after receiving the due process notice required for administrative offset, the debtor requests an agency review on the same issue. Need the agency conduct the review?
 - ❑ NO. The issue of the debtor's identity has already been determined by a more formal level of agency review.

No Duplication of Due Process

□ Examples:

- Agency realized that it made a calculation error on the debt, and the debt is actually \$100 more than what the debtor was told in the due process notice. Must the agency re-do due process?
 - YES. But, only with regard to the additional \$100.
- Agency obtained a judgment against the debtor. Does the agency need to send a due process notice to the debtor before offsetting the debtor's payments?
 - YES. The debtor may have already received some of the required due process notification through the court proceeding. But, did the agency warn the debtor about each possible collection action and provide the debtor with all the required opportunities (e.g., opportunity for a repayment agreement)?

Tips & Best Practice

- Periodically revisit your agency's form demand and due process letter(s) to ensure that they are well-written and include all required notifications.
 - Some situations may require an individualized due process notice (e.g., if the debtor is subject to bankruptcy).
- Does your agency combine its due process and demand letters?
 - Combining these letters is generally the recommended approach but, there may be circumstances where it is preferable to separate the two letters.
- Do you send your due process notice at an appropriate time in the collection cycle?
 - The earlier the due process letter is sent, the sooner collection action can begin.

Tips & Best Practice

- Have a process for promptly responding to requests for repayment agreements, including how to evaluate such requests.
- Have a process for responding to disputes, proof of debt requests, requests for repayment agreements and hearing requests.
- Have a process for determining when a communication qualifies as a request for agency review or for a hearing request.
- Retain appropriate records regarding due process.
- Engage with your agency's legal counsel.

Checklist

- ❑ Below is a non-exhaustive list of the information that generally should be included in an agency's due process letter:
 - Inform debtor of the nature and amount of the debt.
 - Explain how interest, penalties, and administrative costs will be added to the debt balance.
 - List the date by which payment should be made to avoid enforced collection.

Checklist (continued)

- List all collection tools that the agency may use to collect the debt.
- Explain how the debtor can exercise the opportunity to: inspect and copy agency records, request a review of the agency's determination regarding the debt, or enter into a reasonable repayment agreement.
- If the agency intends to collect the debt through salary offset or AWG, explain how the debtor can request a hearing.

Checklist (continued)

- Provide contact information for the agency.
- Advise the debtor:
 - To notify the agency if a bankruptcy is filed.
 - Of the penalties for making false statements.
 - That excess collections will be refunded to the debtor, unless prohibited by law.
 - If collecting through tax refund offset, that the non-debtor spouse should file a Form 8379 with the IRS to obtain his/her share of the tax refund.
- Provide the debtor with any notice required by any law applicable to your agency or program.