

limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) *Required notices.* In demand letters, the USDA creditor agency shall inform the debtor of:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) The willingness of the creditor agency to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (*see* § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office within the creditor agency;

(6) The intention of the creditor agency to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's USDA payments and refer the debtor's debt to the Treasury Offset Program for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) *Private collection agency.* [Reserved].

(iii) *Credit reporting agency reporting.* Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) *Administrative wage garnishment.* Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation.* Refer the debt to the Department of Justice in accordance with 3.21 to initiate litigation to collection the debt;

(vi) *Referral to Treasury.* Referral of the debt to Treasury for collection in accordance with subpart C of this part;

(7) That USDA debts over 180 days delinquent must be referred to Treasury for the collection actions described in paragraph (b)(6) of this section;

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the USDA creditor agency's determination that the debtor owes a debt and present evidence that the debt

is not delinquent or legally enforceable (*see* subpart F of this part);

(10) [Reserved].

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* subpart G of this part);

(12) How a debtor may request a waiver of the debt, if applicable;

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see* <http://www.irs.gov>);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guarantees, and insurance (*see* § 3.14);

(16) If applicable, the creditor agency's intention to suspend or revoke licenses, permits, or privileges (*see* § 3.14); and

(17) That the debtor should advise the creditor agency of a bankruptcy proceeding of the debtor or of another person liable for the debt being collected.

(c) *Exceptions to notice requirements.* A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (b)(17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(d) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, internal administrative offset, the procedures applicable to offset should be followed (*see* subpart D of this part). The availability of funds or money for debt satisfaction by internal administrative offset, and the agency's determination to pursue collection by internal administrative offset, shall release the

agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., p. 157) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting consumer debts.

(a) *Notice.* In demand letters to debtors sent in accordance with § 3.11, agencies shall inform debtors:

(1) The intent of the agency to report the delinquent consumer debt to credit reporting agencies after 60 calendar days;

(2) The specific information to be transmitted (*i.e.*, name, address, and taxpayers identification number, information about the debt);