

# DEBT COLLECTION

## Policy ES-06

### PURPOSE

This policy was established by the Bureau of Administration in order to ensure proper documentation and processing of the debt collection policy. Referral of debt to the Obligation Recovery Center (“Center”) by the state agency or government entity (“Agency”) should be made for bad debt as defined in SDCL Ch. 1-55, and only when the Agency’s efforts to collect the debt have been exhausted and it is not receiving payments from the debtor. This policy and Administrative Rules of South Dakota (“ARSD”) Article 10:11 apply to all Agencies that utilize the Center for the collection of debt. The rules may be found online at the South Dakota Legislative Research Council website at:

<http://www.sdlegislature.gov/Rules/DisplayRule.aspx?Rule=10:11>

Agencies may establish their own written procedures in policy or administrative rules for collection of debt prior to providing final notification to a debtor that debt is being referred to the Center.

### POLICY REQUIREMENTS

Effective July 15, 2016, each Agency will have ninety (90) days to collect accounts that are past due or in the alternative follow its internal process to collect accounts that are past due according to this policy or any Agency written policy, statutes or rules. Past due means thirty (30) days have passed since the debt was due. When charging interest on past due debt, the Agency will comply with the provisions of SDCL § 54-3-4, unless otherwise required in statute, plus any and all penalties and costs. The interest and Agency penalties and costs should appear on all statements and notices after the first invoice.

When the Agency has exhausted its collections effort and determined the debt to be bad debt, debts of twenty five dollars (\$25.00) or more are to be referred to the Center for collection no sooner than fourteen (14) days after final notification has been given to the debtor. When referring the account to the Center for collection, include interest-to-date, and also provide an itemization of the debt which separately sets forth the principal, interest accrued, any costs, penalties, or other charges or fees.

#### **Procedure:**

The timeline below is suggested for those Agencies who do not have an internal process to collect accounts that are past due. The timeline contemplates that the debt will already have been incurred and the first invoice will already have been sent. The first invoice should state a payment due date. The due date for payment of the debt is pivotal, as it is the date upon which this timeline is based. If no payment is received by the due date, refer to the following steps:

- 30 days after debt is due: Debt is considered past due. Debtor is informed that debt is past due and Agency continues its collection efforts by sending monthly statements of the debt 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 or a payment plan is not established with the Agency.
  
- 90 days after debt is due: Final Notification is mailed to the Debtor and will include the same information required in the prior statement(s) in addition to the following:
  - A statement that the debt will not be turned over to the Center for collection until at least fourteen (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 Agency.

**Determination of Bad Debt and Referral to the Center:**

After fourteen (14) days have elapsed since the Final Notification was provided to the Debtor:

- The Agency determines the past due account is considered bad debt and refers the debt to the Center for collection by providing detailed debt information to the Center as required by ARSD 10:11:03:02. The information will be transmitted electronically from the Agency to the Center in a format prescribed by the Center and following the established encryption guidelines. Once the Agency has referred the bad debt to the Center for collection, all collection efforts by the Agency will cease.

The following types of debt should **not** be referred to the Center:

- Debts with a principal balance less than \$25.00
- Debts that can no longer be verified
- Debts owed by governing bodies, public entities or political subdivisions
- Debts of which the statute of limitations has expired
- Debts of debtor who is deceased
- Debts of debtor with a pending bankruptcy proceeding or whose debts have been discharged in bankruptcy

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 Agency is certifying that the individual owes the debt and the 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.

When accounts are referred to the Center, the Agency will list a contact person from the Agency with a telephone number and email address. This person will be the one to be contacted concerning the account, if any questions arise.

The Center and the Agency will execute a Memorandum of Understanding (MOU) prior to any bad debt referral. The MOU will address any agency specific requirements regarding the debt collection process, including any settlement authority to be delegated by the Agency to the Center. The Center will 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 will collect all debts as authorized by SDCL 1-55.

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 Agency has researched the dispute, the Agency will notify the Center if the debt is valid or if the debt should be adjusted or the collection case closed.

### **Third-Party Debt Collection:**

If the Center is unable to collect a debt within the account receivable cycle, it will refer the debt to a third-party debt collection agency for a period of no less than one year or as otherwise agreed by contract. Pursuant to SDCL 1-55-14, the third-party debt collection agency may add a collection charge, not to exceed twenty percent of the total referred debt, to the debt forwarded by the Center as payment for collection services. If the third-party debt collection agency returns the debt to the Center, the collection charge on the debt returned to the Center will remain the same as it was for the third-party debt collection agency.

### **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.

If the applicant, registrant, or licensee has paid the debt and cost recovery fee in full, has entered into a payment plan with the Center and payment pursuant to the plan is current, or the balance of the debt owed is less than the amounts set forth in ARSD 10:11:06:02, the Center will notify the licensing agency.

### **Due Process Hearing:**

A debtor affected by any motor 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 licensing 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 will notify the Agency whose debt generated the hearing and all other Agencies having a debt owed by the debtor, informing them that a hearing has been requested. The Agency whose debt generated the hearing will 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. This Agency will also contact the other Agencies affected, notifying them of the hearing;
- Compile all documentation that proves the debtor has a debt. The documentation must contain personally identifying information of the debtor, including but not limited to, social security number, birthdate, and addresses of record. The Agency may also include any documentation that shows the Agency's attempts to collect the debt;
- 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 9:00 a.m. and 4:30 p.m., Central Time. This hearing will be held within thirty (30) days of the Agency's request for hearing date. This time deadline is not statutory and may be set aside due to extenuating circumstances;
- Individuals to be present at the hearing are contemplated to include debtor and/or debtor's representative, representatives of the Center, representatives of the referring Agency and representatives of other Agencies who are owed debt by the debtor;
- 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 and will address the determination by the Center that the debtor has a debt that has been referred to the Center for collection.

The issues to be determined 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 money;

- After the hearing takes place, the Hearing Examiner will render a written recommended decision to the Agency within thirty (30) days. The head of the Agency may either adopt or reverse the decision of the OHE. The final decision from the Agency will be sent to the parties and OHE within ten (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 will implement the decision immediately.

<i>Scott W. Bollinger (original signature on file)</i>	<i>06/03/2022</i>
Scott W. Bollinger, Commissioner	Date

**POLICY INDEX**

**Scope:** Statewide  
**Replaces Policy:** EC-96-11  
**Effective Date:** July 2016  
**Supersedes Version Written:** August 2008  
**Office of Primary Responsibility:** Bureau of Administration

**REVISION LOG**

August 2008 Editorial revisions only  
 July 15, 2016 Policy revisions  
 July 25, 2016 Editorial revisions  
 December 12, 2016 Policy revisions  
 June 1, 2022 Clarification revisions