

§ 20.52

(2) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982;

(3) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(4) To debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) Agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 20.52 Definitions.

For purposes of this subpart—

(a) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization or entity, except another federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial demand letter (§ 20.54), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under payment agreement with the Department of Labor, or any agency thereof.

§ 20.53 Agency responsibilities.

(a) The Department of Labor agency responsible for administering the program under which a delinquent debt arose shall assess interest and related charges on the debt, in accordance with guidelines established by the Chief Financial Officer. In the case where a debt arises under the program of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency, or official, shall have responsibility for car-

29 CFR Subtitle A (7-1-06 Edition)

rying out the provisions of this subpart.

(b) Before assessing any charges on a delinquent debt, the responsible agency must notify the debtor of the Department's policies for assessing interest, penalties and administrative costs and must ensure that the debt is overdue for the respective periods specified in these regulations.

(c) Each Department of Labor agency is responsible for ensuring the continued accuracy of calculations and records relating to its assessment of charges, and for the prompt notification of the debtor of any substantial change in the status or amount of the claim. As appropriate, the Agencies should promptly follow up on any allegation made by a debtor that principal or charges is in error. Agencies should respond promptly to communication from the debtor, within 30 days whenever feasible.

§ 20.54 Notification of charges.

The agency head (or designee) responsible for carrying out the provisions of this subpart shall mail or hand-deliver an initial demand for payment to the debtor. In the initial demand, the debtor shall be notified that interest on the debt will start to accrue from the date on which the notice is mailed or hand-delivered, but that payment of interest will be waived if the debt is paid by the due date, or within 30 days of the date of notice, if no due date is specified. The initial demand shall also state that administrative costs of recovering the delinquent debt will be assessed if payment is not received by the due date.

§ 20.55 Second and subsequent notifications.

(a) In accordance with guidelines established by the Chief Financial Officer, the responsible agency head (or designee) shall send progressively stronger second and subsequent demands for payment, if payment or other appropriate response is not received within the time specified by the initial demand. Unless a response to the first or second demand indicates that a further demand would be futile

or the debtor's response does not require rebuttal, the second and subsequent demands shall generally be made at 30 day intervals from the first, and shall state that a 6 percent per annum penalty will be assessed after the debt has been delinquent 90 days, accruing from the date it became delinquent. The second and subsequent demands shall also identify the amount of interest then accrued on the debt, as well as administrative costs thus far assessed. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to waiver of the indebtedness, administrative offset, salary offset and disclosure of information to credit reporting agencies, to the extent that such inclusion is appropriate and practicable.

§ 20.56 Delivery of notices.

The responsible agency head (or designee) shall exercise due care to ensure that demand letters are dated and mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

§ 20.57 Accrual of interest.

Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency.

§ 20.58 Rate of interest.

(a) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the FEDERAL REGISTER (as of the date the notice is sent), unless another rate is specified by statute, regulations or preexisting contract condition. The Office of the Chief Financial Officer will notify agencies promptly of the current Treasury rate. The responsible agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States, and such rate is agreed to by the Chief Financial Officer (or his designee). The rate of interest prescribed in section 6621 of the Internal Revenue Code shall be sought for backwages recovered in litigation by the Department.

(b) The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed.

(c) Interest shall not be assessed on interest, penalties or administrative costs required by this subpart. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

§ 20.59 Assessment of administrative costs.

(a) The Department of Labor agency responsible for collecting the claim shall assess against debtors charges to cover administrative costs incurred as a result of the delinquent debt; that is, the additional costs incurred in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based on cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency.