

§ 1177.10 Demand for payment.

(a) NEH will promptly make a written demand, as described in paragraph (b) of this section, upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with NEH to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to NEH's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), NEH will give due regard to the need to refer debts promptly to DOJ for litigation, in accordance with § 1177.33 or otherwise. When necessary to protect the Government's interest (for example, to prevent a statute of limitations from running), NEH may precede written demand by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within NEH;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which the debtor should make payment in order to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally should not be more than thirty (30) days from the date that NEH mails or hand-delivers the demand letter; and

(4) The name, address, and phone number of a contact person or office within NEH.

(c) NEH will 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. NEH will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the agency can resolve the debt administratively or must refer it for litigation.

(d) NEH will include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; its remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

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

(f) Prior to initiating the demand process, or at any time during or after completing the demand process, if NEH determines to pursue, or is required to pursue, offset, it will follow the offset

procedures in § 1177.11. The availability of funds or money for debt satisfaction by offset, and NEH's determination to pursue collection by offset, will release NEH from further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, NEH will advise each person it determines to be liable for the debt that, unless the agency can collect the debt administratively, it may initiate litigation. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. NEH will notify DOJ that it has given this notice.

(h) When NEH learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless NEH 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 NEH will immediately stop collection activity against the debtor.

(1) After seeking legal advice, in most cases NEH will file a proof of claim with the bankruptcy court or the Trustee. NEH will 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 NEH 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) In most cases, offset is stayed by the automatic stay. However, NEH will seek legal advice from its Office of the General Counsel to determine whether it may freeze its payments to the debtor, and other agencies' payments that are available for offset, until it can obtain from the bankruptcy court relief from the automatic stay. NEH will also seek legal advice from its Office of the General Counsel to determine whether recoupment is available.