

CHAPTER 6**CONTRACTOR DEBT COLLECTION**0601 OVERVIEW

This chapter addresses NASA policy related to the collection of debts owed to the government by contractors. Such debt shall be promptly and aggressively collected, with follow-up action(s) taken as necessary, to recover outstanding debts. This chapter issues policy and procedures for the collection and recovery of those debts that are owed by contractors, vendors, assignees, and business entities, and the transfer of eligible delinquent debts to the Department of Treasury for collection and cross-servicing.

0602 AUTHORITY AND REFERENCES

060201. Provisions of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and the revised Federal Claims Collection Standards regulation of 2000.

060202. The Federal Claims Collection Standards (FCCS). The FCCS regulation, issued jointly by the Department of Treasury and the Department of Justice, is codified at Title 31, Code of Federal Regulations, Chapter 9, Parts 900 – 904 (31 C.F.R. 900 – 904). The provisions of 31 C.F.R. 901.3, “Collections by administrative offset,” are hereby adopted without change by reference. These provisions implement the statutory requirement for mandatory referrals of eligible debts to the Department of Treasury.

060203. Relevant references to published regulations (i.e., Federal Acquisition Regulations (FAR)) are made throughout this chapter where applicable. Refer to the specific section for citations.

- A. United States Code (USC) (e.g., 28 USC 2415)
- B. Federal Acquisition Regulations (FAR) (e.g., FAR Part 33.102(b))

0603 ROLES AND RESPONSIBILITIES060301. NASA HEADQUARTERS

A. NASA HQ, OCFO Shall: Establish and maintain Policies and procedures for the timely collection of contractor debt in accordance with applicable laws and Department of Treasury Guidance.

- B. The Deputy Chief Acquisition Officer Shall:

1. Establish and maintain contractual policies and procedures for the time identification of amounts owed by contractors, and issuance of demand letter for repayment.

2. Monitor Center level compliance with contractor debt collection policies and procedures.

060302. NASA CENTERS

A. Center Contracting Officers Shall:

1. Identify amounts owed by contractors.

2. Prepare and issue demand letters to contractors.

3. Provide a copy of the demand letter and any associated documentation to the OCFO

B. Center Office of the CFO Shall:

1. Record accounts receivable based on demand letters received from the contractual offices.

2. Maintain records of receivables and take appropriate follow-up action on delinquent receivables.

0604 DEFINITIONS

060401. Debt and Claim. The terms, “debt” and “claim,” as used in this chapter are synonymous and interchangeable. They refer to any amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency.

060402. Delinquent Debt. Delinquent debt refers to a debt that has not been paid by the due date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement).

060403. Debts Eligible for Transfer. Debts “eligible for transfer to the Department of Treasury” include debts that have been delinquent for a period up to 180 days for which the Department of the Treasury may take appropriate action to service, collect, or compromise the debt or to suspend or terminate collection action.

060404. Debts Not Eligible for Transfer. Debts that are “not eligible for transfer to the Department of the Treasury” include:

- A. Are in litigation or foreclosure
- B. Will be disposed of under an approved asset sale program
- C. Have been referred to a private collection contractor for a period of time acceptable to the Department of Treasury
- D. Are at a debt collection center for a period of time acceptable by the Department of Treasury
- E. Will be collected under internal offset procedures within 3 years after the debt first became delinquent
- F. Are exempt by the Department of Treasury based on a determination that the exemption is in the best interest of the United States.

0605 POLICIES AND PROCEDURES

060501. NASA’s policy is effectively and proactively to collect debts owed to the Agency. Uncollectible eligible debts up to 180 days delinquent shall be transferred to the Department of the Treasury as soon as a determination is made that despite the Agency’s due diligence to recover debts voluntarily, additional efforts will not result in the voluntary recovery of these debts. Referral of debts to the Department of Treasury shall be made in accordance with terms of agreement between NASA and the Department of Treasury.

060502. Debt Management Requirements. In order to protect the government’s interests, officials of NASA shall cooperate fully with each other to ensure that the following required actions are accomplished.

A. Identify and Correct Debt Causes. Procedures shall be established at all organizational levels, as necessary, to identify the causes of indebtedness, delinquencies, and defaults. Corrective actions shall be taken to eliminate those causes and reduce the number of debts subject to collection.

B. Debt Controls. Effective controls shall be established over debts for collection according to requirements specified in this requirement, consistent with other applicable statutes and regulations. Debts shall be aged so that timely and appropriate collection and follow-up action can be accomplished.

C. Debtor Information Exchange Program. NASA organizations shall participate in government debtor exchange programs.

D. Debt Collection Partnering. NASA organizations shall cooperate with each other, other federal agencies, and other private entities, as requested, to collect delinquent contractor or vendor debts.

E. Documenting Collection Activity. NASA organizations shall document their administrative debt collection activities, including the basis for debt compromise, suspension, or termination of collection action, and retain the documentation in individual debtor files.

F. Obtaining Debtor Mailing Address. Procedures shall be established at all organizational levels, as necessary, to identify the causes of indebtedness, delinquencies, and defaults. Corrective actions shall be taken to eliminate those causes and reduce the number of debts subject to collection. Participation in the Department of the Treasury Cross-Servicing or Treasury Offset Programs enables the Agency to obtain debtors' addresses from the Department of the Treasury, Financial Management Service, Production Systems and Operations Branch. Contact the Financial Management Service to obtain this information. Mailing addresses obtained in this manner shall be used to enforce the collection of debts and may be disclosed to other agencies and collection agencies for the purpose of collecting debts owed to NASA. A mailing address obtained from the Department of the Treasury may be disclosed to a commercial credit bureau only for obtaining a commercial credit report. However, this disclosure limitation no longer applies once a debtor's mailing address is independently confirmed.

G. Determining Debt Amount for Compromise, Suspension, and Termination. Debts shall not be subdivided to avoid monetary ceilings for debt compromise, suspension, or termination of collection actions. A debtor's liability arising from a particular transaction shall be considered a single debt in determining if a debt is \$100,000 or greater for purposes of compromise, suspension, or termination. Nothing in this chapter exempts accountable officials from pecuniary liability arising from erroneous payments and loss of funds.

H. Collection Priorities for Multiple Debts. Internal administrative offsets shall continue until a debt is paid prior to offsetting or liquidating subsequent debts. However, consideration shall be given to applicable statutes of limitations and collection priorities to ensure that maximum amounts of indebtedness are collected within the allowed recovery period.

I. Crediting Collections to Accounts. If collected in time to be credited to a current or expired fiscal year appropriation, debt principal amounts collected shall be refunded to the appropriation or account originally charged when funds were disbursed or to the appropriation or account originally designated to receive credit as a result of a sale of goods or services. Otherwise, debt principal proceeds due to lapsed

appropriations shall be credited to the Treasury Miscellaneous Receipt Account as designated by law. Interest, penalties, and administrative costs received in conjunction with delinquent debt collection also shall be credited to the appropriate Treasury Miscellaneous Receipt Account.

J. Recovery Auditing. The use of contingency fee auditing services contracts to identify and recover contractor overpayments is being implemented via a NASA wide contract.

060503. Collections.

A. NASA Centers are responsible for collecting the amount of an overpayment resulting from an erroneous payment, duplicate payment, or dual negotiation of an original and recertified U.S. Treasury check. However, when a contract modification (downward adjustment) is issued after the date of a disbursement that causes a contract to be in an overpayment status, the result of that modification is not an erroneous payment with respect to this chapter. The Center Office of the CFO shall contact the procuring contracting officer or the administrative contracting officer (the individual who issued the modification causing the overpayment) to ensure that a demand letter is sent to the contractor for recovery of funds.

B. The primary responsibility for determining the amount and ensuring collection of contract debt is with the contracting officer, for most types of contract debts. It is the Center CFO Office's responsibility to initiate action to make the collection from the contractor. Officers shall act judiciously to make recovers of debt upon receipt of a official request, including payment dates, amounts due to the contractor, and provision of a copy of the contract from the contracting officer or other authorized official. Any checks from contractors for the payment of debt should be immediately sent to the disbursing officer with a request for confirmation of receipt of payment.

060504. Debt Collection Initiated by Contracting Officers or Designees.

A. Unless otherwise prescribed, collection of contractor debts described below shall be initiated by the appropriate contracting officer, or designee, in accordance with the procedures in the Federal Acquisition Regulation (FAR), as supplemented by the requirement.

1. Damages or excess costs related to defaults in performance.
2. Breach of contract obligations for progress payments, advance payments, or payments for government furnished property or material.
3. Government expenses to correct defects.

4. Overpayments for errors in quantity, billing or deficiencies in quality.
5. Retroactive price reductions resulting from contract price redetermination or incentive type contracts.
6. Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.
7. Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.
8. Reimbursement of costs, as provided in the FAR, subparts 33.102(b) and 33.104(h)(1), paid by the government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification as provided in the FAR subpart 33.104(h)(8).

B. The contracting officer, or designee, shall keep the applicable accounting office apprised of all collection and offset transactions, including all notices issued or received, that affect the Organization's accounting records. Communication of the foregoing activity shall be performed in the accounting month that the activity occurred. These actions will ensure that receivables are established, aged, collected and written-off in the accounting records and identified in reports.

060505. Demand for Payment. Written demand for repayment of debts shall be made promptly, and in terms that inform the debtor of the consequences of failing to cooperate with the Agency to resolve the indebtedness. Priority shall be given first to voluntary repayment prior to initiating involuntary measures for recovery of debts. Repayment measures include one or more of the following activities: internal debt recovery processes by the Agency (through installment agreements and internal administrative offsets), and/or transfer to the Department of the Treasury for cross-servicing. Transfer of debts to the Department of Justice for litigation also may be required.

A. Demand Letters. Upon determination that a debt exists from a contractor, vendor, assignee, or business entity, make an immediate written demand for payment within 5 working days after recognizing the debt. Recover debts under \$600 normally through established internal NASA payment offset procedures. The demand letter shall direct the contractor to make payment for the debt to the disbursing office, or in the case of terminations for default, to the accounting office. The contracting officer shall send a copy of each demand letter to the Office of the Center CFO and request acknowledgement of receipt. Contracting officers shall furnish documents to the disbursing office that identify the distribution of the principal amount of the debt by appropriation, preferably attached to the disbursing office copy of the demand letter.

B. Demand Letter under the Provisions of the Cecile Industries Decision. Previous legal decisions have upheld the government's right to offset contract debts. (The decision by the Court of Appeals for the Federal Circuit in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed.Cir. 1993), held that the Debt Collection Act of 1982 does not govern the government's common law right to offset contract debts. With respect to the Cecile decision, a demand letter for payment of contract debts that are determined to be recovered internally by the Agency through offsets should not make reference to 31 USC 3176.) The demand letter to contractors indebted to the government shall include the following:

1. A description of the debt, including the amount.
2. A statement stating that payment should be made in full within 30 days from the date of the demand letter.
3. The address to which payment should be sent (and notice that the check, or wire transfer when applicable, shall be made payable to the "U.S. Treasury")
4. Notification that any amounts not paid within 30 days from the date of the demand letter shall bear interest from the date of the demand letter, or from any earlier date specified in the contract, if applicable, and the rate that shall be used for calculating interest.
5. Notification that the principal and interest shall be subject to collection by offset if the debt is not paid within 30 days from the date of the demand letter.
6. The name, address, and phone number of a contact person or office within the agency.
7. Any available documentation that substantiates the indebtedness should be included with the demand letter.

C. Number of Demand Letters. It is agency policy that only one demand letter is required. A second, or additional, demand letter(s) may be issued on a case-by-case basis when the debt is not recovered or active measures to resolve the indebtedness have not been initiated, after 30 days from the date of issuance of the initial demand letter.

D. Maximum Time Limitations for Collecting Debts. Title 28 United States Code, section 2415, "Time for Commencing Actions brought by the United States," and 31 U.S.C 3716, "Administrative Offset," promulgate time limitation requirements for collecting debts under this chapter. Based on the statute of limitation, agencies are barred from filing a formal complaint to pursue a collection action under this

chapter after the expiration of the later of the following dates: 6 years from the debt repayment due date, or within 1 year after a final decision has been rendered in an administrative proceeding. In the event that issuance of a later partial payment or written acknowledgment of debt occurs, the time limitation for collection action shall begin anew at the time of each such payment or written acknowledgment of debt. Administrative offsets of payments, however, may continue for up to 10 years. Accordingly, the collection of contractor debts should be pursued in accordance with the time limitations specified in 28 USC 2415 and 31 USC 3716.

060506. Internal Administrative Offsets. Recover debts internally within the Agency, to the extent practicable, by voluntary repayment of the debt by the debtor or by administrative offset(s) of other payments owed to the contractor. The contractor shall be required to liquidate debts either by payment in a lump sum on demand, or by credit against unpaid bills due the contractor, unless an installment agreement has been entered into or a deferment of collection has been approved (see FAR 32.606(d)). After 30 days have elapsed since the initial demand letter was mailed and no payment has been received, offset the amount of a contractor's indebtedness against other monies that are owed the contractor.

A. Offset as a Deduction on a Public Voucher. FAR subpart 32.611 allows for offsetting contractor payments to liquidate debts owed by the contractor if an explanation is given to the contractor. Offsets (that include appropriate administrative charges) shall be made against the same contract that gave rise to the debt, provided that payments are scheduled under that contract. Effect offsets against amounts due the contractor under other contracts only when offsets against the contract that gave rise to the debt cannot be accomplished. The public voucher must be approved and the accounting classification charged for the total amount being settled with no regard for the deduction being applied. Prominently annotate the face of the voucher showing the amount withheld and the accounting classification credited to ensure that only the adjusted net amount is paid to the contractor. A notation with the appropriate information also shall be made that adequately informs the payee of the reason(s) for the deduction.

1. Considerable discretion is needed to determine when an offset is appropriate. Some businesses prefer that their debts be liquidated as an offset. If a contractor indicates agreement in writing to the disbursing office, the disbursing office may effect an offset prior to the expiration of the due date indicated in the demand letter. Other contractors may prefer to make a remittance by check shortly after the due date. In either of these instances, an offset may result in collecting the debt twice, thereby requiring a refund of a collection. Another problem may arise when a remittance has not been forthcoming, but the disbursing office is unaware of whether the contractor will be submitting any invoices in the near future.

2. Processing an offset is more complex than processing the receipt of a remittance; therefore, in these cases, the disbursing office should encourage contractors to submit their payments by check or wire transfer. Interest charges shall be computed through the date of an offset, and the expenses associated with effecting an offset shall be included as an administrative cost as mentioned in section 1807, below. Offsets normally shall not be accomplished when there is an existing assignment of claims associated with the contractor. Disbursing office personnel shall seek guidance from their legal staff, as appropriate, in determining whether an offset may be taken when an assignment of claims exists.

B. Credit Memoranda

1. The demand letter shall indicate that a credit memorandum is not an acceptable means for liquidating indebtedness; however, as an exception, a credit memorandum may be accepted under special circumstances and only when there is a payable invoice to which the credit can be applied. For example, a credit memorandum may be acceptable when a contractor is the original discoverer of the error that led to the indebtedness and voluntarily submits a credit memorandum to the disbursing office without having received a demand letter. The contractor should furnish the disbursing office, upon request, an invoice number, date, and the amount of the debt to be offset against the invoice, according to the credit memorandum.

2. A contractor may indicate on an invoice, or on a progress payment request, that the amount of the credit memorandum shall be deducted from the amount due from the government. In all other instances, a determination must be made on the most efficient manner in which the debt can be recovered. In making this determination, give consideration both to the relative costs that would be incurred by the Agency under each option, and to the method that is expected to result in liquidation of the debt at the earliest date. The latter factor is dependent upon the expected volume and frequency of incoming invoices that are susceptible to administrative offset. Regardless of the method selected, the disbursing office shall acknowledge receipt of the credit memorandum and inform the contractor of its disposition. If direct remittance is required, the acknowledgement shall contain a statement, such as: "This is to acknowledge receipt of your credit memorandum 14245, dated December 14, 2xxx. We cannot accept this document as liquidation of your indebtedness, and must ask that you remit a check to the following address: _____." If an offset is accomplished, the disbursing office's letter shall contain a statement such as: "This is to acknowledge receipt of your credit memorandum 67890, dated June 12, 2xxx. We have offset the amount of your debt against your invoice A654Z, dated June 5, 2xxx." Receipt of a credit memorandum by the due date (where the due date is stated in the demand letter) does not preclude a charge of interest and administrative costs.

C. Payment Schedule.

1. Whenever possible, payment, including deferred payment, of debts owed the government by contractors shall be made in one lump sum amount.

2. When a debtor contractor is able to establish sufficient justification, a series of installment payments may be approved that will ensure liquidation of the debt within a reasonable period of time. In accordance with 31 C.F.R. 901.8, when feasible, installment payments should be sufficient in size and frequency to liquidate the government's claim within 3 years. Interest and administrative fees shall be computed and assessed for each payment of outstanding debt.

3. All remittances received, whether in lump sum or installments, shall be collected and deposited to the appropriate fund account upon receipt. The accounting site must be informed of all collections as the accounting site maintains the official accounts receivable records. If the amount received is not adequate to liquidate the entire amount of the indebtedness, the remittance shall be applied in the following order: 1) outstanding penalties, 2) administrative charges, 3) interest, 4) principal.

060507. Transfer of Delinquent Debts. The Debt Collection Improvement Act of 1996 requires agencies to transfer for collection a debt or a claim that has been delinquent 180 days or more to the Department of Treasury (or other approved debt collection center) for collection. There are different procedures that apply to uncollectible debts under \$600 and \$600 or greater.

A. Delinquent Debts Under \$600. Delinquent debts under \$600 shall be written off after exhausting all reasonable remedies, including internal administrative offsets, to recover the debt internally within the Agency. Although a debt is written off, collection of the debt through internal administrative offset still may be pursued until the debt is closed out. The transfer of a debt under \$600 to the Department of the Treasury, or to the Department of Justice (if accepted), shall be considered only when a determination is made that the recovery of the debt is in the best interest of the government.

B. Delinquent Debts \$600 or Greater. In order to enable subsequent debt collection efforts, including offsets, and permit the accumulation of adequate supporting data, the disbursing office may retain these debts up to a maximum of 180 days following the date of the initial demand letter.

1. Transfer of Debts to the Department of the Treasury. The accounting office shall refer eligible debts that are delinquent for up to 180 days to the Department of the Treasury, Financial Management Service (FMS), for debt collection and cross-servicing in accordance with the FMS-NASA agreement. Recovery and collection of debts transferred to the Department of the Treasury for cross-servicing are subject to the administrative offset provisions of 31 USC 3716.

2. Supporting Documentation. When a debt is transferred to the accounting office, the debt shall be supported by the following documents that are legible and tabbed as follows for processing:

a. Copies of vouchers paid under the contract, which relate to the specific debt. For example, claims resulting from erroneous overpayments to the contractor need to be supported only by those paid vouchers that will assist in fully understanding the case. Submission of all paid vouchers under the contract is encouraged when such documentation is necessary for a full understanding of the claim. All paid vouchers submitted in support of claims transferred shall clearly indicate the date that the disbursement was made.

b. Amounts of collections/offsets and dates collections were offset.

c. For duplicate payments and dual negotiated successor checks, copies of the negotiated checks obtained from the Department of Treasury.

d. All demand letters, other correspondence, and written documentation of telephone or personal contacts with the debtor and others which are pertinent to the debt.

e. Any other documents needed to support a recommendation for compromise, discontinuation, or termination.

f. Taxpayer identification number

g. Telephone number, address, and the name of the point of contact who is knowledgeable of the following entities: debtor, Contract Financing Officer making transfer, disbursing office making submission, and accounting activity.

h. In the case of a determination of debt(s) resulting from an audit or contract reconciliation, a copy of the audit or reconciliation report, with sufficient supporting documentation to explain the conclusions.

i. The accounting classification/appropriation to which the principal portion and administrative fees of the debtor's payments should be deposited.

3. Department of the Treasury Cross-Servicing. Until a debt is referred to a private collection agency, the Department of Treasury will actively pursue collection, including purchasing credit reports, skip-tracing, and negotiating compromise and repayment plans. Department of Treasury has established standard processes for accepting and collecting debts. These services are outlined below:

- a. Demand letter issued
- b. Attempts to contact the debtor by phone
- c. Credit bureau reporting
- d. Offset of federal payments through the Agency of the Treasury Offset Program
- e. Referral to a private collection agency through a governmentwide contract administered by the Department of the Treasury.
- f. Recommendation, and upon the Agency's concurrence, referral of debts to the Department of Justice

4. Funds Accountability. Once a debt is transferred to the accounting office, the accounting office will have full responsibility for collecting the debt. Funds accountability, however, does not transfer to the accounting division. If an office other than the accounting office receives a payment after transfer of the debt, the office receiving the payment shall notify the accounting office within 3 workdays, of the receipt and disposition of the payment. When there are overcharges to appropriations or funds, the activity responsible for maintaining the official accounting records shall continue to maintain control over the receivables.

5. Debt Write-Off. When all means to recover the debt have been exhausted, and upon notification of a determination by the Department of the Treasury and/or the Department of Justice that a debt that was transferred to one or both of the foregoing Departments is uncollectible, the accounting office shall notify the disbursing office that the debt should be written off and action should be taken to write it off.

6. Close-Out of Indebtedness. While collection action is suspended or terminated, a debt remains delinquent; further collection action may be pursued at a later date (within the allowable statutory time limit). When a debt is discharged, or "closed out," in full or in part, further collection action is prohibited. Before closing out a debt, the debt collection action must be terminated in accordance with the requirements of 31 USC 3711, which requires the Agency to sell a delinquent nontax debt upon termination of collection action if it is determined to be in the best interests of the government, and 26 U.S.C 6050P that requires that the Agency file

discharge report to the Internal Revenue Service upon discharging a debt. Components shall seek legal assistance through the local legal office to close out a debt.

060508. Interests, Penalties, and Administrative Charges

A. Interest Rate. In most cases, the debtor shall be assessed interest calculated using the Current Value of Funds (CVF) interest rate that is in effect on the date from which interest begins to accrue and remains fixed for the duration of the indebtedness. The CVF interest rate shall be provided to individual disbursing offices by the accounting office. The CVF interest rate shall not apply to debts where a statute, regulation, loan agreement or contract either prohibits such charges or explicitly fixes the charges that apply to debts involved.

B. Calculating Simple Interest. Unless otherwise established in the specific contract, repayment agreement, statute, or regulation, interest is not assessed until the due date for payment of indebtedness has passed. Interest accrues, however, from the date on which the first demand letter is mailed or hand delivered to the debtor to the date the debt is paid in full. Therefore, the minimum amount charged for interest shall be for a 30-day period. When the due date passes without receipt of the required payment from the contractor, interest shall be computed by multiplying the principal amount of the debt by the applicable CVF interest rate divided by 360 days times the number of days in the interest period. NOTE: The Department of the Treasury annually or quarterly publishes the CVF rates in the Federal Register and in Treasury Financial Manual bulletins. If there is an offset, or if the principal amount of the debt decreases for any other reason, the daily amount of interest needs to be recalculated, effective with the date of the change.

C. Waiver of Interest Charges.

1. Interest may be waived on a case basis, e.g., when the disbursing officer or other authorized official determines that collection of interest charges would be against equity and good conscience, or not in the best interest of the United States. Frequently, a debtor will make remittance of the principal amount due to the government a few days past the established due date. Another common debtor practice is to pay the last amount billed, but fail to make allowance for the additional interest that accrues between the billing date and the remittance date. In such cases, disbursing offices shall determine if additional billing is warranted.

2. Interest in amounts less than \$50 shall not be billed. For example, a contractor owes \$1,330 (of which \$1,080 is the principal amount and \$250 is the interest amount) when the demand letter is sent out. Subsequently, the contractor submits a payment for \$1330, but payment is not received until after the due date. Interest of \$25 more accrues by the time payment is received. The disbursing office would waive the additional \$25 interest without pursuing further collection action on it, credit \$250 to interest, and credit \$1,080 to principal. When additional interest of \$50 or more accrues, each case shall be reviewed on an individual basis to consider the facts surrounding the case in order to make a determination on the assessment of interest charges. For example, when a contractor has made a good faith effort to make full payment of monies due, collection of additional charges would be against equity and good conscience, and additional interest may be waived.

D. Penalty Charges. Creditor organizations (i.e., organizations to which a debt is owed) shall assess a penalty charge of 6 percent per annum on any debt principal that is delinquent beyond 90 days. Penalty charges shall accrue from the date the principal amount owed becomes delinquent. Amounts received from a contractor or business entity are to be deposited in the Treasury Receipt Account 1099, "Fines, Penalties, and Forfeitures, Not Otherwise Classified."

E. Administrative Costs. Administrative costs relate to only delinquent debts (i.e., debts not paid for 30 or more days from the date the demand letter was mailed). Administrative costs are assessed to cover expenses incurred in the recovery of the delinquent debts. The cost of sending an initial demand letter would not be included when calculating administrative costs because that expense is incurred whether or not the debt becomes delinquent. In contrast, costs associated with the calculation of interest and forwarding of the debt to the accounting office are necessitated only because the debt is not paid when due (i.e., within 30 days after the date from which the notice is mailed when interest accrues) and subsequently becomes delinquent. Therefore, costs associated with these actions are included in the calculation of administrative costs. Administrative charges must be based on actual costs, or on an average based on actual costs. The costs may not arbitrarily be established. Additional administrative charges may be assessed, if needed.

060509. Deferments and Disputes Under the Contract Disputes Act. Under the Contract Disputes Act of 1978, a contractor may appeal a decision of indebtedness to the ASBCA or through the United States court system. The contractor may request, in writing, for a deferment of debt payment until the appeal is decided (see FAR subpart 32.613). Although a contractor may use the term "deferment" when requesting postponement of a payment, a contractor's request for a deferment for collection of indebtedness on a contract associated with an appeal should be sent to the contract financing office by certified mail, within 3 work days from the date of receipt of that request (see FAR subpart 32.613). The accounting office cannot approve or deny such a request for a deferment. When a disbursing office or the accounting office receives a request for deferment of a debt from a contractor in association with an appeal, the office

receiving the request shall send the request within 3 work days to the appropriate contract financing office.

060510. Bankruptcy. Bankruptcy litigation is accomplished by the Department of Justice through the office of the cognizant U.S. Attorney. Prescribed actions shall be taken when the procurement contracting office or contract administrative office receives notice of bankruptcy from the contractor or from another source.

A. Bankruptcy cases generally are time sensitive. When a notice of bankruptcy is received, immediate action is required. Government monetary claims and other rights may be adversely and irrevocably affected if not timely asserted.

B. When either the procurement contracting office or the contract administrative office receives information that bankruptcy proceedings have been initiated, the receiving office shall immediately notify the NASA Office of General Counsel.

C. This notification shall occur regardless of whether any contracts have fully been performed, closed, or terminated. At a minimum, the notification should contain the name of the contractor, the court in which the bankruptcy petition has been filed, the date of the filing of the bankruptcy petition, and the bankruptcy court docket number (if known).

D. Upon receipt of a notice from a contracting officer, the Office of General Counsel shall prepare a consolidated proof of claim on behalf of the Agency. The proof of claim shall be forwarded to the appropriate U.S. Attorney's office for filing, as well as to the contracting officer. A copy shall be sent to the DoJ's Central Intake Facility. The proof of claim shall identify the Office of General Counsel as the office designated to receive further notices and any funds received pursuant to the proceedings.

E. The filing of a bankruptcy petition has a major impact on business relationships with the contractor who has filed for bankruptcy protection. Many otherwise appropriate actions cannot be taken against a bankrupt contractor, and actions that may be legally taken against a contractor may have adverse consequences for the Agency. The activity's legal office should be informed before any action is taken with regard to a contractor who has filed for bankruptcy.

F. In accordance with the FAR subpart 52.242-13, "Bankruptcy," should the contractor enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification should including: date on which bankruptcy petition was filed, identity of court in which the bankruptcy petition was filed, listing of government contract

numbers and contracting officers for all government contracts with this contractor against which final payment has not been made, FAR clause 52.242-13 states that this obligation remains in effect until final payment under the contract(s) is made.