

103 KAR 1:070. Uniform collection procedures.

RELATES TO: KRS 13B.020, 45.237-45.241, 45.260, 45.345, 360.040

STATUTORY AUTHORITY: KRS 45.238(6), 45.241(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.238(6) and KRS 45.241(5) require the Finance and Administration Cabinet to promulgate administrative regulations for those agencies without statutory procedures for collecting debts and to prescribe standards and procedures for effective administration regarding collection of debts, notices to persons (all individuals and business entities) owing debt, information to be monitored concerning the debts, an appeals process, and the writing off of debts. This administrative regulation establishes the above requirements, guidelines for collecting accounts receivable, and the minimum collection actions required for collecting debts.

Section 1. Definitions.

- (1) "Agency" is defined by KRS 45.237(1)(a) and 45.241(1)(c).
- (2) "Debt" is defined by KRS 45.237(1)(e) and 45.241(1)(a).

Section 2. Invoicing and Letter Collections.

- (1) Each agency's mailing practices shall provide for written notification that is sufficient to insure that the debtor understands the nature of the debt and instructions for researching returned mail in order to obtain a more current address.
- (2) Invoices shall be mailed to the debtor within five (5) working days after the debt becomes due and contain clear and detailed information regarding the debt, who to contact with questions, and where to send the payment.
- (3) The invoice shall contain the following components so that adequate information is provided:
 - (a) A header that identifies the name and address of the billing agency, the debtor, invoice number, invoice date, customer number, due date, and the total amount due;
 - (b) A body section that contains:
 1. Any specialized contract or agreement numbers and the billing period covered by the invoice.
 2. Detail specifically identifying the debt, and if more than one (1) item is listed, the total amount due;
 3. A statement indicating if any interest or other charges may be imposed on late payments, insufficiently funded checks, collection actions, etc.; and
 4. Instructions regarding the appeals process; and
 - (c) A contact person or organizational unit, including address and phone number, with whom the debtor can correspond if the debtor has questions regarding the invoice.
- (4) The agency shall keep a copy or an electronic record of letters sent to a debtor.
- (5) The agency shall maintain a file, in an electronic medium if available, on each past-due account, including documentation of all correspondence and all telephone contacts or meetings.
- (6) The agency shall establish a system to ensure that it reviews the debt if it receives no response by the date specified.
- (7) If the debtor does not respond to the original invoice, the agency shall send an additional letter notifying the debtor that the account may be forwarded to the Department of Revenue for collection action.

Section 3. Debtor Appeal Rights. Unless an agency is exempt from the provisions of KRS Chapter 13B, as specifically provided in KRS 13B.020, any debtor of an agency shall have all the rights contained in that chapter to appeal the finality of its debt.

Section 4. Telephone Collections.

- (1) If the debtor does not respond satisfactorily to the written notification of the debt, the agency shall attempt to contact the debtor by telephone.
- (2) While engaged in a telephonic discussion with a debtor for payment, the agency shall:
 - (a) Attempt to secure a commitment for full payment of the debt;
 - (b) Negotiate an agreement with the shortest possible payment time frame as provided in Section 6 of this administrative regulation, if the debtor is unable to pay the debt in full;
 - (c) Document the debtor's file with the date and with whom the negotiations were made;
 - (d) Document any new agreements reached; and
 - (e) If the debtor has filed a bankruptcy proceeding, the agency shall obtain from the debtor the bankruptcy court and case number. Upon verification of the bankruptcy proceeding, the agency shall discontinue further collection action.
- (3) During any telephone conversation with the debtor, representatives of the agency shall not:
 - (a) Threaten violence, use obscene language, or make harassing phone calls;
 - (b) Call the debtor at work, if the debtor objects;
 - (c) Misrepresent the identity of the collector;
 - (d) Reveal the past due debt to a third party, such as a neighbor or employer. However, collection personnel may report the debt to the agency's attorney;
 - (e) Call at unusual times (after 8 a.m. and before 9 p.m. is assumed convenient); and
 - (f) Initiate a conversation with a debtor, if it is known that the debtor is represented by an attorney, without first obtaining permission from the attorney.

Section 5. Interest, Late Fees, and Other Penalties.

- (1) To determine the interest rate to charge, the agency shall first look to the source of the debt. If it arises from a promissory note or contract, the note or contract may state the amount of interest that applies and when it begins to accrue. An agency may have specific statutes regulating interest rates. If no statute specifically regulates the interest rate on debts owed to the agency, and a criminal or civil judgment has been obtained, the judgment interest rate contained in KRS 360.040 shall be applicable.
- (2) The agency shall calculate accrued interest as follows: Unpaid principal (only) multiplied by the interest rate divided by 365 multiplied by the number of days delinquent or since the last interest calculation.
- (3) The agency shall add other late fees or penalties if these types of fees and penalties are addressed in a written agreement or applicable by statute.

Section 6. Payment Agreements.

- (1) The agency shall develop payment schedule guidelines for collection staff to use if making a payment agreement with a debtor.
- (2) The agency shall, as nearly as practicable, use the following concepts in all payment guidelines:
 - (a) Debtors may make payments by credit cards, debit cards, electronic checks, or automated clearinghouse debit (See KRS 45.345);
 - (b) If a minimum payment has not already been established, the agency shall use the following payment schedule to determine a minimum payment amount:

Amount Due	Monthly Payment	Minimum Payment
\$0 - \$50	Pay in Full	N/A
\$51 - \$500	\$50	\$25

\$501 - \$1,000	\$75	\$40
\$1,001 - \$2,000	\$100	\$50
\$2,001 - \$3,000	\$200	\$75
\$3,001 - \$5,000	\$300	\$100
Over \$5,000	The debtor's financial statements shall be reviewed to determine a minimum payment.	

(c) The agency may waive the minimum standards listed above if the debtor demonstrates to the agency that imposition of the minimum standards would cause an undue hardship on the debtor or the debtor's dependents;

(d) If a payment agreement extends for more than six (6) months, the agency shall send the debtor a confirmation letter;

(e) The agency shall verify information regarding the debtor and request additional asset information for enforcement purposes if the debtor's promise is not kept or the arrangements are not followed;

(f) The agency shall inform the debtor that any tax refund or other amounts due or that become due during the tenure of the agreement from any other agency will be offset to the debt; and

(g) If the debtor defaults on a payment agreement, the case shall be referred through normal referral procedures to the Department of Revenue for further enforced collection activity.

Section 7. Debtor Information.

(1) An agency shall collect and record sufficient information when a transaction for goods and services is initiated in order to facilitate effective collection measures. This information shall include:

(a) Current address;

(b) Current telephone number;

(c) Social Security number or federal employer identification number (FEIN); and

(d) The name of any bank where they have an account and the account numbers, if available.

(2) The agency shall maintain current information regarding the debtor on all active accounts.

(3) The agency may obtain debtor information with a written application form, an interview, or both. The minimum information to be contained on any application form or acquired in any interview shall be defined in the agency's policies and shall be sufficient to ensure collection of the account. If obtaining information from a business, the agency shall specify the type of business entity involved and obtain a list of owners with their Social Security numbers or FEINs, if applicable, and their phone numbers.

(4) If specifically authorized to do so, an agency may develop written policies to address when to delay or withhold services to a delinquent debtor.

(5) An agency shall explore new technologies and collection practices that can be integrated with its current policies, procedures, and information systems that will improve efficiencies in its collection practices.

Section 8. Determining Ability to Pay.

(1) Each state agency has a duty to make all reasonable efforts to collect the full amount of monies owed to it or otherwise charged to it for collection (Section 52 of the Kentucky

Constitution and KRS 45.260). An agency shall employ all available legal, and cost-effective means that are appropriate to the circumstances in its collection efforts. A means of collection may be considered cost effective if it is reasonable to expect the costs of collection to be less than the debt.

(2) The agency may consider any debt, including interest and penalties or any portion of the debt, uncollectible if the debtor has no money or other thing of value owing or held by any other state agency that has not been credited to the debt, and it is reasonable to conclude, after all reasonable efforts to collect the debt have been made, that one (1) or more of the following is true:

(a) The debtor does not, and will not for the foreseeable future, own or have the right to own assets from which the state agency can collect the debt;

(b) It is reasonably estimated that the cost of collecting the debt would equal or exceed the amount of the debt;

(c) The debtor is deceased and there are no assets in the debtor's estate from which the state agency can collect the debt;

(d) The debtor is a corporation that is not, and for the foreseeable future will not, be engaged in any income-producing activity, and no assets exist from which the agency can collect the debt;

(e) The debtor's estate is subject to a pending bankruptcy proceeding in which it is reasonable to conclude that the debt will be discharged and that the state agency will receive none or an insubstantial share of the assets of the bankruptcy estate; or

(f) The agency is, and will be for the foreseeable future, unable to collect the debt from the debtor or from anyone owing the debtor money or holding assets of or from the debtor.

(3) If an agency determines that one (1) or more of the circumstances listed in subsection (2) of this section exists after the appropriate collection steps listed in this administrative regulation have been taken or if the Department of Revenue has returned the debts, because it has determined that the collection of the debt is not feasible or cost effective, the debt may be charged off as uncollectible.

(32 Ky.R. 1010; 1218; eff. 2-3-2006; Crt eff. 6-7-2019.)