

Chapter: Agency Management and Operations Subchapter: Miscellaneous Rule: Collection of Delinquent Obligations ACA: N/A Statutes: Gov't Code §2107.002 References: 1 TAC §59.2	Effective Date: 10/1/16 Page: 1 of 6 Replaces: GAP.385.9969, 9/25/00
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RULE

(a) **Purpose.**

This rule sets forth procedures to establish and determine the liability of each person responsible for an obligation to the Texas Juvenile Justice Department (TJJD), whether that liability can be established by statutory or common law. This rule also establishes procedures for collecting delinquent obligations pursuant to [§2107.002 of the Texas Government Code](#).

(b) **Applicability.**

This rule does not apply to delinquent obligations for child support, which are processed according to [§385.9967 of this title](#).

(c) **Definitions.**

The following words and terms have the following meanings when used in this rule.

- (1) **Attorney general** - The Office of the Attorney General of Texas, acting through its Bankruptcy and Collections Division.
- (2) **Debtor** - Any person or entity liable or potentially liable for an obligation owed to TJJD or against whom a claim or demand for payment has been made.
- (3) **Delinquent** - Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.
- (4) **Make demand** - To deliver or cause to be delivered by first class United States mail a writing setting forth the nature and amount of the obligation owed to TJJD.
- (5) **Demand letter** - A writing making demand.
- (6) **Obligation** - A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.
- (7) **Security** - Any right to have property owned by an entity with an obligation to TJJD sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas and/or TJJD against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to TJJD to secure an obligation.

(d) **Procedures for Collecting Delinquent Obligations.**

- (1) When TJJD determines the liability of each person responsible for an obligation, whether that liability can be established by statutory or common law, TJJD's collection procedures shall apply to every debtor, subject to reasonable tolerances established by TJJD.
- (2) TJJD records shall contain and reflect the identity of all persons liable on the obligation or any part thereof.
- (3) TJJD records shall reflect the correct physical address of the debtor's place of business, and, where applicable, the debtor's residence. Where a fiduciary or trust relationship exists between TJJD (or the state) as principal and the debtor as trustee, an accurate physical address shall be maintained. A

post office box address should not be used unless it is impractical to obtain a physical address or the post office box address is in addition to a correct physical address maintained on TJJJ's books and records.

- (4) Demand letters shall be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations, Chapter III, Subchapter A, Part 3001, Subpart C, Appendix A, §911. If an address correction is provided by the United States Postal Service, the demand letter shall be re-sent to that address prior to the referral procedures described herein. Demand shall be made upon every debtor prior to referral of the account to the attorney general. The final demand letter shall include a statement, where practical, that the debt, if not paid, will be referred to the attorney general.
- (5) Where state law allows TJJJ to record a lien securing the obligation, TJJJ shall file the lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. After referral of the delinquency to the attorney general, any lien securing the indebtedness may not be released, except on full payment of the obligation, without the approval of the attorney representing TJJJ in the matter.
- (6) Where practicable, TJJJ shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his/her assets, and other information pertinent to collection of the delinquent account.
- (7) Prior to referral of the obligation to the attorney general, TJJJ shall:
 - (A) verify the debtor's address and telephone number;
 - (B) transmit no more than two demand letters to the debtor at the debtor's verified address. The first demand letter shall be sent no later than 30 days after the obligation becomes delinquent. The second demand letter shall be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. Where TJJJ procedures, statutory mandates, or the requirements of this section indicate that a lawsuit on the account may be filed by the attorney general, the demand letters shall so indicate;
 - (C) verify that the obligation is not legally uncollectible or uncollectible as a practical matter, as follows:
 - (i) **Bankruptcy.**

TJJJ shall prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by TJJJ. Copies of all such proofs of claims filed shall be sent to the attorney general absent the granting of a variance. TJJJ shall maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable TJJJ to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. TJJJ may seek the assistance of the attorney general in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.
 - (ii) **Limitations.**

If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation shall not be referred unless circumstances indicate that limitations have been tolled or are otherwise inapplicable.

(iii) **Corporations.**

If a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation had its certificate of authority revoked, the obligation shall not be referred unless circumstances indicate that the account is clearly uncollectible.

(iv) **Out-of-State Debtors.**

If the debtor is an individual and is located out-of-state, or outside the United States, the matter shall not be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of TJJJ funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) **Deceased Debtors.**

If the debtor is deceased, TJJJ shall file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation shall be classified as uncollectible and not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations shall include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

- (8) Not later than the 90th day after the date an obligation becomes delinquent, TJJJ shall report the uncollected and delinquent obligation to the attorney general for further collection efforts as hereinafter provided.
- (9) Reasonable tolerances adopted by the TJJJ Finance Division are listed below and determine when an obligation shall not be referred to the attorney general for further collection. They are:
- (A) amount of the obligation is less than \$500;
 - (B) existence of any security;
 - (C) likelihood of collection through passive means such as the filing of a lien where applicable;
 - (D) expense to TJJJ and to the attorney general in attempting to collect the obligation;
 - (E) availability of resources both within TJJJ and within the Office of the Attorney General to devote to the collection of the obligation; or
 - (F) debt is uncollectible as set forth in [paragraph \(7\) of this subsection](#).
- (10) TJJJ may utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the [Texas Government Code, §403.055](#), to ensure that no treasury warrants are issued to debtors until the debt is paid.

(e) **Referral to Attorneys for Collection.**

(1) **Suit on the Obligation by In-House Attorneys.**

- (A) If TJJJ seeks to use in-house attorneys to collect delinquent obligations through court proceedings, TJJJ must submit a written request to the attorney general's Bankruptcy and Collections Division.

- (B) Upon the written approval of the attorney general, TJJJ may file suit to collect a delinquent obligation through an attorney serving as a full-time employee of TJJJ. Where circumstances make it impractical to secure attorney general approval for every delinquent obligation upon which a lawsuit is to be filed, TJJJ may apply to the attorney general for an authorization to bring suit on particular types of obligations through attorneys employed full-time by TJJJ. Such authorization, if given, must be renewed at the beginning of each fiscal year.
 - (C) After an obligation is referred to TJJJ's attorneys employed as in-house counsel, the obligation shall be reduced to judgment against all entities legally responsible for the obligation where the lawsuit and judgment will make collection of the obligation more likely and the expenditure of TJJJ resources in recovering judgment on the obligation is justified.
 - (D) Where authorized by law, TJJJ shall plead for and recover attorney's fees, investigative costs, and court costs in addition to the obligation.
 - (E) Every judgment taken on a delinquent obligation shall be abstracted and recorded by TJJJ in every county where the debtor owns real property, operates an active business, is likely to inherit real property, owns any mineral interest, or has maintained a residence for more than one year.
- (2) **Referral to the Attorney General.**
- (A) TJJJ may explore the exchange of accounts with the attorney general by computer tape or other electronic data transfer and discuss any variances as may be appropriate. TJJJ and the attorney general may agree upon an exchange of certain minimum account information necessary for collection efforts by the attorney general.
 - (B) TJJJ may refer individual accounts to the attorney general after the procedures set forth in [subsection \(d\)\(7\)-\(10\) of this section](#). Individual accounts referred to the attorney general shall include the following:
 - (i) copies of all correspondence between TJJJ and the debtor;
 - (ii) a log sheet (see [subsection \(d\)\(6\) of this section](#)) documenting all attempted contacts with the debtor and the result of such attempts;
 - (iii) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;
 - (iv) any information pertaining to the debtor's residence and his/her assets; and
 - (v) copies of any permit application, security, final orders, contracts, grants, or instrument giving rise to the obligation.
 - (C) Delinquent accounts upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws shall be referred immediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.
 - (D) The attorney general may decide that a particular obligation or class of obligations may be assigned after referral to the appropriate division within the Office of the Attorney General.
- (3) **Referral to Collection Firms or Private Attorneys.**
- (A) **Prior Approval of Attorney General.**

Except as provided by [§2107.003, Texas Government Code](#), TJJJ may not contract with, retain, or employ any person other than a full-time employee of TJJJ to collect a delinquent

obligation without prior written approval of the attorney general. Any existing arrangements must receive the written approval of the attorney general to be renewed or extended in any fashion.

(i) **Approval of Contract with Private Firm or Attorney.**

Prior to contracting with, retaining, or employing a person other than a full-time employee of TJJJ to collect a delinquent obligation, TJJJ must submit a proposal to the attorney general requesting the attorney general to collect the obligation(s).

(ii) TJJJ must submit the proposed contract to the attorney general for written approval. The proposal must disclose any fee that TJJJ proposes to pay the private collection firm or attorney. The attorney general may elect to undertake representation of TJJJ on the same or similar terms as contained in the proposed contract. If the attorney general declines or is unable to perform the services requested, the attorney general may approve the contract. If the attorney general decides that TJJJ has not complied with this subsection, the attorney general may:

(I) decline to approve the contract; or

(II) require TJJJ to submit or resubmit a proposal to the attorney general for collection of the obligation in accordance with this subsection.

(iii) If the attorney general fails to act as set forth in clause (i) of this subparagraph within 60 days of receipt of the proposed contract or receipt of additional information requested, the attorney general is deemed to have approved the contract in accordance with this rule.

(B) **Requirements of Proposed Contracts with Private Persons Presented for Attorney General's Approval.**

In addition to information required by other state laws, all contracts for collection of delinquent obligations must contain or be supported by a proposal containing the following:

(i) a description of the obligations to be collected sufficient to enable the attorney general to determine what measures are necessary to attempt to collect the obligation(s);

(ii) explicit terms of the basis of any fee or payment for the collection of the obligation(s);

(iii) a description of the individual accounts to be collected in the following respects:

(I) the total number of delinquent accounts;

(II) the dollar range;

(III) the total dollar amount;

(IV) a summary of the collection efforts previously made by TJJJ; and

(V) the legal basis of the delinquent obligations to be collected.

(C) **Additional Requirements of Proposed Contracts with Private Persons Presented for Attorney General Approval.**

All contracts for collection of delinquent obligations shall contain provisions stating the following:

(i) Litigation on the delinquent account is prohibited unless the private person obtains specific written authorization from TJJJ and the attorney general and complies with the requirements of this rule;

- (ii) The person shall place any funds collected in an interest bearing account with amounts collected, plus interest, less collections costs, payable to TJJJ on a monthly basis or by direct deposit to TJJJ's account on a weekly basis with TJJJ billing once a month; in either case a listing of the accounts and amounts collected per account shall be submitted to TJJJ upon deposit of the funds;
 - (iii) The person shall refer any bankruptcy notice to TJJJ within three working days of receipt;
 - (iv) TJJJ may recall any account without charge;
 - (v) The person may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute or terms of the obligation) without written authority from TJJJ;
 - (vi) The person is not an agent of TJJJ but is an independent contractor, and the person will indemnify TJJJ for any loss incurred by his/her violation of state and federal debt collection statutes or by the negligence of the person, his/her employees, or his/her agents; and
 - (vii) Any dispute arising under the contract shall be submitted to a court of competent jurisdiction in Texas, unless any other venue is statutorily mandated, in which case the specific venue statute will apply, subject to any alternative dispute resolution procedures adopted by TJJJ pursuant to [Chapter 2009, Texas Government Code](#).
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