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GUIDELINES FOR THE COLLECTION OF
DELINQUENT ACCOUNT RECEIVABLES AND
STUDENT LOAN ACCOUNTS
FOR STATE AGENCIES, INSTITUTIONS AND
COMMUNITY COLLEGES

(REVISED SEPTEMBER, 2008)

INTRODUCTION

The Office of the Attorney General, Collection Section, collects delinquent student loan accounts, account receivable accounts and other miscellaneous types of debt for the State Universities and Community Colleges. In addition, the Collection Section also collects account receivable accounts and other miscellaneous types of debt for the State of North Carolina's various State Agencies. This guide is written in order to provide practical information to explain how you can diligently collect debt owed to your organization as well as to explain how this office collects delinquent accounts for the State Universities, Community Colleges and State Agencies. This guide provides legal information, sample forms and letters, and other useful information to help you and this office with the collection of your delinquent debts. Also, when you hire new personnel within your organization you can provide this information to help them understand more about how to collect delinquent debt and the necessary steps they should be performing to send the delinquent accounts to the Attorney General's Office Collection Section. Those of you that have been doing this for years will hopefully learn something new, or learn new and different methods on how to collect delinquent accounts.

FORMS

Each State University, Community College, or State Agency, (hereinafter, Agency Creditor), submitting accounts to the Office of the Attorney General, Collection Section (hereinafter, the Collection Section) for collection is requested to use the following pre-approved Excel forms when submitting accounts for collection:

- (1) Student Loan Accounts (See Form 1)
- (2) Accounts Receivables (Use appropriate forms for School or State Agency- See Forms 2, 3 and 4)
- (3) All forms **must** be submitted on the Collection Section's Excel Spreadsheet Forms and must be e-mailed to the Collection Section Manager at kbowman@ncdoj.gov

If an Agency Creditor, such as a State Agency has a more complex case(s) for collection this may justify submission in a different format. Please limit lists to no more than one hundred (**100**) accounts per month. To submit accounts of more than one hundred (100) per month requires permission from the Collection Section Manager **before** submitting the accounts. All list forms must be e-mailed to the Collection Section. **All accounts must be submitted in alphabetical order.** When filling out the information at the top of the list please fill out each part completely. When entering the date of the list you should use the date it is e-mailed to the Collection Section Manager. When sending back your responses, your list should show this same date.

ADDRESSES FOR DEBTORS

Remember to use an asterisk (*) and/or highlight the Debtor's name, account number, invoice number or other identifying information to indicate if a Debtor's address is known to be inaccurate. Due to the high volume of accounts submitted to the Collection Section, it is primarily the responsibility of the Agency Creditor, to which the debt is owed, to obtain an accurate address for the Debtor. If an accurate address is needed, the Collection Section will perform a research through the N.C. Division of Motor Vehicles database, the Employment Security Commission, Lexis-Nexis, and various internet sites for skip tracing. If needed, the Collection Section may submit the name, social security number, and last known address to the N.C. Department of Revenue's Individual Income Tax Division to try and obtain a good address. Keep in mind, after the list is submitted to the N.C. Department of Revenue it may take a few days to receive the information and will result in the demand letters from this office not going out until this information is received.

Please do not submit the Debtor's name alone, without an address and/or a partial social security number, on the account list form. Pursuant to N.C.G.S. §132-1.10 you will not be able to submit a social security number through e-mail unless it is protected. You may provide a partial social security number on your list and you then call the Collection Section and provide the full social security number and it can then be written on the list in order to perform a research of a debtor's address. **Please keep in mind that a social security number must be provided in order to obtain information about a Debtor's address from the N.C. Department of Revenue.**

PROCESSING GUIDELINES

The Collection Section follows the following guidelines when processing accounts for collection:

- Lists are processed in the order they are received from the Agency Creditors.
- At the top of each list an Agency Creditor must fill out the required information which includes:
 - Name of Institution, School, or Agency (For Student Loan list and Account Receivables list)
 - Date Submitted: (Date list is mailed to the Collection Section)
 - Submitted By: (Name of person submitting list)
 - Reply To: and cc: on D/L: (The contact persons' name from the Agency Creditor whom a Debtor will call in reference to the demand letter and the contact persons' name who will be copied at the bottom of the demand letter. These names should be the same.
 - Telephone No.: Contact Persons' telephone number
 - E-Mail Address: Contact Persons' E-mail address

PLEASE NOTE: IF A CONTACT PERSON CHANGES AT THE AGENCY CREDITOR YOU MUST INFORM THE COLLECTION SECTION SO CHANGES CAN BE MADE TO THE DEMAND LETTER FORM.

- For each submitted student loan list, total indebtedness for each Debtor must be computed, (e.g., total principal due, interest and late charges) when a list is submitted. These figures are utilized in the demand letters. (See Sample Demand Letters for University, Community College and State Agency) **The collection section will send out demand letters for any amount owed to an Agency Creditor.**

- For each submitted account receivables list, total indebtedness for each Debtor should be listed. An Agency Creditor should list separately the principal amount due, the state rate of interest due, late charges due, and any other costs that a Debtor may owe. You should indicate if you want this listed in the demand letter.
- If an Agency Creditor wants the contact persons e-mail address listed in the demand letter, please indicate this on the form by writing **PLEASE INCLUDE E-MAIL ADDRESS IN DEMAND LETTER.**
- If an Agency Creditor **DOES/DOES NOT** want the Collection section to include information in their form demand letter advising the Debtor they may pay their account with a Visa or MasterCard, through the Collection Section, you **must** note this on your list at the time it is submitted or you **must** notify the Collection Section in writing. The language used in a demand letter is as follows: *“If you would like to pay by Visa or MasterCard you must contact the Collection Section at (919) 716-6895 and provide your credit card information so your payment can be credited to your account”* Once a payment is received the money will be transferred to your account.

(Please note that at this time the Collection Section is not taking credit card payments until further notice. We hope to be able to take credit cards again in the very near future. You will be notified when this change is made)

- The original demand letter is sent to the Debtor and two additional copies of the demand letters are photocopied. One copy is retained in the active files of the Collection Section and one is forwarded to the Agency Creditor with a memorandum stating when the responses from the demand letters are due and should be e-mailed back to the Collection Section.
- The Debtor is given thirty (30) days from the date of the demand letter to respond to the Agency Creditor.
- The Agency Creditor should notify the Collection Section within forty-five (45) days from the date of the demand letter what response, if any, the Agency Creditor has received from the Debtor.

- The Agency Creditor should enter the responses into the original list under the column named **RESPONSES**. The codes to be used for the responses are listed below. (See **Attachment 1**)

(PD) Paid

(SR) Satisfactory Response

(N/R) No Response (A.G.'s Office will make a recommendation)

(N/R SUE) No Response (A.G.'s Office will file lawsuit)

(N/R CA) No Response (Client will send to Collection Agency)

(UR) Unsatisfactory Response (A.G.'s Office will make a recommendation)

- Should the Debtor contact the Agency Creditor, after receipt of a demand letter from the Collection Section, it is the responsibility of the Agency Creditor to handle any inquiries or repayment agreements. The Collection Section normally will only make a repayment agreement after a lawsuit is filed. However, if a Debtor calls the Collection Section to make a payment by credit card then the Collection Section will take the payment and may set up a repayment agreement, if needed. The Collection Section will notify the Agency Creditor of the credit card payment by e-mail and any repayment agreement made with the Debtor.
- After the Collection Section forwards the Agency Creditor copies of the demand letters, information regarding each Debtor's account is entered into a database of the Collection Section and demand letters are retained in the file pending the receipt of response codes from the Agency Creditor.
- Once the forty-five (45) day time period has expired, and the Collection Section has received the Agency Creditor's response codes by e-mail, the Collection Section will make its recommendations for each account and will e-mail this information back to you. If the Collection Section has not received your responses by the end of the forty-five (45) day time period then an e-mail reminder will be sent to the Agency Creditor from the Collection Section. (See **Attachment 2**)
- The Collection Section recommendation for action will be marked on both the Agency Creditors' list and a list maintained by the Collection Section. This information is also entered into the Collection Section database. The Agency Creditor's list will be returned to the Agency Creditor by e-mail with a memorandum stating the recommendations of the Collection Section. (See **Attachment 3**)

- If any demand letter is returned from the Post Office because of an insufficient address, the Collection Section will mark the code **NAN** (New Address Needed) on the returned envelope and letter and return it to the Agency Creditor. **Please resubmit any letters returned NAN on a new list after an accurate address is obtained for the Debtor.** The Debtor's account must be resubmitted because the dates in the letter will be incorrect and the Debtor must be afforded thirty (30) days in which to repay the debt. **(See Attachment 4)**

STATUTE OF LIMITATIONS

All account receivables submitted for collection should be reviewed to ensure that the statute of limitations has not run. The statute of limitations will be three (3) years on most account receivables. See N.C.G.S. §1-52. **(See Attachment 5)**

If the promissory note or contract is "under seal" there is a ten (10) year statute of limitations. See N.C.G.S. §1-47 **(See Attachment 6)** On federally funded student loans there is no statute of limitations. See 20 U.S.C.A. §1091(a). **(See Attachment 7)** If an Agency Creditor desires to try to collect a debt that the statute of limitations has run, they may submit their account to the Collection Section for a demand letter to be sent to the Debtor. The Agency Creditor may, also, send an account where the statute of limitations has run to a state-contracted collection agency for collection. **The Debtor has the burden of proof of bringing the defense that the statute of limitations has run. Once a Debtor raises this defense the collection agency and the Collection Section will stop all collection proceedings and return the account to the Agency Creditor with the code (SOL), which means Statute of Limitations has run and the account is considered uncollectible. If the Debtor raises the defense of Statute of Limitations to the Agency Creditor, then the Agency Creditor should also consider the account as uncollectible if the Statute of Limitations as run.**

If a Debtor acknowledges the debt, either by letter, e-mail or by making a payment toward the debt, this will renew the statute of limitations and it will begin again from the date the correspondence or payment is received by the Agency Creditor.

INTEREST AND PENALTIES

Pursuant to N.C.G.S. § 147-86.23, the N.C. Department of Revenue sets a statutory rate of interest which shall be charged on all past due Account Receivables from the date due until paid. **Please note that the statutory rate of interest may change and the N.C. Department of Revenue will send notice to the Collection Section every six (6) months to update this rate. An e-mail will be sent to State agencies, institutions and the State-contracted collection agencies to provide notification of a change in the interest rate.** You may refer to the N.C. Department of Revenue's web site for more information on interest rates. <http://www.dorn.com/taxes/rate.html> (See Attachment 8)

In addition, a late penalty fee of no more than ten percent (10%) of the principal amount owed on an account may be charged on all past due accounts. All accounts on which these amounts are charged should show these amounts separately from the principal and interest.

GENERAL ACCOUNTS RECEIVABLE:

COLLECTION vs. WRITE-OFF

- Account Receivables, which had N/R (No Response) from the demand letter, and are \$25.00 or less, are recommended to be written off (W/O).
- Account Receivables in amounts over \$25.00 should be placed with a State-contracted collection agency.
- **PLEASE NOTE: PURSUANT TO N.C.G.S. § 75-55 and N.C.G.S. § 58-70-115, Unconscionable Means. YOU CAN NOT CHARGE THE COLLECTION AGENCY FEE TO A DEBTOR ON ANY ACCOUNT RECEIVABLE ONCE IT IS TURNED OVER TO A COLLECTION AGENCY. YOU, HOWEVER, MAY STILL CHARGE THE STATUTORY RATE OF INTEREST AND THE LATE PENALTY FEES TO THE DEBTOR. (See Attachments 9 and 10)**
- If you have a contract with language that states the Debtor will be responsible for all collection costs, including attorney fees and collection agency fees if the account becomes delinquent, and the Debtor signs the statement agreeing to all terms of the contract then you **ARE** allowed to charge the debtor with any collection agency fees or any costs associated with collecting the account. (See Attachment 11)

STUDENT LOAN ACCOUNTS:

COLLECTION vs. WRITE-OFF

- Student loan accounts, with a N/R CA recommendation for any dollar amount are recommended to be submitted to one of the State-contracted collection agencies.
- Student loan accounts, with a N/R SUE recommendation in the amount of \$200.00 or more, are recommended for lawsuit. If the Debtor lives out of state, and the promissory note was signed in North Carolina, the Collection Section will file a lawsuit and serve the complaint by certified mail or by a designated delivery service (i.e. FedEx or UPS)
- If the Debtor lives out-of-state, and the Collection Section is not successful in serving the Debtor, the Collection Section recommends that the account be submitted to a State-contracted collection agency.
- Due to the cost of litigation it is suggested by the Collection Section that the Agency Creditor should send an account with a N/R response code to a State-contracted collection agency **before** a lawsuit is filed against a Debtor. Once you submit an account to a State-contracted collection agency you should keep the account with that agency up to one (1) year if the agency is making contact with the Debtor and working to get the Debtor to pay the account. If it is deemed the State-contracted collection agency is unable to collect the delinquent account you may ask that the account be closed and returned. You should then send the account to a different State-contracted collection agency for collection efforts. If it is deemed the delinquent account is uncollectible you **must** send the account to the Collection Section to prepare a Summons and Complaint (lawsuit) to be processed and served on the debtor in compliance with 34 C.F.R.§ 674.46. (See Attachment 12)

CREDIT BUREAU REPORTING

Pursuant to 34 C.F.R. 674.45, a school must report an account to credit bureaus as being in default when a borrower fails to respond to the final demand letter or the following telephone contact. You must report the default to any one national credit bureau or to an affiliated credit bureau that transmits credit information to one of the three national credit bureaus with which the Department of Education has an agreement. **(See Attachment 13)**

If the delinquent account is an Account Receivable it is the decision of the Agency Creditor to decide if they want the account submitted to a State-contracted collection agency to collect and to report the debt to the credit bureaus. **If the Agency Creditor decides to have the collection agency report the debt to the credit bureaus it is the responsibility of the Agency Creditor to validate the debt and any other information about the debtor and ensure the statute of limitations has not run. If the Agency Creditor cannot provide this to the collection agency then the collection agency can decide not to report the account to the credit bureaus. The collection agency will be the one held accountable if they violate the Fair Debt Collections Act or the Fair Debt Reporting Act.**

******* PLEASE REFER TO THE CASH MANAGEMENT POLICY OVERVIEW, ACCOUNTS RECEIVABLE POLICY OVERVIEW and STATEWIDE ACCOUNTS RECEIVABLE PROGRAM POLICY BY THE OFFICE OF THE STATE CONTROLLER (See Attachments 14 and 15)**

SOCIAL SECURITY NUMBERS AND IDENTITY THEFT

N.C.G.S. § 132-1.10, Social Security Numbers and Other Personal Identifying Information discusses the rules for social security numbers and how State and local governments should collect social security numbers and other personal identifying information. Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law. N.C.G.S. § 132-1.10(3)(b)(1) states in pertinent part, “except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following: (1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency’s duties and responsibilities as prescribed by

law. Social Security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers have been clearly documented. (Emphasis added) (See Attachments 16 and 17)

Pursuant to N.C.G.S. § 105A-3(b) a State agency must submit a debt owed to it for collection under this Chapter. Therefore, a State agency is authorized by law to collect a social security number as described in the paragraph above. When the State agency is collecting a social security number from an individual, the number must be segregated on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request. The State agency must also provide at the time of or prior to the actual collection of the social security number to that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

N.C.G.S. § 132-1.10(c) – Subsection (b) of this section **does not** apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

Pursuant to N.C.G.S. § 75-62, Social Security Number Protection describes what a business may and may not do regarding an individual's social security number. N.C.G.S. § 75-62(b) states:

(1) When a social security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C.S. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) To the collection, use, or release of a social security number for internal verification or administrative purposes.

(3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.

(4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit. (Emphasis added) **(See Attachment 18)**

GENERAL MANDATORY DISCLOSURE AND
GENERAL VOLUNTARY DISCLOSURE
OF SOCIAL SECURITY NUMBERS TO INSTITUTIONS

General Mandatory Disclosure - Universities and Community Colleges should have their students fill out these forms in accordance with federal laws that govern information reporting for qualified tuition and related expenses pursuant to 26 C.F.R. § 1.6050S-1(b)92)ii(B) **(See Attachment 19)** whereby an institution reporting payments received for qualified tuition and related expenses must include on Form 1098-T the name, address, and Tax Identification Number (TIN) of the individual who is, or has been, enrolled by the institution and who receives payments from the institution. **(See Attachment 19(a))**

General Voluntary Disclosure – The Privacy Act of 1974, Section 7(a)(2) provides that an agency may continue to require the disclosure of an individual’s Social Security Number where the agency required this disclosure under statute or regulations prior to January 1, 1975, in order to verify the identity of the individual. The statutory authority for collecting the requested information from and about you is the Higher Education Act of 1965 (HEA) as amended, 20 U.S.C. § 1091(a)(4)(B). **(See Attachment 19(b))**

IDENTITY THEFT

Identity Theft is described in N.C.G.S. § 14-113.20 as a person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences. **(See Attachment 20)** N.C.G.S. § 75-61 provide definitions under the Identity Theft Protection Act which are attached for reference. **(See Attachment 21)**

To cut down on identity theft in North Carolina, the above referenced laws will:

- Minimize the use of Social Security Numbers as identification numbers and restrict the sale and display of Social Security Numbers.
- Give consumers the right to place a security “freeze” on their credit reports to block an identity thief from opening an account or obtaining credit in your name.
- Make sure that businesses that are disposing of personal identifying information about their customers destroy or shred those records, so that identity thieves can’t retrieve information from discarded files that have been carelessly thrown away.
- Require businesses to notify their customers if a security breach may have compromised their personal information and placed them at risk of identity theft.
- Prohibit state and local government agencies from unnecessarily collecting people’s Social Security Numbers, or from disclosing Social Security Numbers to the general public if it is necessary for the government to collect them.

FILING A LAWSUIT

FOR UNIVERSITIES AND COMMUNITY COLLEGES

Under N.C.G.S. § 1A-1, Rule 3, Commencement of Action, a civil action is commenced by filing a complaint with the Court. The clerk shall enter the date of filing on the original complaint, and such entry shall be prima facie (proof) of the date of filing. (Emphasis added) **(See Attachment 22)**

- For all student loan Debtors on whom suit is anticipated, four (4) copies of Promissory Notes, should be forwarded to the Collection Section once it has been determined that a lawsuit should be filed. Each copy must have the Social Security number redacted (marked through so that the number is not legible) pursuant to N.C. G.S. 132-1.10(b)(2). Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law. If the promissory note provides for attorneys’ fees in some specific percentage of the “outstanding balance” as defined by N.C.G.S. § 6-21.2, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said “outstanding balance” owing on said note, contract or other evidence of indebtedness. **(See Attachment 23)**

- Lawsuits are prepared from information submitted by the Agency Creditor on the Debtor's account. To assure that all information on a Debtor is correct and current, a **"Suit Preparation Worksheet"** must be submitted. (See Attachment 24(a))
- The Collection Section prepares one (1) original (white summons) and three (3) (yellow summons) to be attached to one (1) original and three (3) copies of the complaint on each defendant. (See Attachment 25)

The four (4) sets of the summons and complaints are prepared for each of the following:

·University or Community College

·Defendant

·Clerk's Office, and

·Attorney General's Office Collection Section

- Once the lawsuit, (hereinafter referred to as "Complaint"), is drafted, everything will be mailed to the Agency Creditor. The Agency Creditor must check to make sure all amounts, including principal amount owed, interest rates, interest from dates, late charges (if any), and collection costs (if any) are correct. Verify the accuracy of names and addresses and any information previously submitted has not changed since the time the accounts were originally submitted to the Collection Section. (See Sample Complaint, Attachment 26)
- If a change needs to be made to the Complaint or Summons, after review by the Agency Creditor, the Agency Creditor should return the originals and all copies of the Summons and Complaint back to the Collection Section with the requested changes noted on the Complaint. The Collection Section will make the necessary corrections and return the Complaint and Summons to the Agency Creditor for filing at the Clerk of Superior Court.
- The Verification page is included as the last page of the Complaint (before the exhibits). (See Attachment 27) **The person verifying the complaint must always sign the original and all copies of the verification in front of a Notary Public and have the original and all copies notarized.** N.C.G.S. § 1A-1, Rule 11. (See Attachment 28)

- The University or Community College is responsible for obtaining a check issued in the amount of \$90.00 (current costs for filing in District Court as of July, 2008) or \$110.00 (current costs for filing in Superior Court as of July, 2008) to cover costs of filing each lawsuit. The check should be made payable to the Clerk of Superior Court of the county in which you are filing the lawsuit(s). **(See Attachment 29)**

- The University or Community College is responsible for obtaining a check issued in the amount of \$15.00 (current costs as of 2008 for serving a complaint by the sheriff's department), made payable to the Sheriff's department of the county in which the person being served lives. **If service is made by certified mail, it is not necessary to issue a check to the Sheriff's Department.**

- The Sheriff's Department has 60 days after the date of the issuance of a summons, see N.C.G.S. § 1A-1, Rule 4, except in tax and assessment foreclosures under N.C.G.S. § 105-391 or N.C.G.S. § 105-414, to make personal service or substituted personal service of summons. Failure to obtain service within this 60 day period does not invalidate the summons. The officer returns the summons to the Clerk of Superior Court, who issued it, with a notation of its non-service and reasons why the defendant was not served. **(See Attachment 30)**

- At this point the Collection Section and the Agency Creditor attempt to obtain an accurate address and complete service of process. Resources that the Collection Section may use to find a good address are as follows:
 - The N.C. Division of Motor Vehicles. Under N.C.G.S. § 20-42(b), we may request a certified copy of a DMV record or perform a research through their database;
 - The Employment Security Commission;
 - A letter to the Postmaster asking for verification of an address;
 - Lexis-Nexis and Various Internet Sites for Skip Tracing, or
 - A list to the Department of Revenue's Individual Income Tax Division;

- Once an accurate address is obtained, the Collection Section prepares an Alias and Pluries Summons. (This summons takes the place of the original summons but gives additional time in

which to serve the Debtor). An Alias and Pluries Summons must be secured within 90 days after the issuance of the last summons or the last prior endorsement. **(See Attachment 31)**

- The Collection Section can also serve the Defendant/Debtor by certified mail. Service by certified mail is usually selected as the method of service when a person must be served at a Post Office Box, and no street address is available for the Debtor, or when the Sheriff's Department is having trouble serving the Defendant/Debtor but it is known that the Defendant/Debtor does reside at the address on the summons. When serving by certified mail, the return receipt "green card" will have the Collection Section's return address so the Collection Section can file an Affidavit showing the Court that the Defendant/Debtor was served. **(See Attachment 32)** If the certified mail is not claimed, the entire envelope will be returned to the Agency Creditor because it is mailed out in your envelope with your return address. **The envelope and all documents should be returned to the Collection Section to determine why the defendant was not served and to proceed with the next steps to serve the Defendant/Debtor.**
- The Collection Section can also serve the Defendant/Debtor at their place of employment, once verified, if service is not successful at the Debtor's residence.
- Another means of serving the Defendant/Debtor is by a designated delivery service (i.e. FedEx or UPS) as authorized pursuant to 26 U.S.C. § 7502(f)(2), and N.C.G.S. § 1A-1, Rule 4 (2)(j)(d) by depositing a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. The General Assembly of North Carolina amended N.C.G.S. § 1A-1, Rule 4 (2)(j)(d) as follows: As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt. **(See Attachments 30, 33 and 34)**
- If a Summons and Complaint have been returned unserved by a Sheriff's Department, the unserved complaint will be located in the Clerk of Superior Court's file.
- When the Agency Creditor files the Alias and Pluries Summons at the Clerk of Court's office, the returned complaint **must** be attached to the Alias and Pluries Summons.
- If the Summons and Complaint, which the Agency Creditor was trying to serve by certified mail, is returned by the post office, either unclaimed or with a new address, the copy that indicates that the documents were returned by the post office must be attached to the Alias and Pluries Summons.

- When the Collection Section receives the certified mail, return receipt "green card" back from the Post Office, an Affidavit of Service by Certified Mail is prepared, signed by the Collection Manager, and notarized by a Notary Public. It is then filed with the Clerk of Superior Court's Office. The Collection Section copies the Defendant/Debtor with the Affidavit on the day it is mailed to the Clerk of Superior Court for filing. When the Collection Section receives the filed copy from the Clerk of Court's Office the Collection Section mails a filed copy to the Defendant/Debtor, the University or Community College and retains a filed copy for the Collection Section files. **(See Attachment 35)**
- Once the Defendant/Debtor is served, he has thirty (30) days to file an answer with the Clerk of Court's Office. If no answer is filed within (30) days, the Collection Section and the University or Community College will decide whether to file a Default Judgment against the Defendant/Debtor.

UNIVERSITIES AND COMMUNITY COLLEGES

INSTRUCTIONS FOR FILING LAWSUITS

- Complaints (originals and copies) **MUST BE VERIFIED**, before a notary public, by the person authorized by the University or Community College to make a verification.
- Take the Verified Complaints, with Summons and checks, to the Clerk of Superior Court in the county where the University or Community College is located for filing.
- When proper entries have been made by the Clerk, the original Complaint is retained for the Court records and the Clerk will return the white summons and copies of the complaint with yellow summons to the Agency Creditor. **(The Agency Creditor should mail a copy of the filed summons to the Collection Section for their files)**
- Address an envelope to the sheriff of each county indicated on the Summons (located after the defendant's address).
- Retain one copy of filed yellow summons and complaint for the State Agency Creditor files. Mail a copy of the complaint with white and yellow summons attached, and a check in the amount of \$15.00, made payable to the sheriff's department of the county indicated on the summons to the sheriff. The sheriff will return the white summons to the Clerk of Court for their

records to show if the Defendant/Debtor was served and the date he was served. If the summons was not served, the sheriff's department will mark the summons appropriately.

- If the complaint is to be served by certified mail, return the original white summons to the Clerk of Court. (In some cases, the Clerk's Office will not accept the summons at this time) If this happens please mail the white summons to the Collection Section. The Collection Section will prepare, and file with the Clerk of Court, an Affidavit of Service of Process once the defendant is served and the "green card" is returned to the Collection Section.

COLLECTING STATE AGENCY ACCOUNT RECEIVABLES

Accounts that may be submitted by State agencies include, but are not limited to, salary overpayments, contract work completed by a State agency which has not received payment, fees owed to a State agency, checks returned unpaid for insufficient funds, civil penalty assessment fines, and nonpayment for goods bought by an individual or company from a State agency. The Processing of Accounts referred to in the Attorney General's Guidelines, beginning on page two, also apply to the collection of accounts for State Agencies.

FILING A LAWSUIT FOR A STATE AGENCY

Under N.C.G.S. § 1A-1, Rule 3, Commencement of Action, a civil action is commenced by filing a complaint with the Court. The clerk shall enter the date of filing on the original complaint, and such entry shall be prima facie (proof) of the date of filing. (Emphasis added) **(See Attachment 22)**

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law. If the promissory note provides for attorneys' fees in some specific percentage of the "outstanding balance" as defined by N.C.G.S. § 6-21.2, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness. **(See Attachment 23)**

- The Collection Section will file a lawsuit on behalf of a State agency if the amount of the account is \$200.00 or more, or

- Due to the cost of litigation you may submit the delinquent account to a State-contracted collection agency before a lawsuit is filed against a Debtor. Once you submit an account to a State-contracted collection agency you may keep the account with that agency up to one (1) year if the agency is working the account. If it is deemed the State-contracted collection agency is unable to collect the delinquent account you may ask that the account be closed and returned. You may then choose to send the account to a different State-contracted collection agency for collection efforts or you may send the account to the Collection Section and a complaint (lawsuit) can be processed and served on the debtor.
- If the account is an amount less than \$200.00, the account should be submitted to a State-contracted collection agency.
- Lawsuits are prepared from information submitted by the Agency Creditor on the Debtor's account. To assure that all information on a Debtor is correct and current, a **"Suit Preparation Worksheet"** must be submitted. **(See Attachment 24(b))**
- Documents that need to be provided to the Attorney General's Office Collection Section include:
 - All correspondence with the Debtor, (i.e., demand letters sent to the Debtor from the State agency or any correspondence received from the Debtor concerning the account);
 - Any signed contracts;
 - Any forms used in payroll which showed an overpayment was made to the Debtor;
 - Any document that would show proof of monies owed to the State agency.
- The Collection Section will coordinate with your assigned Attorney General attorney representative in preparing and filing lawsuits for State agencies, however, it will be the State agency's responsibility to obtain all checks for filing fees and service of process fees.
- The State agency will be responsible for providing a contact person's name, address, telephone number, e-mail address, etc. who is familiar with the debt and who will be able to answer any questions regarding the account.

- The State agency will be responsible for providing the name, title, etc. of the person who will verify the complaint on behalf of the State agency.

REPAYMENT AGREEMENTS AFTER FILING OF LAWSUIT

UNIVERSITIES, COMMUNITY COLLEGES

AND STATE AGENCIES

When a Defendant/Debtor is served with the civil summons and complaint, and the Collection Section is contacted by the Defendant/Debtor, the Collection Manager will set up a repayment agreement with the Debtor if the Debtor is unable to pay the debt in full. A letter confirming this repayment agreement is mailed to the Defendant/Debtor and the letter states if the Defendant/Debtor agrees with the repayment agreement he/she is to sign the letter, at the designated signature line, and return the signed original letter back to the Collection Section. A copy is sent to the Agency Creditor and a copy is placed in the Defendant/Debtors' Attorney General's file. In a repayment agreement, the Debtor is required to make all payments payable to the University, Community College or State agency and to remit the payment to the Attorney General's Office, Collection Section. If a State agency will not accept repayment agreements (monthly payments), the Collection Section **must** be informed. If a Defendant/Debtor is proposing to pay the account in full, the Collection Section will verify payoffs with the Agency Creditor before giving this information to a Defendant/Debtor. **Please do not make any repayment agreements with a Defendant/Debtor if you are contacted by them after they have been served with a Complaint. The Defendant/Debtor must be referred to the Attorney General's Office, Collection Section, to negotiate a repayment agreement and to answer any questions the Defendant/Debtor may have regarding the complaint. (See Attachment 36 - Sample Repayment Agreement)**

CREDITING PAYMENTS TO A DEBTORS ACCOUNT

When the Collection Section receives a payment from a Defendant/Debtor, a letter is written to the Defendant/Debtor acknowledging the date of the payment and the amount of the payment. The payment, along with a copy of the letter to the Defendant/Debtor, is then forwarded to the Agency Creditor. A copy of the letter and the payment (personal check, certified check, money order) are filed in the Debtor's Attorney General's file. **(See Attachment 37 - Sample Receipt of Payment Letter)**

Please Note - The Attorney General's Office, Collection Section, has a credit card machine. We accepted credit card payments previously but have had to suspend doing so at this time. Hopefully, in the very near future we will be able to take Visa or MasterCard credit card payments again from a Debtor to be applied to a delinquent account owed to an Agency Creditor. The funds will be transferred by the Attorney General's Financial Services Section to the Agency Creditor by a wire transfer (similar to how your Setoff Debt money is transferred from the Department of Revenue). When a credit card payment is accepted, the Collection Section will e-mail the Agency Creditor to inform them of the payment so they can check their records for the transfer of the funds into their account.

AMENDED COMPLAINT

If a Defendant/Debtor **has not filed a responsive pleading (Answer)** to the Complaint, after the Collection Section has served him with the lawsuit, and has been attempting to repay the debt owed, or there are changes that need to be made to the complaint, after it is initially filed with the Clerk of Court's office, the Collection Section may file an Amended Complaint, with the amendments listed.

The Amended Complaint is filed with the Clerk of Court's Office and a copy is served on the Defendant/Debtor by Certificate of Service, U.S. Mail. To insure that the Defendant/Debtor receives the Amended Complaint, the Amended Complaint is mailed to the Defendant/Debtor by certified mail, return receipt requested. If the Defendant/Debtor does not answer the amended complaint within thirty (30) days, the Collection Section can submit a Motion for Default Judgment.

MOTION TO AMEND THE COMPLAINT AND ORDER

If a Defendant/Debtor **has filed a responsive pleading (Answer)** to the Complaint and there are changes that need to be made to the complaint, after it is initially filed with the Clerk of Court's office, the Collection Section may file a Motion to Amend the Complaint, with the amendments listed. A District Court Judge can sign an Order, at a scheduled motion hearing in district court, allowing the complaint to be amended. Changes to the complaint could be, but are not limited to, defendant's name, the principal amount, the interest from date, late charges, or collection costs. **A motion is not necessary unless the defendant has filed a responsive pleading.** N.C.G.S. § 1A-1, Rule 15 (See Attachment 38)

MOTION FOR DEFAULT JUDGMENT

AND ENTRY OF DEFAULT

Once a lawsuit is filed and the defendant is served, the defendant has 30 days in which to file a written response with the Court. If a response is not filed, the Collection Section can seek a Default Judgment.

- Pursuant to N.C.G.S. § 1A-1, Rule 54(a). **(See Attachment 39)** - A judgment is the final determination of the rights of the parties.
- Pursuant to N.C.G.S. § 1A-1, Rule 55(a) and (b). **(See Attachment 40)** - The Clerk may enter an entry of judgment by default when the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, for that amount and costs against the defendant, if the defendant has defaulted for failure to appear and if the defendant is not an infant or competent person.

OTHER TYPES OF MOTIONS FOR JUDGMENTS

MOTION FOR JUDGMENT ON THE PLEADINGS **AND** **MOTION FOR SUMMARY JUDGMENT**

Motion for Judgment on the Pleadings - N.C.G.S. § 1A-1, Rule 12. **(See Attachment 41)** If a defendant answers the Complaint filed against him within the 30 day time to answer, but does not deny owing the debt and does not make any attempt to repay the debt, the Collection Section can file a Motion for Judgment on the Pleadings. This motion is filed with the Clerk of Court's Office and a copy is served on the Defendant. The Collection Section will ask the Court to calendar the case for a hearing on the Motion or the Court, on its own initiative, can set the case on the court calendar. Unless the Defendant pays the debt, the Collection Section can obtain a Judgment against the Defendant in Court before a judge. N.C.G.S. § 1A-1, Rule 58.

Motion for Summary Judgment: N.C.G.S. § 1A-1, Rule 56. **(See Attachment 42)** If a Defendant makes a repayment agreement with the Collection Section and begins making payments, but then stops, the principal amount owed and interest from date would change from the amount sued for in the complaint. When this occurs, the Collection Section may file a Motion for Summary Judgment showing

the new amount owed. Attached to the Summary Judgment Motion will be an Affidavit which states the dates payments were made and how payments were applied to the debt. The Affidavit is a sworn statement from a person familiar with Defendant's account at the Agency Creditor. The Motion and Affidavit are filed with the Clerk of Court's Office and a copy is served on the Defendant. Unless the Defendant pays the debt the Collection Section can seek a Judgment against the Defendant in Court before a Judge. N.C.G.S. § 1A-1, Rule 58. (See Attachment 43)

An Agency or University Creditor is not allowed to charge a Debtor with any other costs once a Judgment has been filed against him. This includes any judgment account submitted to a State-contracted collection agency. The University or Community College must pay the collection agency fee from the fund or other means. No additional fees may be charged to the debtor once a judgment has been filed. The amount of the judgment is for a sum certain and is the final determination by court order.

NOTE: IF ATTORNEY FEES OR COLLECTION COSTS ARE IN A FILED COMPLAINT AND A JUDGMENT IS ENTERED STATING THESE COSTS, THEN YOU MAY CHARGE THE DEBTOR WITH THOSE FEES BUT NO ADDITIONAL FEES CAN BE CHARGED TO THE DEBTOR AFTER THE JUDGMENT IS FILED.

RENEWAL OF JUDGMENT

Before the expiration of the original judgment, which is ten (10) years, a judgment can be renewed for an additional ten (10) years. The process of renewing a judgment is to file and serve the Defendant with a new lawsuit. The original judgment is the exhibit attached to the lawsuit.

PAYMENT BY DEBTOR ON JUDGMENT

Pursuant to N.C.G.S. § 1-239(c), Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, and the clerk shall thereafter promptly enter the payment on the judgment docket of the court, and the clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a

transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. (See Attachment 44)

Pursuant to N.C.G.S. § 1-242, where a payment has been made on a judgment docketed in the office of the Clerk of the Superior Court, and no entry made on the judgment docket, “any person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, to have such credit, reversal or modification entered.” (See Attachment 45)

When a Defendant/Debtor makes a payment to be credited toward the judgment it is the responsibility of the judgment Creditor (University, Community College or State agency) to give notice of the payment to the Clerk of Superior Court within **sixty (60)** days after receipt of the payment.

REMEMBER to credit all payments to judgments within a thirty (30) day period. Each Agency Creditor may fill out the appropriate form and file it with the Court. (See Attachment 46) You may also find this form on the Administrative Office of the Court’s Website under <http://www.nccourts.org/Forms/Documents/680.pdf>. This is a form which you can fill in the appropriate payment information; print it, and file it with the Clerk of Superior Court’s office. Be sure to serve a copy of the filed form on the Defendant/Debtor to show that this credit has been made on the judgment account by mailing the same to the defendant.

The other alternative in which to credit a payment to a judgment is to set aside one (1) day out of each month to go to the courthouse to have payments credited to the judgment accounts with the Clerk of Superior Court’s office. They will fill out the forms and mail them to the Defendant/Debtor once the payment has been noted in the judgment book.

DISMISSALS

If the Collection Section cannot obtain service, either by the sheriff’s department or by certified mail, in the time allowed by N.C.G.S. §1A-1, Rule 41, (See Attachment 47) a Voluntary Dismissal will be filed. A new action based on the same claim may be commenced within one (1) year after such dismissal.

Other Reasons for Filing a Voluntary Dismissal:

- Defendant has paid the account in full;
- Defendant is making regular and satisfactory monthly payments to repay the account;
- Defendant has requested and received student deferment (after paying court costs);
- Defendant has requested and received teacher cancellation (after paying court costs);
- Defendant has requested and received a hardship/economic deferment (after paying court costs);
- Defendant has moved out of the state of North Carolina and the Collection Section has not been able to serve defendant;
- Plaintiff is remitting account to a State-contracted collection agency for collection.

VOLUNTARY PAYROLL DEDUCTION

To collect a debt owed by a Debtor who is employed by a State agency the Agency Creditor should follow the guidelines of the Budget Manual for the State of North Carolina, Office of State Budget and Management, Section 4.6 Repayment of Money Owed to the State **(See Attachment 48)**

N.C.G.S. § 143-553 states that “All persons employed by an employing entity (see definition contained in N.C.G.S. § 143-552), as enumerated in N.C.G.S. § 143B-3 of the ‘Executive Organization Act of 1973’ who owe money to the state and whose salaries are paid in whole or in part by state funds must make full restitution of the amount owed as a condition of continuing employment.” **(See Attachments 49, 50 and 51)**

N.C.G.S. § 143-64.80. Overpayments of State funds to persons in State-supported positions; recoupment required states:

(a) An overpayment of State funds to any person in a State-funded position, whether in the form of salary or otherwise, shall be recouped by the entity that made the overpayment and, to the extent allowed by law, the amount of the overpayment may be offset against the net wages of the person receiving the overpayment;

(b) No State department, agency, or institution, or other State-funded entity may forgive repayment of an overpayment of State funds, but shall have a duty to pursue the repayment of State funds by all lawful means available, including the filing of a civil action in the General Court of Justice. (See **Attachment 52**)

N.C.G.S. § 95-25.8. Withholding of Wages provides methods in which a State agency may withhold or divert any portion of an employee's wages. Under (2) of this statute it states: When an amount or rate of the proposed deduction is known and agreed upon in advance, the employer **must have written authorization from the employee** which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount of the percentage of wages which shall be deducted from one or more paychecks. Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization. (See **Attachment 53**)

- Sample Letter to send to a State Employee who owes for a student loan (See **Attachment 54**)
- Sample Letter to send to a State Employee who owes a State agency (See **Attachment 55**)
- Sample Language for Voluntary Payroll Deduction (See **Attachment 56**)
- Sample Letter to a State agency from another State agency who has a State Employee who owes money them money (See **Attachment 57**)
- Sample Memo to State agency owed money from Ex-Employee to a State Agency Employing this same Employee (See **Attachment 58**)

VERIFYING A STATE EMPLOYEE'S EMPLOYMENT **WITH A STATE GOVERNMENT AGENCY OR INSTITUTION**

The Office of State Budget, Planning and Management will assist in verifying whether a Debtor is a state employee. The contact person is as follows:

Agness Gunter
Office of State Budget and Management
20320 Mail Service Center
Raleigh, NC 27699-0230
(919) 807-4777
E-Mail: agness.gunter@osbm.nc.gov

There are specific guidelines used to submit names to this department for verification of employment. Please contact the person named above to find out the format you must use to submit the names to be verified. Once it is verified that the Debtor is a current state employee, the Agency Creditor should write the Debtor and request payment, citing N.C.G.S. § 143-553(a) or N.C.G.S. § 143-64.80 and inform the Debtor if payment is not made on the debt, the employee's employer will be notified in accordance with the statute.

RETURNED CHECKS

N.C.G.S. § 25-3-506, Collection of Processing Fee for Returned Checks, states: A person who accepts a check in payment for goods or services or his assignee may charge and collect a processing fee, not to exceed twenty-five dollars (\$25.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. **The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee. (See Attachment 59)**

SET OFF DEBT COLLECTION ACT - N.C.G.S. § 105A

N.C.G.S. § 105A-1 Purposes is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State or to a local government through their various agencies and who qualify for refunds from the Department of Revenue.

N.C.G.S. § 105A -3 Remedy additional; mandatory State usage; optional local usage; obtaining identifying information; registration. (See Attachment 60)

(a) Remedy Additional: The collection remedy under this Chapter is in addition to and not in substitution for any other remedy available by law.

(b) Mandatory State Usage: A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the State agency has determined that the validity of the debt is legitimately in dispute, an alternative means of collection is pending and believed to be adequate, or such a collection attempt would result in a loss of federal funds. The State

Controller may waive the requirement for a State agency, other than the Department of Health and Human Services or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

(c) **Identifying Information:** All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by the Department from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this Chapter.

N.C.G.S. § 18C-134. Setoff for Debt Collection Against Lottery Prizes. The Commission must match the information submitted by the claimant agency with persons who are entitled to a State lottery prize payment in an amount of six hundred dollars (\$600.00) or more. If there is a match, the Commission must set off the debt against the lottery winnings to which the debtor would otherwise be entitled. When there are multiple claims to be set off, the priority in claims to set off is the same as provided in G.S. 105A-12. The winnings that exceed the amount of the debt, if any, must be paid to that person. The Commission must mail the debtor written notice that the setoff has occurred and must transfer the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8. **(See Attachment 61)**

The Collection Section will submit Debtor information to the N.C. Department of Revenue for debts owed to the N.C. Department of Justice through the Setoff Debt Collection Act. Other State agencies should register with the Department of Revenue and the State Controller's Office (unless the State Agency Creditor has previously been registered) in order for each Agency Creditor to submit its delinquent accounts to the Department of Revenue for Setoff Debt Collection.

Attorney General Opinion 270, dated July 12, 1996 addresses **“Applicability of Statutes of Limitations to Claims Under the Setoff Debt Collection Act and the State Employees Debt Collection Act”**

The questions asked in the Attorney General Opinion are:

- (1) Do the statutes of limitations in Chapter 1 of the General Statutes apply to the administrative setoff of a debt owed to a state agency or institution against the state tax refund due the debtor under Chapter 105A of the General Statutes?
- (2) Is the action of a state agency or institution attempting to collect a debt from a state employee or public official pursuant to Article 60 of Chapter 143 of the General Statutes subject to the statutes of limitations in Chapter 1 of the General Statutes?

The answer was: We conclude that the statutes of limitations in Chapter 1 of the General Statutes do not apply to the administrative procedures under Chapter 105A, the Setoff Debt Collection Act, and Article 60 of Chapter 143, the State Employees Collection Act. The opinion further discusses the issues and the answers to these questions. **(See Attachment 62)**

BANKRUPTCY

If you receive a Notice of Bankruptcy you must immediately cease all collection efforts. You must stop all billing and any letter writing to the Debtor where you are requesting payment on a debt. **PLEASE NOTE: Do not write off the debt unless you receive a Discharge Order from the Bankruptcy Court and are notified that the debt has been discharged.** Agency Creditors will receive Chapter 7 (Individual Asset Case or No Asset Case), Chapter 13 or a Chapter 11(Corporation/Partnership Case) Notice of Bankruptcy. **(See Attachments 63, 64, 65, and 66)**. The Agency Creditor is prohibited from engaging in collection activity against the Debtor and certain co-debtors as listed under 11 U.S.C.S. § 362 - **Automatic Stay**. **(See Attachment 67)**

The Agency Creditor will receive a Proof of Claim form. **(See Attachment 68)** This form is a signed statement describing a creditor's claim. If you do not file a Proof of Claim by the deadline to file a proof of claim you might not be paid any money on your claim against the Debtor.

By filing a Chapter 7 Bankruptcy the Debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the Debtor. A Debtor filing a Chapter 13 Bankruptcy allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. The Debtor is seeking a discharge of most debts, which may include your debt. The

Debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the Debtor's case is converted to Chapter 7. **(For an explanation of each Bankruptcy chapter, see Attachment 69)**

A student loan cannot be discharged under bankruptcy unless excepting such debt from discharge will impose an undue hardship on the Debtor and the Debtor's dependents. 11 U.S.C.S. § 523(a)(8) **(See Attachment 70)**

If a bankruptcy court determines a Debtor is entitled to a discharge, you will receive a signed and dated order entitled DISCHARGE OF DEBTOR. **(See Attachment 71)**. If a bankruptcy court determines a Debtor is not entitled to a discharge, you will receive a signed and dated order entitled ORDER DENYING DISCHARGE or DISMISSAL OF BANKRUTPCY. Although a debtor may file for bankruptcy, the debt is still owed until you receive the Discharge of Debtor Order. If the bankruptcy is not discharged by the court of it is dismissed then you may begin billing the Debtor again for the debt owed.

CONCLUSION

The Attorney General's Office, Collection Section, hopes the information provided in the Guidelines is helpful in your pursuit to collecting delinquent or past due accounts. Questions about the collection of accounts by Agency Creditors may be directed to:

Karen P. Bowman, N.C. Certified Paralegal
Manager Collection Section
N.C. Department of Justice
114 W. Edenton Street
Post Office Box 629
Raleigh, NC 27602-0629
Telephone: (919) 716-6895
Fax: (919) 716-6071
E-Mail: kbowman@ncdoj.gov