



Department of Veterans Affairs

Financial Policy

Volume XII

Debt Management

Chapter 1E

Treasury Offset Program and Treasury Cross-Servicing

Approved:

A handwritten signature in black ink, reading "Edward J. Murray", is written over a horizontal line.

Edward J. Murray
Interim Assistant Secretary for Management
And Interim Chief Financial Officer

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Date

VA Financial Policies and Procedures
Treasury Offset Program and Treasury Cross-Servicing

CHAPTER 1E

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0101 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures relating to the referral of delinquent debts to the Department of the Treasury (Treasury) Offset Program (TOP) or Cross-Servicing for debt collection, as authorized by the Debt Collection Improvement Act of 1996 (DCIA), (Public Law 104-134). This chapter does not apply to third-party medical care receivables, which do not represent debts of a certain dollar value.

010101 AUTHORITY FOR REFERRING DEBTS TO TREASURY. VA may enter into cross-servicing agreements with Treasury for most delinquent debts on VA's behalf, as permitted by 31 C.F.R. 285.12. Under the DCIA, all Federal agencies are required to refer past due, legally enforceable, nontax debts greater than 120 days delinquent to Treasury for collection by administrative offset or for cross-servicing.

010102 ACTIONS FOR REFERRING DEBTS TO TREASURY. Prior to referral to Treasury, VA will use all available collection tools to recover outstanding debts. VA will only forward legally enforceable debts to Treasury, provided VA has made a final determination that the debt in the amount stated is due and there are no legal bars to collection action per 31 C.F.R. 285.12. Refer to Volume XII Chapter 1, *VA Debt Collection Standards*, for detailed information relating to the due process rights available to debtors and the actions leading up to a referral.

0102 POLICIES

010201 AUTHORITY FOR REFERRING DEBTS TO TREASURY.

- A. VA must refer all eligible debts greater than 120 days delinquent to the Treasury for collection via the TOP or Cross-Servicing Program.
- B. VA will not refer debts to Treasury for collection that are explicitly provided for or prohibited by another statute.

010202 ACTIONS FOR REFERRING DEBTS TO TREASURY.

- A. VA will notify the debtor in writing of its intent to recover the debt by means of administrative offset or referral to the Treasury for cross-servicing at least 30 days prior to initiating the collection action.
- B. VA will only forward legally enforceable debts provided VA has made a final determination that the debt, in the amount stated, is due and there are no other legal bars to collection action.
- C. VA will refund any funds recouped by Treasury from the debtor (including any Treasury collection fees) if the debt is subsequently determined to be invalid (e.g., a

Veteran is charged a co-payment for medical services and later determined not required to make co-payments).

0103 AUTHORITY AND REFERENCES

010301 5 U.S.C. 4108, Employee Agreements; Service after Training

010302 5 U.S.C. 5705, Advancements and Deductions

010303 31 U.S.C. 3716, Administrative Offset

010304 31 U.S.C. 3720, Collection of Payments

010305 31 U.S.C. 3720A, Reduction of Tax Refund by Amount of Debt

010306 38 U.S.C. 5301, Nonassignability and Exempt Status of Benefits

010307 38 U.S.C. 5314, Indebtedness Offsets

010308 31 C.F.R. Part 285, Federal Claims Collection Standards - Debt Collection Authorities under the Debt Collection Improvement Act of 1996

010309 38 C.F.R. 1.995, Requesting Recovery through Centralized Administrative Offset

010310 Treasury Cross-Servicing

010311 Treasury Offset Program (TOP)

010312 Digital Accountability and Transparency Act (DATA Act) Pub. L. 113-101

0104 ROLES AND RESPONSIBILITIES

010401 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. Responsibilities include the direction, management and provision of policy guidance and oversight of VA's financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

010402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chiefs of the Finance Activities, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

010403 The Debt Management Center (DMC) located in St Paul, MN, is responsible for collecting debts resulting from an individual's participation in VA's education, pension or disability compensation programs within the DMC's jurisdiction. The DMC consults with Veterans and their families in the management and liquidation of their benefit debts.

010404 The Chief of the Finance Activity will ensure appropriate procedures in accordance with this chapter are followed for the debt management program for Treasury offset and cross-servicing.

0105 PROCEDURES

010501 AUTHORITY FOR REFERRING DEBTS TO TREASURY.

A. VA must refer outstanding debts greater than 120 days delinquent to Treasury for collection after all attempts to collect them have been taken. Prior to referring a debt to Treasury, VA will ensure the debtor is properly notified and the referral is reviewed by the appropriate official having jurisdiction.

B. This chapter does not apply to debts or claims arising under the IRS Code of 1954, as amended, Social Security Act, tariff laws of the United States, or any case where collection of a debt by offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

010502 ACTIONS FOR REFERRING DEBTS TO TREASURY.

A. Eligibility for Referral to Treasury. Debts become delinquent 30 days after the debtor is mailed a Notice of Indebtedness (NOI) and has not made a payment, either partial or in full, or the debtor has defaulted on an agreed-upon payment plan. Debts in current repayment plans are not considered delinquent. The Chief of the Finance Activity, at their discretion, may refer delinquent debts that are at least 60 days old; however, the Chief must refer debts greater than 120 days delinquent for cross-servicing, unless they are exempt.

The requirements for referral to cross-servicing and referral to TOP are similar. However, a Social Security Number (SSN) or Taxpayer Identification Number (TIN) is only required for referring a debt to TOP.

VA is required to seek approval from Treasury for any exemptions for debt referral not listed below.

1. Debts exempt from referral action:
 - a. Debts in bankruptcy proceedings.
 - b. Debts for third-party medical insurance claims.

- c. Debts in a waiver or appeal process.
- d. Home loan debts in foreclosure proceedings.
- e. Debts in litigation.
- f. Debts with a balance of less than \$25.
- g. Debts for which VA does not have an SSN or a TIN. These debts may still be referred for cross-servicing.
- h. Debts for which VA has not provided the debtor due process.
- i. Debts that are not legally enforceable.

2. TOP Referral. Before referral, VA will ensure the debtor was properly notified of the indebtedness, the related due process rights, and the possible consequences of failure to pay the debt, including VA's intention to refer the debt for TOP (see Volume XII, Chapter 1, *VA Debt Collection Standards*, paragraph 010502A1). When notification has been previously provided to the debtor in a dunning notice or bill, an additional notice should be sent to the debtor to advise him or her of VA's intent to refer the debt to TOP once it has been identified as eligible for referral. This notice should be sent at least 30 days before the debt is to be referred and will advise the debtor that referral may be avoided by contacting VA and arranging to pay the debt.

3. Treasury Cross-Servicing Referral. Debts referred for cross-servicing are subject to certain collection actions by Treasury, as specified in a cross-servicing agreement executed for the entire debt program. These actions by Treasury will usually include at least one collection letter and possibly an attempt at telephone contact to request payment. Debts which are not paid or resolved upon initial contact may be referred by Treasury to a private collection agency or DOJ for enforced collection (litigation).

B. Treasury Referral Process. Before referral action occurs, VA will ensure the debtor has been provided a proper NOI, to include related due process rights and possible consequences of failure to pay the debt. After the original NOI and the required days (for delinquency) have passed, VA will send an additional NOI to the debtor advising them of VA's intent to refer the debt to TOP, unless the debtor contacts VA and arranges to pay the debt in full or establishes a repayment plan within 30 days.

1. TOP Referral

a. VA will certify to Treasury that it has complied with all due process requirements by providing a written NOI to the debtor of the type and amount of the debt, the intention to use administrative offset to collect the debt and an explanation of the debtor's rights. These rights include the opportunity to inspect and copy VA records related to the debt,

review the determination of indebtedness and make a written agreement to repay the debt.

b. VA offices will submit all referrals to the DMC for inclusion in a consolidated submission to TOP. The DMC refers debts at least once a month to TOP. Payments and payment information are also processed through the DMC, as are other updates from Treasury. Subsequent updates from VA may be passed through the DMC or input directly, if Treasury's Financial Management Service (FMS) provides direct system access to the TOP database. Refer to the TOP Web site for more information or direct questions to the appropriate office.

c. VA must notify Treasury of all debts over 120 days delinquent to ensure recovery of the debts by centralized administrative offset. This includes Federal employee debts which VA seeks from another Federal agency via salary offset. Refer to Volume XII, Chapter 1D, *Salary Offset for Federal Employees Indebted to U.S.*, for more information.

2. Treasury Cross-Servicing Referral

a. If a debt has been or will be referred to Treasury for cross-servicing and the agreement allows Treasury to refer the debt to TOP, then the debt should not be referred separately to TOP. Smaller debt programs not maintained in a centralized database (e.g., Health Care Professional Scholarship debts or Chapter 32 overpayments) should be referred so Treasury may submit the debts directly to TOP. The extra effort and expense of conducting these two VA referrals would not be worth any minimal benefit resulting from lower fees withheld from Treasury collections. Larger programs maintained in highly automated systems, such as debts managed by the DMC, may be referred separately to each program at the discretion of program managers.

b. Treasury's Cross-Servicing Web site provides access to the Cross-Servicing Implementation Guide, which is a useful information source covering all aspects of cross servicing. The guide not only contains cross-servicing contacts and general information in reference to the DCIA requirements, but outlines the Treasury collection process, NOI of rights to debtors, fees, Letter of Agreement, downloadable Agency Profile and Debt/Debtor Information forms, data formats and reporting information. More information on this and all other aspects of cross-servicing may be found at Treasury's Cross-Servicing Web site or questions may be directed to VA Central Office's Cost and Debt Management Service (047GC).

C. Treasury Fees. Treasury may charge fees sufficient to cover the full cost of providing debt collection services authorized by 31 C.F.R. 285.12. Fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a creditor agency (e.g., VA) from agreeing to pay fees for debt collection services which are not based on amounts collected. Fees charged by Treasury may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

1. Treasury charges a fee every time an offset is performed. The offset fee varies depending on whether it is a tax refund offset, administrative offset, or salary offset. In situations where Treasury may offset the entire amount of the debt at one time, Treasury takes its offset fee from the amount collected from the debtor and remits the remainder to VA. When Treasury is not able to offset the entire debt at one time, it deducts its fee from whatever is offset and remits the remainder to VA. Treasury then keeps pursuing offset to collect the remaining debt, deducting its fee from each subsequent offset.
2. In situations when an amount referred to Treasury for offset is later deemed to not be a valid debt, the amount offset, including the TOP fee will be refunded by VA to the debtor. For previous offsets later deemed to be an invalid debt, a person will have up to 6 years (from the date the debt was deemed invalid), pursuant to 28 U.S.C. 2401(a), to request a refund of the TOP fee. Refunds will only be issued on an as-requested basis.
3. For all VA appropriations except MCCF, TOP fees refunded to the person will be paid from the appropriation used for the administrative expenses of collecting for the type of debt involved in each case. Therefore, for C&P debts, the TOP fee refunded to the debtor will be made from the Franchise Fund. For non-MCCF VHA debts, the medical administration appropriation (0152A1) will be used to refund the TOP fees. For debts recorded in MCCF, the medical services fund (0160X4) will be used to refund the TOP fees.

0106 DEFINITIONS

010601 Administrative Offset. A withholding of funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

010602 Cross-Servicing. An arrangement between two or more Federal agencies in which a function, such as debt collection, is performed by one agency in support of one or more agencies, and for which reimbursement is required from the agencies receiving the support. Cross-servicing most often refers to a Federal agency's referral of a delinquent debt to Treasury for collection action.

010603 Debt in Litigation. A debt referred to either the VA Regional Counsel (RC) or the Department of Justice (DOJ) for litigation. The debt is also in litigation if it is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by VA, the debtor, or any other party.

010604 Foreclosure. A debt is in foreclosure if collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction. A debt is also in foreclosure if notice has been issued that collateral securing the debt will be liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial

proceeding and VA anticipates proceeds will be available from the liquidation of the collateral for application to the debt.

010605 Nontax Debt. A debt or claim, used interchangeably, to any amount of money, funds or property as determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government.

010606 Notice of Indebtedness (NOI). Written communication with the debtor explaining the details of the debt along with the debtor's due process rights, including the right to request a hearing and waiver of the debt. This notice advises the debtor of the timing of repayment and repayment options for paying off the debt, possible course(s) of action to be taken by VA and the potential effect of added interest and other late payment charges to the debt.

010607 Private Collection Agency (PCA). A private sector company specializing in the collection of delinquent debt. A PCA will attempt to find and contact a debtor by searching various databases, making telephone calls and sending collection letters. Once the debtor is located and contacted, the PCA will encourage the debtor to satisfy the debt. Collection efforts by PCAs are governed by various Federal and State laws, including, but not limited to, the Fair Debt Collection Practices Act, the Federal Claims Collection Standards and the Privacy Act.

010608 Treasury Offset Program (TOP). A centralized offset program, administered by the Treasury's Financial Management Service (FMS) Debt Management Services, to collect delinquent debts owed to Federal agencies and States in accordance with 26 U.S.C. 6402(d) - collection of debts owed to Federal agencies, 31 U.S.C. 3720A - reduction of tax refund by amount of the debts and other applicable laws.

010609 Waiver. A decision that conditions exist, under the applicable statutes (38 U.S.C. 5302 and 5 U.S.C. 5584) and implementing regulations (38 CFR 1.955 - 1.969, 17.105) that prohibit recovery by VA of certain debts as defined in the statutes and regulations, including interest and other late payment charges assessed on such debts.

0107 RESCISSIONS

010701 VA Handbook 4800.7, Treasury Offset Program and Treasury Cross-Servicing

0108 QUESTIONS

Questions concerning these financial policies and procedures should be directed as follows:

VHA
VBA
All Others

VHA Accounting Policy (Outlook)
VAVBAWAS/CO/FINREP (Outlook)
OFP Accounting Policy (Outlook)

0109 REVISIONS

Section	Revision	Office	Reason for Change	Effective Date
010101 OVERVIEW	Updated to reflect mandatory change of 180 days to 120 days	OFP (047G)	To comply with new Law	July 2016
010201 Authority for referring debts to Treasury	Updated to reflect mandatory change of 180 days to 120 days	OFP (047G)	To comply with new Law	July 2016
0103 Authority and References	Updated to include DATA Act Link	OFP (047G)	Updated to include addition of 010312 Digital Accountability and Transparency Act (DATA Act) with Link	July 2016
010501 Authority For Referring Debts To Treasury	Updated to reflect mandatory change of 180 days to 120 days	OFP (047G)	To comply with new Law	July 2016
010502 Actions For Referring Debts To Treasury	Updated to reflect mandatory change of 180 days to 120 days	OFP (047G)	To comply with new Law	July 2016
0109 in Table of Contents and Revisions	Updated to include addition of Revisions within Table of Contents and REVISIONS section of policy.	OFP (047G)	To highlight chapter changes	July 2016