

VA Financial Policies and Procedures  
Termination of Collection Action and Close Out of Debt

**CHAPTER 11**

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## 0101 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures for the termination of collection action and the close out of debts owed to VA. This chapter applies to all debts owed to VA, except for medical care receivables established under 38 U.S.C. 1729 (Medical Care Collection Fund), as these represent debts of an uncertain amount. This chapter, however, does apply to co-payments incurred by individuals for medical treatment and pharmacy prescriptions, as well as other debts incurred by individuals for medical care and services.

010101 AUTHORITY FOR TERMINATION OF COLLECTION ACTION. VA may terminate collection action on and close out debts with principal amounts not exceeding \$100,000 in accordance with the standards set forth in 38 C.F.R. 1.940-1.944, pursuant to 31 U.S.C. 3711(a)(3), “*Collection and Compromise*” and 31 C.F.R. Part 903, “*Standards for Suspending or Terminating Collection Activity*.”

010102 ACTIONS FOR TERMINATION OF COLLECTION ACTION. VA will base its termination of collection decision on various factors including the amount of the debt, the financial condition of the debtor and any pending or future benefits or other payments owed to the debtor. VA may also terminate collection action on a debt when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor.

## 0102 POLICIES

010201 AUTHORITY FOR TERMINATION OF COLLECTION ACTION.

A. VA may terminate collection action on a debt when the debt is waived, compromised, determined to lack legal merit, not able to be collected in any substantial amount, discharged in bankruptcy, referred for enforced collection<sup>1</sup>, or the debtor is deceased.

B. VA may terminate collection action on debts if the debtor is not receiving VA benefits that may be offset and other conditions exist, such as the debtor having refused to pay. VA may also terminate collection action on employee debts<sup>2</sup>, such as erroneous payment of pay and allowances, when certain conditions exist. Collection action on debts not meeting the criteria for the Treasury Offset Program (TOP)<sup>3</sup> referral will be terminated.

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<sup>1</sup> Refer to Volume I - Chapter 1B, *Waiver of Debts*, Chapter 1C *Compromise of Debts*, Chapter 1G *Referrals for Enforced Collection (Litigation)* for further details on these collection actions.

<sup>2</sup> Refer to Volume I - Chapter 4, *Employee Debts*, for additional details specific to employee debts.

<sup>3</sup> Refer to Volume I - Chapter 1E, *Treasury Offset Program and Treasury Cross-Servicing*.

C. VA may terminate collection action on debts less than \$100,000, excluding interest and other late payment charges, when conditions exist to allow this decision. (See 010403C)

D. VA will refer debts exceeding \$100,000, excluding interest and other late payment charges, to the Regional Counsel (RC) for review and approval as the initial step before they are submitted to the Department of Justice (DOJ) for termination approval.

010202 ACTIONS FOR TERMINATION OF COLLECTION ACTION. VA will notify debtors of their rights by promptly forwarding demand letters, advising them of remedies available to satisfy debts, and informing them of the consequences of failure to cooperate with VA. In exercising its termination of collection action authority, VA will ensure the termination decision is reviewed by the appropriate individual or office having jurisdiction. Refer to Volume XII, Chapter 1, “*VA Debt Collection Standards*,” for the required information related to debt or demand letters.

A. Termination of Collection Action Requirements. VA will terminate debt collection action when it appears no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is anticipated to exceed the recoverable amount.

B. Termination of Collection Action Decisions. VA will base its decision to cease collection of the debt on the amount owed and financial condition of the debtor, and whether any VA benefits (educational allowance, disability compensation, etc.) or other payments are due or likely to be payable to the debtor.

C. Termination of Collection Action, Currently Not Collectible. VA will terminate collection action on certain debts also determined to be collectible in the near future and forward them to the Department of the Treasury (Treasury) for offset. The debts are not closed out in VA’s financial records.

D. Termination of Collection Action and Close out of Debt. VA will terminate collection action and close out debts determined to be uncollectible and are not likely to become collectible in the near future.

### **0103 AUTHORITY AND REFERENCES**

[010301 31 U.S.C. 3711\(a\)\(3\), Collection and Compromise](#)

[010302 31 C.F.R. Part 903, Standards for Suspending or Terminating Collection Activity](#)

[010303 38 C.F.R. 1.940 through 1.944, Standards for Suspending or Terminating Collection Action](#)

010304 Office of Management and Budget (OMB) Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables

## 0104 ROLES AND RESPONSIBILITIES

010401 The Secretary of Veterans Affairs has the authority, which cannot be delegated<sup>4</sup>, to suspend or terminate debt collection action, or to refund amounts collected after death, as follows:

A. The Secretary may suspend or terminate debt collection against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, during a period when the Coast Guard operated as a service in the Navy (31 U.S.C. 3711(f)(3)).

B. The Secretary may not collect all or any part of a VA program benefit debt owed to the United States by an individual who is a member of the Armed Forces or a Veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, when the termination of collection action is in the best interest of the United States (38 U.S.C. 5302A). Debts associated with the Housing Program (38 U.S.C. Chapter 37) are exempt from this special authority action.

C. The Secretary may refund any amounts collected after the death of a member of the Armed Forces or Veteran to the estate of the decedent or, in its absence, to the decedent's next-of-kin.

010402 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.

010403 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chiefs of Finance Activities, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

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<sup>4</sup> The restriction on the delegation of this authority is found in 38 C.F.R. 1.945, published in the Federal Register as a proposed regulation on August 7, 2009. The regulation is currently being prepared for publication as a final regulation.

010404 Delegation of Authority.

A. The Chief of the Finance Activity will ensure appropriate procedures are followed in accordance with this chapter for administrating the termination of collection action and close-out of debts. The Chief of the Finance Activity may terminate collection action and close out a debt that has been waived, compromised, determined to lack legal merit, referred for enforced collection or discharged in bankruptcy. Termination and close-out may also occur where the debt cannot be offset or it involves a debtor who is deceased.

B. For debts up to \$40,000 and not in the 010404A categories above, the Chief of the Finance Activity, or the Director of the Debt Management Center located in St. Paul, MN, has the authority to terminate debt collection action and the remaining debt.

C. For debts greater than \$40,000 but less than \$100,000 (exclusive of interest and other charges), the Chief Financial Officer (CFO) within the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA), and the Deputy Assistant Secretary (DAS) for Finance have authority to terminate debt collection action and the remaining debt. They may also delegate termination authority to the Chief of the Finance Activity or the Director of the DMC.

D. For debts exceeding \$100,000 (exclusive of interest and other charges) meeting the criteria for termination, the Chief of the Finance Activity will refer the debt to the RC for review and approval as the initial step before being forwarded to DOJ for disposition authority.

010404 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. The DMC consults with Veterans and their families in the management and liquidation of their benefit debts. The Director of the DMC has the same delegated authority as the Chief of the Finance Activity described in 010403A above.

010405 The Regional Counsel (RC)<sup>5</sup> and designated staff attorneys are authorized, in any matter within the jurisdiction of the VA's General Counsel, delegated or otherwise assigned to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents. The RC is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to VA installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the RC may delegate to staff members or other VA attorneys authority to perform, to the extent specified, any legal

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<sup>5</sup> Refer to 38 C.F.R. 14.501, "Functions and Responsibilities of Regional Counsels," for additional information related to the RC.

function under the professional direction of the RC. The RC may modify, suspend, or rescind any authority delegated hereunder.

## **0105 PROCEDURES**

010501 AUTHORITY FOR TERMINATION OF COLLECTION ACTION. When VA has determined a debt exists, it will promptly demand, in writing, payment of the debt. VA will notify the debtor of his/her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally one demand letter is sufficient, but subsequent demand letters may be issued, as appropriate.

A. Regardless of the amount, the Chief of the Finance Activity, or designee, may terminate and close out a debt when the:

1. Debt is waived. Any portion of a debt that is waived by either a Committee on Waivers and Compromises (COWC) or the Board of Veterans Appeals (BVA) will be terminated.
2. Debt is compromised. Any portion of a debt that is compromised by VA (Finance Activity/COWC/RC) or the DOJ will be terminated.
3. Debt is determined to lack legal merit. Collection action should be terminated on a debt whenever it is determined the debt is legally without merit or enforcement of the debt is barred by an applicable statute of limitations. A debt will be terminated when the RC states, in writing, the claim is legally without merit.
4. Debt is not collectible in any substantial amount. Collection action may be terminated on a claim when it becomes clear VA cannot collect from the debtor and the debt does not meet the criteria for referral to TOP, for VA benefit offset (benefit debts only), or for VA salary offset.
5. Debt is discharged in bankruptcy. A debt will be terminated when the RC states that the debt has been discharged in bankruptcy, or the legal effect of the bankruptcy proceedings releases the debtor of the obligation to pay the debt. Debts will not be terminated due to bankruptcy without the written advice of the RC.
6. Debt is referred for enforced collection and determined uncollectible. After referral of a debt for litigation, the U.S. Attorney or RC having jurisdiction advises VA to terminate debt collection and close out the debt because the account is determined uncollectible.
7. Debtor is deceased. The debtor is deceased and has left no estate and the Government has no prospect of collection from the estate.

B. DEBTS LESS THAN \$40,000 (excluding interest and other late payment charges).

1. DEBTS LESS THAN \$25

a. VBA benefit debts under \$25 (excluding interest and other late payment charges), will be terminated if the debtor is not receiving VA benefits subject to offset, and when one or more of the following conditions exist:

i. The first collection letter is returned marked "no forwarding address;"

ii. No payment or reply is received within 30 days of the date of a second collection letter if applicable;

iii. The debtor refuses to pay; or

iv. No additional payments are received on the debt and it has been 60 days from the date of the last payment.

b. VHA first party medical debts should be retained for at least six months to allow for additional charges for the provision of medical services or pharmaceuticals. If the debt remains under \$25 for more than six months, with no additional medical care or pharmacy charges accruing to the debtor, the debt should be terminated if the debtor is not receiving VA benefits that may be offset.

c. For other debts besides those cited in 1a and 1b above, assuming no opportunity for collection by involuntary offset exists, the Chief of the Finance Activity, or designee, may terminate non-benefit debts, such as erroneous payment of pay and allowances (former employees), travel overpayments, vendor overpayments, and Freedom of Information Act charges, when one or more of the conditions described in paragraph 010502A below exists. Multiple debts owed by one individual will be consolidated in order to determine dollar thresholds.

2. DEBTS BETWEEN \$25 AND UNDER \$40,000 (excluding interest and other late payment charges).

a. The Chief of the Finance Activity, or designee, may terminate these debts when the requisites for termination have been met.

i. Debts (excluding interest and other charges) meeting certain criteria (See Volume XI, chapter IE, *Treasury Offset Program and Treasury Cross Servicing*) will be referred to the Treasury Offset Program (TOP) for collection by administrative offset from any eligible Federal payment due to debtors. VA will notify a debtor by first class mail at least 60 days in advance of referring the account to TOP. The notification allows the debtor another opportunity to pay the debt or contest the validity of the debt.

ii. Debts may be terminated if the debtor is not receiving VA benefits (for benefit debts only) or any other Federal payments which may be offset and there are indications that further collection attempts will not result in the voluntary liquidation of the receivable.

iii. Debts referred to TOP, but not resulting in a collection because the debtor was not due any Federal payments within at least one year after referral, will be reviewed for appropriate disposition (i.e., suspension, termination, or enforced collection action). Debts not meeting the criteria for TOP referral may be terminated.

iv. Debts referred to TOP, partially collected via offset, and with a remaining balance less than \$25 will be terminated.

C. DEBTS OVER \$40,000 BUT LESS THAN \$100,000 (excluding interest and other late payment charges).

1. The authority to terminate the debt is dependent upon the delegations of authority from the Administration CFOs and the Deputy Assistant Secretary (DAS) for Finance.

a. Authority to terminate debts up to \$100,000. The level of delegation is left to the discretion of each CFO and the DAS for Finance to retain this authority or to redelegate it to whatever level is deemed more appropriate.

D. DEBTS \$100,000 AND OVER (excluding interest and other late payment charges).

1. Debts meeting this dollar threshold for termination are to be submitted, together with a Claims Collection Litigation Report (CCLR), to the Regional Counsel (RC) for review and approval.

a. The RC will forward the case to VA Central Office's (VACO) Cash and Debt Management Division for the proper action.

b. The Cash and Debt Management Division will review the requests and submit them to DOJ for approval.

#### 010502 ACTIONS FOR TERMINATION OF COLLECTION ACTION.

A. Termination of Collection Action Requirements. Debts owed to VA may be terminated only after one or more of the conditions described below have been met. Multiple debts owed to VA by one individual will be consolidated in order to determine dollar thresholds. Claims may not be subdivided solely to justify their termination because the cost of collection will exceed recovery (see 3 below).

1. Inability to Collect Any Substantial Amount.

a. Collection action may be terminated on a claim when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor.

b. A decision to approve termination of a debt should include consideration of the following factors:

- i. Age and health of the debtor.
- ii. Present and potential income and assets, including employment prospects, inheritance prospects, actual or potential rights to social security benefits, VA benefits, workers' compensation, or military service/retirement pay.
- iii. The possibility that assets have been concealed or improperly transferred by the debtor.
- iv. The availability of assets or income that may be realized upon enforced collection proceedings.

**2. Inability to Locate Debtor.**

- a. Collection action may be terminated on a claim when the debtor cannot be located and there is no security remaining to be liquidated; or
- b. The applicable statute of limitations has run out and the prospects of collecting by offset are too remote to justify retention of the claim.

**3. Cost of Collection Will Exceed Recovery.**

- a. Collection action may be terminated on a claim when the costs of collection, including those of a litigation nature, would exceed the amount recovered.
- b. In cases involving a substantial legal issue, an issue that might affect enforcement policies, or an issue that might have significance for the Government as a whole, the cost of collection is usually not a deciding factor.

**4. Claim Is Legally Without Merit.**

Collection action should be terminated on a claim whenever it is determined the claim is legally without merit or enforcement of the debt is barred by any applicable statute of limitations.

**5. Claim Cannot Be Substantiated By Evidence.**

Collection action should be terminated when the claim cannot be substantiated with the necessary evidence, when witnesses are not available, and the debtor has refused to pay the debt voluntarily.

6. Bankruptcy.

a. When the debt has been discharged in bankruptcy, VA may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization.

b. Debt collection should be terminated immediately on any debt where the debtor has filed for a Chapter 7 “No Asset” bankruptcy. VA will receive a bankruptcy notice, which may indicate it is a “No Asset” case. When this occurs, VA will take the following action depending upon the amount of the debt to VA:

i. If the debt is less than \$5,000, the Chief of the Finance Activity will terminate collection action.

ii. If the debt is \$5,000 or greater, the Chief of the Finance Activity will obtain a current credit report on the debtor and determine if the debtor appears to have sufficient assets to justify VA filing a proof of claim. If a proof of claim appears warranted, the case will be forwarded to the appropriate RC. Otherwise, collection action will be terminated.

7. Death Cases.

a. For benefit overpayments created because of the Veterans’ death or the death of his/her beneficiary, the following apply:

i. If the account balance is less than \$2,000, the debt should be terminated when reclamation action is completed and a balance still remains, or reclamation action cannot be accomplished, and more than 6 months has lapsed since the date of death.

ii. If the balance exceeds \$2,000, and not more than 11 months has lapsed since date of death, the Chief of the Finance Activity should send a letter to the probate court to determine if an estate exists.

iii. If more than 11 months has lapsed since the date of death, the debt should be terminated, unless the account is being investigated for fraud.

B. Termination of Collection Action Decisions.

1. In reviewing a case for termination, decisions are to be based on as much of the following documented information as may be applicable to the particular case:

a. Statement of the amount of indebtedness, indicating any credit, and including

i. The original principal amount of the debt;

ii. Principal reduction, if any, (including reduction by offset of VA benefits);

- iii. Current principal balance;
  - iv. Current accrued interest, if any;
  - v. Other current accrued costs or charges, if any; and
  - vi. Total current amount of indebtedness.
- b. Itemized statement of allowances due the debtor from VA for educational assistance, disability compensation, pension, insurance, or other benefits.
  - c. VA Form 5655, Financial Status Report, or a current credit report on the debtor, and/or verification of employment.
  - d. For ineligible hospitalization or emergency care debts, a statement showing all means of recovery from Medicare and Medicaid programs have been exhausted, or showing neither program is applicable and stating the reasons why.
  - e. For vendor debts, a statement that VA's payment data has been reviewed to ensure the vendor is not doing business with other VA offices and there are no payments due the vendor from VA which could be offset.
- C. Termination of Collection Action, Currently not Collectible.
- 1. VA may terminate benefit and employee debts and forward them to TOP; however, they remain unclosed in VA's financial records.
    - a. If an offset becomes available in the future, Treasury will perform the offset and notify VA.
    - b. If VA receives a partial payment of a terminated debt, VA may reactivate the debt, but not recall it from TOP unless the debt is also being closed out in VA records.
  - 2. If a terminated debt is not closed out and has been referred to TOP or cross-servicing, the debt may remain at Treasury as long as the statute of limitations does not expire.
    - a. Subject to the statute of limitations, which is normally six years in accordance with 28 U.S.C. 2415, terminated debts not closed out may also be referred to Treasury if they were not previously referred.
    - b. For reporting purposes, these debts should be classified as "currently not collectible" on the Treasury Report on Receivables Due from the Public (TROR).
    - c. As with all terminated debts, these debts do not appear on VA's financial statements.

3. Most debts not collected within two years and not in current payment plans will be terminated, though many may be maintained as currently not collectible with the intent of collecting them in the future.
4. VA will reestablish terminated nonmedical benefit debts, when they have not been closed out, in restricted circumstances because of data processing limitations inherent in current systems. The following are examples of terminated nonmedical benefit debts that may be reestablished:
  - a. A "Write-Off Flash – DMC" for terminated loan guaranty debts on a Veteran debtor is to be forwarded by the DMC to the regional office of jurisdiction for filing in the claims folder. Terminated loan guaranty debts will be reestablished should the Veteran wish to pay his/her debt in full to restore previously-used entitlement or if requested by the DMC.
  - b. A terminated nonmedical benefit debt not closed out may be reestablished for collection only if the debtor becomes entitled to VA benefits which may be offset, or if the debtor submits payment in full or an acceptable compromise payment for the debt.
5. Other terminated debts not closed out may be reestablished at any time it appears they have become collectible (assuming VA otherwise retains authority to collect the debt and has access to relevant historical collection activity).
6. Debts terminated but not closed out may remain at TOP after they are terminated at VA's discretion. For purposes of reporting on the TROR, such debts will be classified as "currently not collectible." If an offset ever becomes available, Treasury will perform the offset and notify VA. If a debt is housed in a system which allows terminated debts to be reactivated for application of payment should offset become available, the debt should not be recalled from TOP when it is terminated if it is not also being closed out.

#### D. Termination of Collection Action and Close Out of Debt.

1. VA will terminate and close out debts in accordance with the definition of close out in accordance with the Office of Management and Budget (OMB) Circular A-129, "*Policies for Federal Credit Programs and Non-Tax Receivables.*"
  - a. A decision to close out the account terminates all collection activity permanently. The debt may not be reestablished at some future time for further collection action.
  - b. The above decision, however, does not preclude any voluntary repayment of the debt at any future time.
  - c. If the TOP process above is not successful, VA will report the debt amount to the Internal Revenue Service (IRS) as taxable income and close out the amount from VA's financial records. A close-out occurs when VA, after determining that additional future collection efforts on a debt would be futile, reports the amount of a terminated debt to

the IRS as potential income to the debtor on Form 1099-C, “Cancellation of Debt.” On debts not reportable to the IRS, close-out never actually occurs.

## 0106 DEFINITIONS

010601 Close out. Occurs when an agency, after determining that additional future collection efforts on a debt would be futile, reports the amount of a terminated debt to the Internal Revenue Service (IRS) as potential income to the debtor on Form 1099-C, Cancellation of Debt. For debts not reportable to IRS, close-out never actually occurs.

010602 Compromise. An offer and acceptance of a partial payment in settlement and full satisfaction of the offeror’s indebtedness, as it exists at the time the offer is made. It is a final settlement, binding on the parties to the compromise, unless procured by fraud, misrepresentation of a material fact or mutual mistake of fact.

010603 Currently Not Collectible. Debts terminated but not closed out that VA may still collect in the future. While this designation may be used for any such debts, the primary use of this designation is for debts VA has terminated and removed from VA’s financial records, and have been referred to Treasury for TOP and/or for cross-servicing.

010604 Debts. Claims for money made by or owed to the Government, arising out of VA activities.

010605 Termination of Collection Action. Refers to a decision made to cease active collection action on a debt, in accordance with criteria set out in the Federal Claims Collection Standards, because such action is not economically worthwhile or is otherwise inappropriate.

010606 Termination, Currently Not Collectible. A decision by the Government to stop all collection activity on an account, but to hold the account for possible future collection action. This decision is made when it is determined that further collection activity will be fruitless or not cost effective at the time, but may be warranted at some future date. Terminated debts may be reactivated and collected if they have been written off, but not closed out. The word “termination” is often used interchangeably with “write off.” However, “termination” is a legal procedure, while “write off” is an accounting procedure generally associated with removing the debt from an agency records.

010607 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.

010608 Write-Off. This process involves reducing receivables in accounting records as a result of the determination that they are uncollectible. All write-offs will be made through allowance accounts for bad debts. Under no circumstances are debts to be

written off directly to expense. Write-offs should be distinguished from reversals of receivables. Federal accounts receivable are not written off; they are cancelled.

**0107 RESCISSIONS**

010701 VA Handbook 4800.6, Termination of Collection Action and Close Out of Debts

**0108 QUESTIONS**

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

VHA	VHA Accounting Policy (Outlook)
VBA	VAVBAWAS/CO/FINREP (Outlook)
All Others	OFP Accounting Policy (Outlook)