



Department of Veterans Affairs

Financial Policy

Volume XII

Debt Management

Chapter 6

Freedom of

Information Act Debt

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0601 Overview

This chapter establishes the Department of Veterans Affairs' (VA) financial policies relating to the calculation and collection of fees associated with Freedom of Information Act (FOIA) (5 U.S.C. § 552) requests. FOIA was enacted by Congress to give the American public greater access to Federal information through the release of data, with some restrictions, from agency records, files, reports, and other documents. General information about making a FOIA request can be found by accessing the VA FOIA Service webpage.

Key points covered in this chapter include:

- VA will charge a fee to recover allowable costs for responding to a FOIA request;
- VA will calculate fees in accordance with the requirements specified in the C.F.R. and this chapter;
- VA will initiate collection procedures against delinquent accounts;
- VA will, when applicable, charge interest on FOIA debts; and
- VA will use all available collection tools to recover outstanding FOIA debts.

0602 Revisions

Section	Revision	Office	Reason for Change	Effective Date
Header	Updated to new debt chapter numbering	OFP (047G)	Chapter number change	February 2021
Section 0603	Updated definitions	OFP 047G	Enhance definition	February 2021
Section 0604	Updated roles and responsibilities	OFP (047G)	Enhance reader understanding.	February 2021
Section 0605	Add policy language on General Policies, FOIA Fees, Debt Collection, etc.	OFP (047G)	Enhance reader understanding	February 2021
Various	Reformatted to new policy format and completed 5-year review.	OFP (047G)	Reorganized chapter layout	August 2017
Section 0604	Updated roles and responsibilities	OFP (047G)	Enhance reader understanding.	August 2017
060501	Added new reference to include Handbook 6300.3.	OFP (047G)	Missing Reference	August 2017

Section	Revision	Office	Reason for Change	Effective Date
Section 0605	Added sub-headings 060501 FOIA Fees, 060502 Billing and Payment, and 060503 Delinquencies	OFPP (047G)	Enhance readability	August 2017
Appendix A	Eliminated	OFPP (047G)	Incorporated into policy sections	August 2017

0603 Definitions

Compromise – Governed by 31 U.S.C. § 3711(c), a compromise is an offer and acceptance of a partial payment in settlement and 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.

Currently Not Collectible (CNC) – A classification of a debt after write-off whereupon cost-effective debt collection efforts should continue if an agency determines that continued collection efforts are likely to yield a return. In such cases, the written-off debt is not closed-out but classified as CNC.

Direct Costs – Cost directly attributable to responding to a FOIA inquiry, such as the salary of employees gathering data, the cost of paper to print a response or the cost of media to transmit a response (e.g., compact disks or thumb drives).

Discharge of Indebtedness – In accordance with 31 C.F.R. § 903.5, and 38 C.F.R. § 1.944, a “discharge” of a debt (also referred to as a “close-out” of the debt) is the classification of a write-off determination action that concludes a debt is no longer collectible.

Due Process – Providing debtors with notice of intended debt collection actions and the opportunity to dispute the debt or amount, request a waiver when applicable, or negotiate a compromise of the debt.

Enforced Collection – The referral of a delinquent debt to Office of General Counsel (OGC) or Department of Justice (DOJ) for collection by securing a judgment against the debtor through litigation.

Notice of Indebtedness (NOI) – Written communication sent by VA to 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. The notice advises the debtor of the amount due, the timing of payment and payment options, 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. A NOI is sometimes referred to as a demand letter.

Write-off – An accounting action that results in reporting the debt as having no value on the agency’s financial and management report. Write-off may occur before, concurrently with, or after the agency determines that collection action should be terminated. A write-off must be classified as either Currently Not Collectible (CNC) or as a close-out per Office of Management and Budget (OMB) Circular No. A-129, Part V Section E, Termination of Collections, Write-Off, Use of Currently Not Collectible (CNC), and Close-Out guidance.

0604 Roles and Responsibilities

Under Secretaries, Assistant Secretaries, Other Key Officials, and Financial Officials are responsible for ensuring compliance with the policies outlined in this chapter.

Assistant Secretary for Information and Technology (OI&T) is VA’s designated Agency Chief FOIA Officer tasked with monitoring FOIA implementation throughout VA. VA’s Records Management Service, within OI&T, and other VA offices that are designated to administer and manage FOIA requests are responsible for implementing the provisions of Executive Order (EO) 13392, and Public Law 114-185, throughout the agency.

Freedom of Information Act (FOIA) Officers are employees familiar with laws and regulations concerning the release of information to the public. FOIA officers review initial requests for records, make determinations to grant or deny the requests and ensure that responses to FOIA requests include required information. The roles and responsibilities for a FOIA Officer are fully defined in VA Handbook 6300.3, Procedures for Implementing the FOIA.

0605 Policies

060501 General Policies

- A. VA will adhere to FOIA requirements established by 31 C.F.R. § 1, DOJ FOIA regulations, and VA Handbook 6300.3.
- B. VA has 20 business days from the date a request is received to respond to the requestor. The response will state whether the request is granted in its entirety, granted in part, or denied with a reasonable explanation. Refer to VA FOIA FAQ.

1. If VA has determined that an “unusual circumstance” exists that would cause a failure to comply with the 20-day time limit, the time limit may be extended for an additional 10 days.
 2. If a court has determined that an “exceptional circumstance” exists, a failure to comply with the 20-day time limit shall be extended for the length of time provided by the court order”.
 3. For more information on what is considered an “exceptional circumstance”, refer to 5 U.S.C. § 552(a)(6)(C)(i).
- C. FOIA Officers will utilize the FOIAXpress software program to track requests, assist with fee estimates and fee waivers, and to generate invoices for the requests.
- D. VA will provide reports on debt collection actions in accordance with 31 U.S.C. § 3719. VA will incorporate the required debt collection information into the Treasury Report on Receivables (TROR) as required by Treasury each quarter. Refer to VA Financial Policy Volume XII, Chapter 15 – Treasury Reporting on Receivables (TROR) for additional information.

060502 FOIA Fees

- A. Per 38 C.F.R. § 1.555(b)(2), 38 C.F.R. § 1.561, and VA Handbook 6300.3, VA will when appropriate, charge a fee for processing a FOIA request.
- B. VA will charge a fee to recoup the full allowable direct costs for responding to a FOIA request per 38 C.F.R. § 1.555, in conjunction with the OMB FOIA Fee Schedule and Guidelines and VA FOIA Service Fee Information webpage.
1. If there are multiple offices involved in processing a request, each office will calculate their fees and the VA FOIA Officer responsible for responding to the request will consolidate the fees under the tracking number associated with the request.
 2. The following table summarizes chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes.
Educational Institution	No	No	Yes (100 pages or 1 disc free)).
Non-Commercial Scientific Institution	No	No	Yes (100 pages or 1 disc free).
News Media	No	No	Yes (100 pages or 1 disc free).

All other	Yes (2 hours free)	No	Yes (100 pages or 1 disc free).
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- C. VA will waive FOIA fees in the following instances:
- If the anticipated cost of processing the request is less than \$25;
 - If a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise assist in the performance of VA's mission;
 - If the request is from Congress or another government agency; or
 - If the requester can show the disclosure of the information is in the public interest, will contribute significantly to public understanding of the Federal Government's operations and activities, and is not primarily in the commercial interest of the requester.

For more information on when fees can be waived refer to 38 C.F.R. § 1.561(e).

- D. The VA FOIA Officer will advise the requester, in writing, of the estimated fee amount.
1. The requester has 30 days from the date of the notification to:
 - provide a response (i.e., email, letter, etc.) with either acceptance of the proposed fees; or
 - provide changes to the scope of the request to reduce the number of documents.
 2. This notification will include a statement that fees may be charged even if VA is unable to locate the requested records or if the records located are subsequently determined to be exempt from disclosure. Refer to the OMB FOIA Fee Schedule and Guidelines Section 9B, Charges for Unsuccessful Search. A list of nine exemptions where FOIA information is not required to be released can be found on the FOIA.Gov website.
 3. If a response is not provided to the FOIA office within 30 days, the request may be administratively closed.
- E. Upon receiving the requester's agreement to pay the fee, VA will process the request and disseminate the FOIA information.
- F. Advance payments of FOIA Fees are required when the FOIA officer determines the cost of processing a FOIA request will exceed \$250, or where a requester has not paid for a prior FOIA request on time. Refer to 38 C.F.R. § 1.561(I)(2)-(I)(3).

060503 Invoices and Payments

- A. When the information satisfying the FOIA request has been delivered or an advance

payment is required, VA will promptly demand, in writing, payment of the FOIA debt by providing a NOI to the debtor.

- B. At a minimum the NOI will include:
- Vendor Name;
 - Address of the requester/debtor;
 - Amount due;
 - What caused the debt;
 - Explanation of due process rights;
 - Contact information;
 - A statement on the assessment of interest, administrative costs, and penalties;
 - Payment terms; including instructions to the requester on how to remit payment (i.e., either check or money order, made payable to the Treasury of the United States in accordance with Title 38 C.F.R. § 1.561(a));
 - A statement that a response from the debtor is required within 30 days to prevent adverse actions;
 - A statement indicating VA's intent to refer the debt for enforced collection actions, such as referral to consumer reporting agencies, private collection agencies, Treasury Offset Program/Cross-Servicing or enforced collection; and
 - VA's intent to consider the debt delinquent if full payment is not received within 30 days of the original NOI date.
- C. For more information on the NOI, refer to VA Financial Policy Volume XII, Chapter 8 – Notice of Indebtedness.
- D. When VA receives payment from the requestor, the Agent Cashier will ensure the FOIA tracking number is noted on the payment and notify the program office that payment has been received.

060504 Interest Fees, Administrative Charges, and Penalties

- A. VA will charge interest and fees on FOIA debt 31 days after the date of the NOI. Interest continues to accrue until payment is received in full.
- B. For information on interest, fees, administrative charges, and penalties, refer to VA Financial Policy Volume XII, Chapter 9 – Interest, Administrative Costs, and Penalty Charges.

060505 Delinquencies

- A. VA will adhere to debt collection standards specified in laws, regulations, and guidance. Refer to VA Financial Policy Volume XII, Chapter 1 – Debt Collection Standards.

- B. VA will take aggressive collection action to recover monies owed from debts arising out of nonpayment of FOIA fees.
- C. If payment for a FOIA request is not received within 30 days from the original NOI date, the account will be considered delinquent.
- D. VA will advise the requester of his or her due process rights by sending out a delinquency notice and a Notice of Rights and Responsibilities (NRR) if the NOI is not responded to and/or payment in full is not received within 30 days of the NOI date.
- E. Delinquency notices will be sent at 30-day intervals. The notices will include and emphasize to the debtor the consequences of not paying the debt, such as:
 - Referral to consumer reporting agencies,
 - Referral to private collection agencies,
 - Referral to Treasury Offset Program/Cross-Servicing; or
 - Enforced collection actions.

060506 Collection Activities

- A. VA will use all available collection tools to recover outstanding FOIA debts.
- B. VA will suspend collection action if the requester seeks a waiver of the fee or disputes the debt and/or amount. Collection actions will resume when the waiver request or dispute is resolved. Further information on suspension of collection activities on debts can be found in VA Financial Policy Volume XII, Chapter 12 – Suspension of Collections.
- C. VA may compromise FOIA debts. For information on compromising debts, refer to VA Financial Policy Volume XII, Chapter 1C – Compromise of Debt.
- D. Debts that remain outstanding for over 120 days and 180 days respectively, will be referred to the Treasury Offset Program or Cross-Servicing program for collection. Refer to VA Financial Policy Volume XII, Chapter 14 – Treasury Offset Program, Treasury Cross Servicing and Enforced Collection (Litigation) for details.
- E. For more information on debt collection activities, refer to VA Financial Policy Volume XII, Chapter 10 – Collection of Debts.

060507 Termination of Collection Action, Write-Off, or Close-Out

- A. VA will terminate collection activity on debts when all available collection efforts have been exhausted, and one or more of the standard criteria for termination of collection action has been met such as:
- VA is unable to collect any substantial amount through its efforts or the efforts of others (Treasury Cross-Servicing and Treasury Offset Program);
 - VA is unable to locate the debtor;
 - Costs of collection are anticipated to exceed the amount recoverable;
 - The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
 - The debt cannot be substantiated by evidence; or
 - The debt against the debtor has been discharged in bankruptcy.
- B. When a debt is waived, compromised, determined to lack legal merit, or discharged in bankruptcy, VA will write-off the debt. VA will classify the write-off as either CNC or Close-Out in accordance with guidance in OMB Circular No, A-129.
- C. VA will report discharge of indebtedness exceeding \$600 to the Internal Revenue Service (IRS) in the calendar year in which the obligation is closed out or satisfied at less than face value (compromised) per 26 U.S.C. § 6050P.
- D. VA will refer debts exceeding \$100,000, excluding interest and other latepayment charges, to DOJ for termination approval.
- E. For more details regarding debt termination and reporting discharge of debt to the IRS, refer to VA Financial Policy Volume XII, Chapter 13 – Termination of Collection Action, and Reporting Discharge of Debt to IRS.

0606 Authorities and References

[5 U.S.C. § 552, Public information; agency rules, opinions, orders, records, and proceedings](#)

[26 U.S.C. § 6050P, Returns relating to the cancellation of indebtedness by certain entities](#)

[28 U.S.C. § 2401-16, Statute of Limitations - Time for Commencing Action Against the United States](#)

[31 C.F.R. § 1, DOJ FOIA Regulations](#)

[31 U.S.C. § 3711\(c\), Collection and compromise](#)

[31 C.F.R. Parts 901-904, Federal Claims Collection Standards](#)

[31 U.S.C § 3719, Reports on debt collection activities](#)

[38 C.F.R. § 1.555 Fees](#)

[38 C.F.R. § 1.561 Fees](#)

[38 C.F.R. § 1.944 Discharge of indebtedness; reporting requirements](#)

[38 C.F.R. Part 1 Release of Information from Department of Veterans Affairs Records](#)

[Department of Justice FOIA Exemptions Overview](#)

[DOJ Guide to the Freedom of Information Act](#)

[DOJ FOIA Fees and Fee Waivers - Footnote 56](#)

[Executive Order \(EO\) 13392 Improving Agency Disclosure of Information](#)

[Federal Register OMB FOIA Fee Schedule and Guidelines](#)

[FOIA.Gov](#)

[OMB Circular A-129 Part V Section E Termination of Collections, Write-Off, Use of Currently Not Collectible \(CNC\), and Close-Out](#)

[Presidential Memorandum for the Heads of Executive Departments, FOIA January 21, 2009](#)

[Public Law 114-185, FOIA Improvement Act of 2016](#)

[VA Freedom of Information Act Information](#)

[VA FOIA FAQ](#)

[VA FOIA Service FOIA Fee Information](#)

[VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act, dated February 12, 1998](#)

0607 Rescissions

None

0608 Questions

Questions concerning these financial policies should be directed to the specific POC's listed below and formatted as follows using the group email listed next to each organization. Do not use proper names.

VHA	VHA CFO Accounting Policy (10A3A) (Outlook)
VBA	VAVBAWAS/CO/OPERATIONS (Outlook)
NCA	NCA Finance Group (Outlook)
VA FSC FOIA	FOIA, VAFSC (Outlook)
OI&T	VA Privacy and Records Management All Staff
VACO FOIA Service	VACO FOIA Service
VACO Privacy Service	VACO Privacy Service
All Others	OFP Accounting Policy (Outlook)