

INTEREST, ADMINISTRATIVE COSTS, AND PENALTY CHARGES

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 7, Late Payment and Other Charges, and Appendix F, Percentages for Current Value of Funds (CVFT) Rate.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook provides guidelines for the application of late charges to delinquent debts.
- 3. RESPONSIBLE OFFICE:** Cash and Debt Management Division (047GC1), Office of the Deputy Assistant Secretary for Finance.
- 4. RELATED DIRECTIVE:** VA Directive 4800, Debt Management.
- 5. RESCISSIONS:** VA Manual MP-4, Part VIII, Chapter 7 and Appendix F, dated September 22, 1992.

CERTIFIED BY:

/s/

John A. Gauss
Assistant Secretary for
Information and Technology

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS**

/s/

William H. Campbell /for/
D. Mark Catlett
Principal Deputy Assistant Secretary for
Management

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INTEREST, ADMINISTRATIVE COSTS, AND PENALTY CHARGES

1. PURPOSE AND SCOPE. This handbook provides the guidelines for calculating and applying late charges to delinquent debts. This handbook does not apply to medical care receivables established under 38 U.S.C. 1729, as these do not represent debts of a sum-certain amount. However, this handbook does apply to co-payments incurred by individuals for medical treatment and prescriptions, as well as other debts incurred by individuals for medical care and services.

2. RESPONSIBILITY. The Chief of the Fiscal Activity must ensure that all applicable late charges are properly assessed on delinquent debts in accordance with the procedures in this handbook. Any reference to the Chief of the Fiscal Activity also includes the Director, Debt Management Center (DMC) where appropriate.

3. STATUTORY AND REGULATORY AUTHORITY

a. 38 U.S.C. §5315 and 38 CFR §1.919 give the Department of Veterans Affairs (VA) specific authority to charge interest and administrative costs on any amount owed the United States:

(1) For an indebtedness resulting from a person's participation in a benefits program administered by VA, or

(2) For an indebtedness resulting from the provision of medical care or services under Chapter 17 of 38 U.S.C., or

(3) For an indebtedness resulting from a person's participation in a program of loans, loan guaranties, or loan insurance administered by VA, to the extent not precluded by the terms of the loan instruments concerned.

b. 31 U.S.C. §3717, implemented by 38 CFR §1.919, give VA specific authority to charge interest and administrative costs on all nonbenefit debts in accordance with 31 CFR §901.9.

c. 31 U.S.C. §3717 and 31 CFR §901.9 authorize Federal agencies to assess a penalty charge not to exceed six percent per annum for failure to pay any portion of a debt more than 90 days past due. The law excluded federal, state, or local government debts. In accordance with a Comptroller General Decision dated June 8, 1987, which states that debts arising in VA programs under Title 38 U.S.C., are not subject to payment penalties under the Federal Claims Collection Act (FCCA), penalty charges will be assessed only on nonbenefit debts.

4. APPLICATION OF STANDARDS - INTEREST

a. Interest will be charged on all debts owed VA except:

(1) Debts owed by the Canteen Service.

(2) Claims against third-party payers (i.e., insurance companies) resulting from the provision of medical services to a veteran for a nonservice-connected disability or condition when such veteran is eligible to receive payment from the third party for the

medical treatment. These claims do not represent debts of a sum-certain amount against which interest may be applied.

(3) Debts paid in full by the payment due date as specified in the initial collection notification. The payment due date is normally defined as 30 days from the date of the initial collection letter unless an exception is granted by VA Central Office (VACO) (047GC1).

b. Interest accrues from the date of initial notification, although it is not actually assessed until the 31st day. In practice, this means that interest will not be charged if the debt is paid in full within 30 days from the date VA sends the initial notification to the debtor.

c. If a debt is waived, or if it is cleared by corrective award action, any accrued interest will also be waived or cleared.

d. Interest will continue to accrue during any period that collection action is suspended.

e. In death cases, interest will accrue only up to the date of death.

f. When a debtor has entered a petition under the provisions of the Bankruptcy Code, interest will accrue only up to the date of the petition.

g. Late payment interest shall not be demanded or collected on civil penalty and forfeiture claims, unless the statute under which the claim arises authorizes the collection of such interest.

h. When a debt is paid in installments, the payments will be applied in accordance with the so-called "U.S. Rule." That is, payments will be applied first to marshal fees, court costs, penalty charges, and administrative costs, then to interest, and then to principal.

i. Chiefs of the Fiscal Activity are granted authority (but are not required) to stop assessing interest when a debt is referred to a private collection agency or when a debt is referred to the Department of the Treasury or another federal agency for salary offset, tax refund offset, or administrative offset. However, if a debt is returned as unresolved, the interest accrued but not assessed should be recaptured prior to proceeding with additional collection action.

j. In accordance with 38 CFR §1.919, Fiscal Officers are granted authority to forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which the interest and administrative costs are assessed, as well as terminate further assessment of interest and administrative costs, when the collection of such is determined not to be in the Government's best interest. Collection shall not be considered to be in the best interest of the Government when the amount of assessed interest and administrative costs is so large that there is a reasonable certainty that the original debt will never be repaid.

5. APPLICATION OF STANDARDS - ADMINISTRATIVE COSTS

a. Administrative costs will be charged on all debts owed VA except:

(1) Debts owed by the Canteen Service.

(2) Claims against third-party payers (i.e., insurance companies) resulting from the provision of medical services to a veteran for a nonservice-connected disability or condition when such veteran is eligible to receive payment from the third party for the medical treatment. These claims do not represent a sum-certain amount against which administrative costs may be applied.

b. The monthly administrative cost is a fixed amount that is owed by the debtor for each full or partial 30-day period that the debt is delinquent. A debt is considered delinquent if it is not paid within 30 days from the date of the initial notification. Administrative costs will not be charged on debts paid in full within 30 days from the date of notification or on any debt where an acceptable repayment plan is received from the debtor within the initial 30 day period.

c. Except for debts resulting from participation in the work-study program, administrative costs will continue to accrue during any period the debt is suspended.

d. For death cases, administrative costs will stop accruing on the date of death.

e. When a debtor has entered a petition under the provisions of the Bankruptcy Code, administrative costs will accrue only up to the date of the petition.

f. Administrative costs shall not be demanded or collected on civil penalty and forfeiture claims, unless the statute under which the claim arises authorizes the collection of such costs.

g. Administrative costs will not accrue after a debt is referred to the Department of Justice (DOJ) or the Regional Counsel (RC) for litigation as long as the debt remains in that referral status.

h. When a debt is paid in installments, the payments will be applied in accordance with the so-called "U.S. Rule." That is, payments will be applied first to marshal fees, court costs, penalty charges, and administrative costs, then to interest, and then to principal.

i. Fiscal Officers are granted authority (but are not required) to stop assessing administrative costs when a debt is referred for salary offset, tax refund offset, administrative offset, or to a private collection agency. However, if a debt is returned as unresolved, the costs accrued but not assessed should be recaptured prior to proceeding with additional collection action.

6. APPLICATION OF STANDARDS - PENALTY CHARGES

a. A six percent penalty will be charged, in addition to interest and administrative costs charges, on any portion of a nonbenefit debt (including employee debts) that is more than 90 days past due. Note that while the penalty is not assessed until the debt is delinquent for more than 90 days (121 days from the date of the initial demand letter), it accrues from the date the debts became delinquent (31 days from the date of the first demand letter).

b. When a debt is paid in installments, the payments will be applied in accordance with the "U.S. Rule." That is, payments will be applied first to marshal fees, court costs, penalty charges, and administrative costs, then to interest, and then to principal.

c. If a debt is waived, penalty charges will also be waived.

7. DEBTOR NOTIFICATION

a. **Interest.** Debtors must be advised in the letter providing the first notification of the debt that interest will be charged at a specified rate from the date of that letter unless payment in full is received within 30 days from the date of that letter.

b. **Administrative Costs.** The first demand letter to the debtor must state that administrative costs will be charged at a specified monthly rate (subject to change annually) from the date the debt becomes delinquent (usually defined as 31 days from the date of the initial demand letter), unless either payment in full or an acceptable repayment plan is received within 30 days from the date of the letter. The debtor must also be advised of any other administrative costs of collection that might be assessed at least 30 days before VA is to take the action that will cause the costs to be incurred (e.g., referral to Treasury for the Treasury Offset Program (TOP) and cross-servicing, referral for litigation, and request for credit report).

c. **Penalty Charges.** For nonbenefit debts subject to penalty charges, the first demand letter must state that penalty charges will be assessed at six percent per annum if a debt is delinquent more than 90 days, and that the charges will begin to accrue 31 days from the date of the letter.

8. INTEREST RATE

a. **Prejudgment Interest.** Except where the rate is set by contract or agreement, the rate of interest to be charged is the Current Value of Funds to the Treasury (CVFT) rate. This late payment interest charge is reimbursement to the Government for the loss of the Government's ability to invest the timely recovery of the debt for the period of time that the payment is late. Stations will be notified by VACO (at the end of each calendar year) of the interest rate for new receivables established in the following year. Once an interest rate is designated for a debt, that rate shall remain in effect for the life of the debt.

b. **Postjudgment Interest.** Once a judgment has been issued, simple interest will be assessed at the rate specified in the judgment. This rate of interest shall be charged from the date of judgment. Postjudgment interest shall also be compounded annually on the anniversary of the judgment.

9. INTEREST COMPUTATION

- a. Interest is computed on 30-day periods as simple interest, using a 360-day year.
- b. Interest will accrue from the date of initial notification but will not be assessed until 31 days from the date of that notification.
- c. Following is an example of how interest will be computed:

The initial demand letter is dated July 1; the principal amount owed is \$1000; the CVFT rate is 3.000%; and payment was not received timely (by July 31). On August 1st (31 days after the invoice date, one day after the payment due date), another demand letter is sent. This letter informs the debtor that the debt is delinquent and that interest is now owed in addition to the principal. Interest is computed and assessed from the date of the initial demand letter (July 1) through the payment due date of the first letter (July 31st) as follows:

INTEREST					
July 1 through September 1					
Principal	x	Rate	x	Time	= Interest
\$1000		.03		30/360	= \$2.50

If payment of the principal amount plus interest of \$2.50 is not received by the due date of the second letter (August 31st) then interest is computed and assessed on September 1st from the date of the initial demand letter (July 1st) through the payment due date of the second letter (August 31st) as follows:

INTEREST					
July 1 through September 1					
Principal	x	Rate	x	Time	= Interest
\$1000		.03		60/360	= \$5.00

VA components may request an exception to this rule. All requests, in writing, are to be sent to VACO (047GC1). The reason(s) for the need for a variance must be fully explained.

10. MONTHLY ADMINISTRATIVE COST CALCULATION

a. Following is an example of how administrative costs will be computed assuming the initial demand letter is dated July 1; the monthly administrative costs rate (set each year by the Assistant Secretary for Management) is \$1.50; and payment was not received timely (by July 31).

b. On August 1 (31 days after the invoice date, and one day past the payment due date), the next demand letter is sent. This letter informs the debtor that the debt is delinquent and that administrative costs are now owed for each full or partial 30-day period that the debt is delinquent, in addition to the interest and principal. Administrative costs are computed and assessed as follows:

ADMINISTRATIVE COSTS					
August 1 through August 31					
<u>Amount per</u>	x	<u>Number of</u>			= <u>Amount</u>
<u>30 day period</u>	x	<u>Periods</u>			
\$1.50	x	1			= \$1.50

11. PENALTY CALCULATION

a. Following is an example of how penalty charges will be computed assuming the initial demand letter is dated July 1; the debt principal amount is \$100; and the penalty charge rate is 6 percent per annum. While the penalty is not assessed until the debt is

delinquent for more than 90 days (121 days from the date of the initial demand letter), it accrues from the date the debts became delinquent (31 days from the date of the first demand letter).

b. On November 1 (121 days after the invoice date), penalty charges are computed and assessed as follows:

PENALTY COSTS as of November 1						
Principal	x	Rate	x	Time	=	Amount
\$100		.06		90/360	=	\$1.50

12. DEPOSIT OF LATE PAYMENT CHARGE COLLECTIONS

a. Except for Education Loan and Transitional Housing receivables, interest collected is to be deposited to the General Fund Receipt 361435, Proprietary Interest-Not Otherwise Classified. Education Loan interest is to be deposited to 35X4118. Transitional Housing loan interest will be deposited to the special account of the General Post Fund (36X8180) which was established for that program.

b. Collections of administrative charges and penalties will be deposited to General Fund Receipt 363220, Proprietary Receipt-Not Otherwise Classified.