

TERMINATION OF COLLECTION ACTION AND CLOSE OUT OF DEBTS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 23, Suspension of Collection Action and Writeoff of Debts.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes the procedural guidelines for the termination of collection activity and the close out of debts owed to VA.
- 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 23, dated September 22, 1992.

CERTIFIED BY:

/s/

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**BY DIRECTION OF THE SECRETARY
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Distribution: RPC 0471

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TERMINATION OF COLLECTION ACTION AND CLOSE OUT OF DEBTS

1. PURPOSE AND SCOPE. This handbook establishes standardized Department-wide procedures for administering the termination of collection action and the close out of 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 appropriate procedures are followed in accordance with this handbook for administering the termination of collection action and close out of debts. Any reference in this handbook to the Chief of the Fiscal Activity also includes the Director of the Debt Management Center (DMC) where appropriate.

3. DEFINITION OF TERMS

a. **Termination.** 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. "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 agency records.

b. **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 that are not reportable to IRS, close-out never actually occurs.

c. **Currently Not Collectable.** Debts that have been terminated, but not closed out and 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 those debts that VA has terminated, and thus removed from the Department's financial records, but that have been referred to the Department of the Treasury (Treasury) for the Treasury Offset Program (TOP) and/or for cross-servicing. See paragraph 9.c.

4. LEGAL AND REGULATORY AUTHORITY

a. **Legal Authority.** The Federal Claims Collection Act (FCCA) of 1966 (Pub. L. 89-508) gave federal agencies the authority to terminate collection action on debts with principal amounts under \$20,000. The Administrative Dispute Resolution Act (Pub. L. 101-552), dated November 15, 1990, raised the termination threshold to \$100,000. Debts over \$100,000 must be referred to the Regional Counsel (RC) and then to the Office of Financial Policy (047GC1) for submission to the Department of Justice (DOJ) for disposition authority.

b. **Statutes and Regulations.** The standards set forth in 38 CFR §§1.940 –1.943, pursuant to 31 U.S.C. 3711(a)(3), and 31 CFR §§ 903.1, 903.3, 903.4, and 903.5, apply to the termination of collection action of debts due VA.

5. ASSOCIATED REFERRAL ACTION

a. When determining the qualifications of an Account Receivable (A/R) for write-off, eligibility for referral to the TOP must first be considered. Debts that meet the referral criteria should not be terminated unless they have been referred and TOP has not produced any offsets for at least a year, so that the debt will have been with TOP through at least one IRS offset cycle. It is recommended the debt be left with TOP at least through August of the year following the year the debt is referred to TOP to raise the likelihood that any offsets that may come from IRS will not be missed.

b. Debts \$25 and above (including interest and other charges) that meet certain criteria must be referred to TOP for collection by administrative offset from any eligible federal payment due to debtors. A debtor must be notified 60 days in advance of the Department's intent to refer the account to TOP for offset. This notification gives the debtor another opportunity to pay the debt or contest the validity of the debt.

c. Debts that are terminated, but not closed out, may remain at TOP after they are terminated at VA's discretion. For purposes of reporting on the Treasury Report on Receivables Due from the Public, 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.

6. STANDARDS FOR TERMINATION OF COLLECTION ACTIVITY (WRITE-OFF)

a. The standards for termination of collection action are found in 38 CFR §1.942 and 31 CFR §903.3. Collection action will be terminated when one or more of the standards listed below have been documented.

(1) Inability To Collect Any Substantial Amount. 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. A decision to approve termination of a debt under this criteria should take the following factors into consideration:

(a) Age and health of the debtor.

(b) Present and potential income and assets, including employment prospects, inheritance prospects, actual or potential rights to social security, VA benefits, workers' compensation, or military service/retirement pay.

(c) The possibility that assets have been concealed or improperly transferred by the debtor.

(d) The availability of assets or income that may be realized upon enforced collection proceedings.

(2) Inability To Locate Debtor. Collection action may be terminated on a claim when the debtor cannot be located and:

(a) 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, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) Cost of Collection Will Exceed Recovery. Collection action may be terminated on a claim when the costs of collection, including those of a litigative nature, would exceed the amount recovered. However, in cases involving a substantial legal issue or an issue that might effect enforcement policies or 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. The debt has been discharged in bankruptcy. VA may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Debt collection should be terminated immediately on any debt where the debtor has filed for a Chapter 7 "No Asset" bankruptcy. If the notice refers to Chapter 7 Bankruptcy, there is no indication on the pleadings that it is a "No Asset" case, and if:

(a) VA's receivable is \$5,000 or greater, the Chief of the Fiscal 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 Regional Counsel. Otherwise, collection action will be terminated.

(b) VA's receivable is under \$5,000, the Chief of the Fiscal Activity will terminate collection action.

(7) Death Cases. For benefit overpayments created because of the death of a veteran or beneficiary:

(a) If the account balance is under \$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 six months has lapsed since the date of death.

(b) If the balance is over \$2,000, and not more than 11 months has lapsed since date of death, the Chief of the Fiscal Activity should send a letter to the probate court to determine if an estate exists.

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

7. REQUISITES FOR MAKING THE TERMINATION DECISION

a. In reviewing a case for termination, decisions are to be based on as much of the documented information, indicated below, that is applicable to the particular case:

(1) Statement of the amount of indebtedness, indicating any credit; i.e.,

- (a) the original principal amount of the debt,
- (b) principal reduction, if any, (including reduction by offset of VA benefits),
- (c) current principal balance,
- (d) current accrued interest, if any,
- (e) other current accrued costs or charges, if any, and
- (f) total current amount of indebtedness.

(2) Itemized statement of allowances due the debtor from VA for educational assistance, disability compensation, pension, insurance, or other benefits.

(3) VA Form 5655, Financial Status Report, or a current credit report on the debtor, and/or verification of employment.

(4) For ineligible hospitalization or emergency care debts, a statement that all means of recovery from Medicare and Medicaid programs have been exhausted, or that neither is applicable and stating the reasons why.

(5) For vendor debts, a statement that VA's payment data has been reviewed to ensure that the vendor is not doing business with other VA offices and there are no payments due the vendor from VA which could be offset.

(6) When the debtor has not been located:

(a) Whether there was any security for the debt, and if so, the status of the liquidation of the security.

(b) The applicable statute of limitations, the date it began to run; whether it has expired. Additionally, whether and when it started running anew, if tolled.

(c) Whether or not the debtor executed a promissory note and, if so, its status.

(d) Known possibilities of collection by offset in the future and such information, as is available, as to a probable date of offset, source, and amount.

(e) Circumstances showing the likelihood of the debtor's future acquisition of assets which could be reached to satisfy or substantially reduce the debt.

(f) Statement of efforts made to locate the debtor.

8. TERMINATION REQUIREMENTS AND ASSOCIATED REFERRAL GUIDELINES

a. Debts owed to VA may be terminated only after the conditions described below have been met. Multiple debts owed to VA by one individual must be consolidated in order to determine dollar thresholds. Claims may not be subdivided solely to justify their termination because "Cost of Collection Will Exceed Recovery."

b. VBA Debts under \$25. VBA benefit debts, excluding interest and other charges, should be terminated if the debtor is not receiving VA benefits that can be offset and when one or more of the following conditions exist:

- (1) The first collection letter is returned marked "no forwarding address," or
- (2) No payment or reply is received within 30 days of the date of a second collection letter, or
- (3) The debtor refuses to pay, or
- (4) No additional payments are received on the debt and it has been 60 days from the date of the last payment.

c. VHA Debts under \$25. First party medical debts should be maintained 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 can be offset.

d. Other Debts under \$25. Assuming there exists no opportunity for collection by involuntary offset, the Chief of the Fiscal activity, or designee, may terminate nonbenefit debts, such as erroneous payment of pay and allowances (for ex-employees), travel overpayments, vendor overpayments, and FOIA charges when one or more of the conditions described in paragraph 8.b exists. (Note: multiple debts owed by one individual must be consolidated in order to determine dollar thresholds).

e. Debts \$25 or more (excluding interest and other late payment charges) and under \$600 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 if there are indications further collection attempts will not result in the voluntary liquidation of the receivable.

(1) Before being terminated, these debts will be screened to determine if they meet the criteria for referral to the TOP. Debts that are referred to TOP but do not result in a collection because the debtor was not due any federal payments within at least one year after referral must be reviewed for appropriate disposition, i.e., suspension, termination, or enforced collection action. Debts that do not meet the criteria for TOP referral should be terminated.

(2) For debts that have been referred for TOP and partially collected via offset, any debt with a remaining balance less than \$25 should be terminated.

f. Debts not in excess of \$40,000. The Chief of the Fiscal activity or designee may terminate debts not in excess of \$40,000 (excluding interest and other late payment charges) when the requisites for termination in paragraph 6 have been met.

g. Debts over \$40,000 but not in excess of \$100,000. In accordance with VA Directive 4800, Debt Management, authority to terminate these debts is dependent upon the delegations of authority from the Administration Chief Financial Officers (CFOs). Authority to terminate debts up to \$100,000 has been granted to the CFO for each administration. It is left to the discretion of each CFO to retain this authority or to redelegate it to whatever level is deemed appropriate.

h. Debts over \$100,000, exclusive of interest and other charges, which meet the criteria for termination, are to be submitted, together with a Claims Collection Litigation Report (CCLR), to the RC of jurisdiction for review and approval. The RC will then

forward the case to VA Central Office (VACO)(047GC1). VACO will review the requests and submit them to DOJ for approval.

i. Regardless of amount, the Chief of the Fiscal activity or designee may terminate a debt if:

(1) Debt is Discharged in Bankruptcy. A debt will be terminated when the RC states 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 because of bankruptcy without the written advice of the RC.

(2) 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) is to be terminated.

(3) Debt is Compromised. Any portion of a debt that is compromised by VA (Fiscal Officer/COWC/RC) or DOJ is to be written off.

(4) Debt is Legally Without Merit. A debt will be terminated when the RC states, in writing, that the claim is legally without merit.

(5) Debt is an Education Loan Debt. An education loan debt must by law be terminated if a borrower dies or becomes permanently and totally disabled after receipt of the loan (38 U.S.C. §3698(e)(2)).

(6) Debt Cannot be Offset. The debt does not meet the criteria for referral for the TOP, for VA benefit offset (benefit debts only), or for VA salary offset.

(7) Debt Has Been Referred for Litigation. After referral of a debt for litigation, the U.S. Attorney or RC having jurisdiction advises that the file is closed and the reason for closing the file is because the account is uncollectible.

(8) Debtor is Deceased. The debtor is deceased and left no estate, or recovery from the estate cannot be effected.

j. Entitlement Charging and Restoration

(1) When an education debt is written off because of waiver, compromise, bankruptcy, or uncollectibility, entitlement is charged equivalent to the amount written off. To restore the entitlement charged as a result of the write-off, the debt must be paid in full.

(2) Basic loan guaranty entitlement is reduced by entitlement used to obtain a direct, guaranteed, or insured housing loan. If the loan is defaulted and VA incurs a loss on such loan, the loss must be paid in full to restore previously used entitlement.

9. CLOSED OUT ACCOUNTS AND CURRENTLY NOT COLLECTIBLE ACCOUNTS

a. Office of Management and Budget (OMB) Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, defines a "closed out" debt as a debt that is determined to be uncollectible and is terminated, is satisfied at less than face value, or is forgiven (such as a waiver), **and** has been reported to the IRS as taxable income to the debtor. A decision to close out the account terminates all collection activity permanently, i.e., the debt may not be reestablished at some future time for further

collection action. However, this does not preclude voluntary repayments of a debt at any time.

b. A terminated debt that has not been closed out and reported to the IRS as taxable income is removed from the Department's records for accounting purposes, but may be reestablished in the future if prospects for collection improve. Because terminated benefit debts are no longer reported to IRS as taxable income, none of them are ever actually "closed out." Even though they have not been closed out, terminated nonmedical benefit debts can only be reestablished in restricted circumstances because of data processing limitations inherent in current systems. (See NOTES 4 and 5 for cases in which a terminated benefit debt may be reestablished.) Other terminated debts that have not been closed-out may be reestablished any time it appears they have become collectible (assuming the Department otherwise retains authority to collect the debt and has access to relevant historical collection activity).

c. If systems allow, a terminated debt that is not closed out and that has been referred to the Treasury Department for offset (TOP) or cross-servicing may remain at the Treasury Department as long as it is less than ten years old. Terminated debts that are not closed out may also be referred to Treasury if they were not previously referred. For reporting purposes, these debts should be classified as "currently not collectible" on the Treasury Report on Receivables Due from the Public. As with all terminated debts, they do not appear on the Department's financial statements. For debt management systems that cannot facilitate the maintenance of currently not collectible debts, future system enhancements should be planned to include this capability. Ideally, most debts that have not been collected within two years and are 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.

NOTE 1: *A compensation debt where the debtor has been authorized compensation benefits but is not in a payment status due to the prior receipt of severance or readjustment pay will not be terminated.*

NOTE 2: *A Chapter 32 debt will not be terminated when there are still unused participant contributions remaining in an individual's record.*

NOTE 3: *Debts of current employees, employees who have transferred to other Federal agencies, or employees who have funds in retirement accounts will not be written off without the written consent of the Office of Financial Policy (VACO/047GC).*

NOTE 4: *A "WRITE-OFF FLASH-DMC" for terminated loan guaranty debts on a veteran-debtor is to be forwarded by the Debt Management Center (DMC) to the regional office of jurisdiction for filing in the claims folder. Terminated loan guaranty debts will be reinstated should the veteran wish to pay his debt in full to restore previously used entitlement or if requested by the DMC.*

NOTE 5: *A terminated nonmedical benefit debt that has not been closed out may be reestablished for collection only if the debtor becomes entitled to VA benefits which can be offset or if the debtor submits payment in full or an acceptable compromise payment for the debt.*