

TREASURY OFFSET PROGRAM AND TREASURY CROSS SERVICING

- 1. REASON FOR ISSUE:** To issue Department of Veterans Affairs (VA) debt management procedures for implementing the requirements of the Debt Collection Improvement Act of 1996.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook standardizes Departmentwide procedures for the referral of debts to the Treasury Offset Program and Treasury Cross-Servicing Program.
- 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:** None.

**CERTIFIED BY:
SECRETARY**

/S/

Edward F. Meagher
Acting Assistant Secretary for
Information and Technology

**BY DIRECTION OF THE
OF VETERANS AFFAIRS**

/S/

William H. Campbell
Assistant Secretary for Management

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TREASURY OFFSET PROGRAM AND TREASURY CROSS SERVICING

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TREASURY OFFSET PROGRAM AND TREASURY CROSS SERVICING

1. PURPOSE AND SCOPE. This handbook establishes standardized department-wide procedures for the referral of debts for the Treasury Offset Program (TOP) and for cross servicing. This handbook does not apply to third-party medical care receivables, as these do not represent debts of a sum-certain amount. However, this handbook does apply to co-payments, not offset by third-party payments, incurred by individuals for medical treatment and prescriptions.

2. RESPONSIBILITY. The Chief of the Fiscal Activity must ensure that appropriate procedures in accordance with this handbook are followed when performing referrals for TOP or cross servicing.

3. AUTHORITY

a. Under the Debt Collection Improvement Act of 1996 (DCIA), (Pub. L. 104-134), all federal agencies are required to refer past due, legally enforceable, nontax debts that are more than 180 days delinquent to the Department of the Treasury (Treasury) for collection by administrative offset and for cross servicing. A debt is considered 180 days delinquent if it is 180 days past due and is legally enforceable. A debt is legally enforceable if there has been a final agency decision that the debt, in the amount stated, is due and there are no legal bars to collection action.

b. The procedures contained in this handbook do not apply to debts or claims arising under the IRS Code of 1954, as amended, the Social Security Act, or the tariff laws of the United States, or to 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).

c. This chapter does not preclude debtors from requesting waiver of an overpayment under 38 U.S.C. 5302, 5 U.S.C. 5584, or any other similar provision of law, nor does this chapter in any way preclude questioning of the amount or validity of a debt or preclude the exercise of any other appellate procedure available to debtors.

4. TREASURY OFFSET PROGRAM (TOP)

a. **Overview.** The TOP is mandated by the Debt Collection Improvement Act of 1996. TOP is the centralized administrative offset program to collect debts owed to the Government by offset from most Federal payments. TOP incorporates the old IRS tax refund offset program, as well as the Federal salary offset program. TOP also collects debts by offsetting other Federal payments, such as payments to vendors and certain benefit payments, including some social security benefits subject to dollar thresholds. In accordance with 38 U.S.C. §§5301 and 5314, VA benefit payments are exempt from being offset to collect any debts other than VA benefit debts.

b. **Eligibility for Referral.** With the exceptions discussed below, all VA receivables more than 180 days delinquent must be referred for TOP. Before referral, the debtor must have been given proper notification 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 VA Handbook

4800.1, VA Collection Standards, paragraph 4.c.). Even if this notification has been previously provided to the debtor in a dunning notice or bill as required by VA Handbook 4800.1, an additional notice should be sent to the debtor to advise of VA's intent to refer to TOP once the debt has been identified as eligible for referral. This notice should be sent at least 30 days before the debt is to be referred and must advise the debtor that referral can be avoided by contacting VA and arranging to pay the debt. Debts that are at least 60 days delinquent may be referred, at the discretion of the Fiscal Officer, but debts over 180 days delinquent must be referred unless they are exempt. Per VA Directive 4800, Debt Management, paragraph 5.g., debts become delinquent 30 days after the debtor is billed or mailed notification of the debt, or 30 days after the debtor has reneged on an agreed payment plan. Debts that are in current payment plans are not considered delinquent. Debts that are exempt from referral are limited to:

- (1) Debts in bankruptcy proceedings.
- (2) Third party medical insurance claims.
- (3) Debts that are in a mandatory waiver or appeal process.

(4) Home loan debts that are in foreclosure proceedings. 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 foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding and VA anticipates that proceeds will be available from the liquidation of the collateral for application to the debt.

(5) Debts that are in litigation. A debt is in litigation if the debt has been referred to 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.

(6) Debts with a balance of less than \$25.

(7) Debts for which VA does not have a SSN or TIN (may still be referred for cross servicing).

(8) Debts for which VA has been unable to provide due process.

(9) Debts that are not legally enforceable (must be able to explain why).

(10) Any other exemptions from referral must be agreed to by the Office of Financial Policy (047GC), as well as by Treasury.

c. Referral Process.

(1) The instructions for referring debts for TOP are found at the Treasury Financial Management Service's (FMS) website (<http://www.fms.treas.gov/debt/top.html>). In referring debts to Treasury, VA must certify that the debts are past due and legally enforceable and VA has complied with all due process requirements by providing written notice 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, the opportunity for a review of the determination of indebtedness, and an opportunity to make a written agreement to repay the debt.

(2) Currently, all referrals must be submitted to the Debt Management Center (DMC) for inclusion in a consolidated VA submission for TOP. The DMC refers debts at least once a month. Payments and payment information are also processed through the DMC, as are other updates from Treasury. Updates from VA to Treasury may be passed through the DMC or may be input directly if Treasury FMS gives your office the ability to update the TOP database directly. More information on this and all other aspects of TOP may be found at the website above, or you may refer questions to the Cost and Debt Management Service (047GC).

d. **Cross servicing.** If a debt has been or will be referred to Treasury for cross servicing (see paragraph 5 below), and if the cross-servicing agreement governing the debt allows for Treasury to refer the debt to TOP as part of its collection effort, then the debt need not be referred separately for TOP. For smaller debt programs that are not maintained in a centralized database, such as Health Care Professional Scholarship debts or Chapter 32 overpayments, it is advisable to refer only for cross servicing and allow Treasury to submit the debts for TOP. The extra effort and expense of conducting two referrals would not be worth any minimal benefit to VA that may result from lower fees withheld from collections by Treasury for those debts that are referred directly to TOP. Larger programs maintained in highly automated systems, such as those debts managed by the DMC, may be referred separately to each program at the discretion of program managers.

5. TREASURY CROSS SERVICING

a. **Overview.** Cross-servicing referral, like TOP, is mandated by the Debt Collection Improvement Act of 1996 (DCIA). Debts referred for cross servicing will be subjected to certain collection actions by Treasury as specified in a cross-servicing agreement that must be executed for each debt program. These actions by Treasury will usually include at least one dunning letter and possibly an attempt at telephone contact to request payment. Debts that are not immediately paid or resolved upon initial contact will usually be referred by Treasury to a private collection agency and may be referred to the DOJ for litigation. Debts may also be referred to TOP at the program manager's discretion, as noted in the preceding paragraph.

b. **Eligibility for Referral.** With the exceptions discussed below, all VA receivables more than 180 days delinquent must be referred for cross servicing. Before referral, the debtor must have been given proper notification 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 cross servicing (see VA Handbook 4800.1, paragraph 4.c.). Even if this notification has been previously provided to the debtor in a dunning notice or bill as required by VA Handbook 4800.1, an additional notice should be sent to the debtor to advise of VA's intent to refer for cross servicing once the debt has been identified as eligible for referral. This notice should be sent at least 30 days before the debt is to be referred and must advise the debtor that referral can be avoided by contacting VA and arranging to pay the debt. Debts that are at least 60 days

delinquent may be referred, at the discretion of the Fiscal Officer, but debts over 180 days delinquent must be referred, unless they are exempt. Per VA Directive 4800, paragraph 5.g., debts become delinquent 30 days after the debtor is billed or mailed notification of the debt, or 30 days after the debtor has reneged on an agreed payment plan. Debts that are in current payment plans are not considered delinquent. Debts that are exempt from referral are limited to:

- (1) Debts in bankruptcy proceedings.
- (2) Third party medical insurance claims.
- (3) Debts that are in a mandatory waiver or appeal process.
- (4) Home loan debts that are in foreclosure proceedings.
- (5) Debts that are in litigation.
- (6) Debts with a balance of less than \$25.
- (7) Debts that are not legally enforceable (must be able to explain why).
- (8) Any other exemptions from referral must be agreed to by the Office of Financial Policy (047GC), as well as by Treasury.

c. **Referral Process.** The instructions for referring debts for cross servicing are found at the Treasury Financial Management Service's website (<http://www.fms.treas.gov/debt/crossserv.html>). The website provides access to the Cross-Servicing Implementation Guide, which is a useful information source that discusses 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, notice of rights to debtors, fees, the Letter of Agreement, Agency Profile Form, data formats, and reporting information. You may also download various forms to utilize, such as the Agency Profile, and Debt/Debtor Information forms. More information on this and all other aspects of cross servicing may be found at the website above, or you may refer questions to the Cost and Debt Management Service (047GC).