

FREEDOM OF INFORMATION ACT (FOIA) FEES

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 12, Freedom of Information Act (FOIA).
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes the general procedural guidelines for the collection of FOIA fee debts owed to VA.
- 3. RESPONSIBLE OFFICE:** Cash and Debt Management Policy 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 12, dated September 22, 1992.

CERTIFIED BY:

/s/

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

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CONTENTS

PARAGRAPH	PAGE
1. PURPOSE AND SCOPE	5
2. RESPONSIBILITY	5
3. COLLECTION PROCEDURES	5

FREEDOM OF INFORMATION ACT (FOIA) FEES

1. PURPOSE AND SCOPE. This handbook establishes standardized Department-wide procedures for the collection of FOIA fees.

2. RESPONSIBILITIES.

a. The Chief of the Fiscal Activity must ensure that appropriate procedures in accordance with this handbook are followed when collecting FOIA fee debts, as required by 38 CFR 1.555(g)(5). Any reference in this handbook to the Fiscal Activity also includes the Debt Management Center (DMC) where appropriate.

b. In accordance with FOIA (5 U.S.C. §552(a)(4)(A)(iv)(I)), VA is precluded from collecting FOIA fees where the costs of routine collection and processing equal or exceed the fee to be collected.

c. FOIA governs all aspects of the production of records under that statute, including the decision whether, and under what circumstances, to waive FOIA fees. The standards governing agencies' waiver of FOIA fees are contained in guidance issued by OMB, 52 Fed. Reg. 10012 (1987). Further, FOIA (5 U.S.C. §552(a)(4)(A)(vii)) establishes a process culminating in court proceedings for determining whether a FOIA fee waiver is appropriate. FOIA is subject to the general Federal 6-year statute of limitations for challenging VA's actions, including its actions in regard to a FOIA fee waiver decision, under 28 U.S.C. § 2401(a).

3. COLLECTION PROCEDURES

a. FOIA authorizes the release of information (with some restrictions) from the files, records, reports, and other papers and documents in VA custody. 38 CFR 1.555 establishes fees that are to be charged to requesters for the cost VA incurs in complying with and releasing information under FOIA. If the allowable charges that a requester may be required to make are likely to exceed \$250, or if a requester has previously failed to pay a FOIA request fee in a timely fashion, VA may require the requester to make an advance payment. Otherwise, FOIA requesters will generally receive their documents before they are required to pay a fee. If a requester does not pay charges billed for disclosure of records, the collection procedures authorized by 31 CFR Parts 901-904, and VA implementing regulations 38 CFR 1.900 et seq., are to be used. In addition, VA is to charge interest, administrative costs, penalties, and other charges on debts that requesters fail to pay timely in accordance with procedures found in VA Handbook 4800.9.

b. The FOIA Officer should advise the local fiscal activity in the event of non-payment of a FOIA fee in order to establish an accounts receivable in the requester's name. After the establishment of a receivable, the fiscal activity is responsible for all collection action. The first demand letter issued by the fiscal activity will advise the requester of the consequences of failure to pay the fee within 30 days of the date of the letter, including the assessment of interest, administrative costs, penalties, and other charges; referral to credit reporting bureaus, private collection agencies, and the Department of the Treasury for

further collection action. The requester will also be advised that he or she can submit a request to the local fiscal activity for a repayment plan.

c. The FOIA officer will immediately advise the fiscal activity of receipt of any dispute or request for fee waiver from the requester. Likewise, the fiscal activity will immediately advise the FOIA officer of receipt of any dispute or request for fee waiver from the requester. Collection action will be suspended in the event of a dispute or fee waiver request and will remain suspended until resolution.

d. A requester's check or money order that is received in payment for a FOIA fee will be deposited by the local fiscal activity in the Miscellaneous General Receipt Fund (36F3220).