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# Treasury Financial Manual

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Transmittal Letter No. 668

Volume I

To: Heads of Government Departments, Agencies, and Others Concerned

## 1. Purpose

This transmittal letter releases new I TFM 4-4000, Debt Management Services Collection of Delinquent Nontax Debt. This chapter describes how the U.S. Department of the Treasury's Financial Management Service (FMS) provides delinquent nontax debt collection services for Federal agencies. It describes:

- Federal agencies' responsibilities to transfer eligible delinquent debts to FMS for collection action;
  - FMS's responsibilities to provide delinquent debt collection services for Federal agencies;
- AND
- Fees charged by FMS for delinquent debt collection services.

## 2. Page Changes

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## 3. Effective Date

This transmittal letter is effective immediately.

#### 4. Inquiries

Direct questions concerning this transmittal letter to:

Debt Management Services  
Financial Management Service  
Department of the Treasury  
401 14th Street, SW., Room 446  
Washington, DC 20227  
Telephone: 202-874-3810  
Email: [debt-tfm@fms.treas.gov](mailto:debt-tfm@fms.treas.gov)

A handwritten signature in black ink, appearing to read "D. Lebryk", is positioned above the printed name and title.

Date: October 18, 2011

David A. Lebryk  
Commissioner

## Part 4—Chapter 4000

# Debt Management Services Collection of Delinquent Nontax Debt

This Treasury Financial Manual (TFM) chapter describes how the U.S. Department of the Treasury's Financial Management Service (FMS) provides delinquent nontax debt collection services for Federal agencies. It describes:

- Federal agencies' responsibilities to transfer eligible delinquent debts to FMS for collection action;
  - FMS's responsibilities to provide delinquent debt collection services for Federal agencies;
- AND**
- Fees charged by FMS for delinquent debt collection services.

### Section 4010—Background

Federal agencies are required to aggressively pursue collection action on all debts arising out of their activities. Debts owed to the United States can arise from various Federal Government programs and actions, including loan and loan guarantee programs; overpayments to beneficiaries, Federal employees, or contractors; or penalties and fines owed from violations of law, etc. Each Federal agency should establish and implement effective collection strategies that suit its needs. Collection strategies must meet all statutory and regulatory requirements, and should include use of all authorized and appropriate debt collection tools. One such tool is the referral of nontax debts to FMS for debt collection services.

The Debt Collection Improvement Act of 1996 (DCIA) generally requires Federal agencies to transfer any nontax debt delinquent over 180 days to FMS for debt collection services. After transfer, FMS must take appropriate action to service, collect, compromise, or suspend or terminate collection action on

the debt (commonly referred to as "Cross-Servicing").

FMS has been providing delinquent debt collection services to Federal agencies since the enactment of the DCIA in 1996. Before publication of this TFM chapter, FMS and Federal agencies entered into Letters of Agreement describing their respective roles and responsibilities. This TFM chapter replaces and supersedes all existing Letters of Agreement. To the extent that this TFM chapter changes current processes, FMS will work with each Federal agency to implement the provisions of this TFM chapter.

### Section 4015—Scope

There are two provisions requiring Federal agencies to submit debts to FMS for collection:

- 31 U.S.C. § 3711(g) requires Federal agencies to transfer any nontax debt delinquent over 180 days to FMS for general debt collection services;

AND

- 31 U.S.C. § 3716(c)(6) requires Federal agencies to notify FMS of all nontax debts delinquent over 180 days for purposes of administrative offset.

The provisions of this TFM chapter:

- Apply to all Federal agencies that are required or authorized to transfer debts to FMS per 31 U.S.C. § 3711(g);

AND

- Govern the collection of debts required to be, or that have been, transferred to FMS per 31 U.S.C. § 3711(g).

Upon timely referral of a debt to FMS per 31 U.S.C. § 3711(g), the Federal agency also complies with the requirement to notify FMS of delinquent debts for administrative offset purposes, per 31 U.S.C. § 3716(c)(6), if the Federal agency authorizes FMS in the agency profile form to fulfill this requirement on its behalf.

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**Section 4020—Definitions**

The following terms are defined for the purposes of this TFM chapter.

**Agency or Federal Agency**—A department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

**Agency Profile Form**—The document(s) the creditor agency completes to provide information to FMS about the creditor agency's debt collection program, including, among other things, relevant statutory and regulatory authorities, general descriptions of each type of debt arising out of the creditor agency's operations, and contact information for the creditor agency's personnel who are available to assist FMS with questions related to the transferred debt. The agency profile form is an FMS document that FMS sends to Federal agencies for completion.

**Creditor Agency**—Any Federal agency that is owed a delinquent nontax debt.

**Debt**—Has the same definition as set forth in 31 U.S.C. § 3701(b). Debt includes any amount of money, funds, or property that has been determined by an agency official of the Federal Government to be owed to the United States by a person. As used in this TFM chapter, debt does not include a debt arising under the Internal Revenue Code of 1986.

**Debtor**—A person who owes a debt to the United States.

**Eligible Debt**—A debt that is valid, legally enforceable, and has no legal bars to collection.

**Internal Offset**—Withholding of funds payable to the debtor by the creditor agency to satisfy a debt owed by the debtor to the creditor agency.

**Nonexempt Debt**—An eligible debt that has been delinquent for 180 days. Nonexempt debts do not include debts that, as further set forth by 31 CFR § 285.12(d), are in litigation, foreclosure, or forbearance; are being collected by

internal offset; or, have been scheduled for sale.

**Person**—An individual, corporation, partnership, association, organization, State or local government, or any other type of entity, other than a Federal agency.

**Recall**—As set forth in subsection 4035.60, Recall and Return Transferred Debt, the notification by the creditor agency to FMS that FMS must cease its debt collection efforts for a particular debt and that the responsibilities for servicing, collecting, or compromising the debt, or for suspending or terminating collection action on the debt, have been transferred back to the creditor agency.

**Return**—As set forth in subsection 4040.50, Return Transferred Debt, the notification by FMS to the creditor agency that FMS has ceased collection efforts on behalf of the creditor agency and that the responsibilities for servicing, collecting, or compromising the debt, or for suspending or terminating collection action on the debt, have been transferred back to the creditor agency.

**The Freedom of Information Act**—The Freedom of Information Act (5 U.S.C. § 552), as amended.

**The Privacy Act**—The Privacy Act of 1974 (5 U.S.C. § 552a), as amended.

**Treasury Offset Program (TOP)**—The centralized offset program administered by FMS to collect delinquent debts owed to Federal agencies and States by withholding payments owed to debtors by Federal agencies and States, per 26 U.S.C. § 6402(d), 31 U.S.C. § 3716, 31 U.S.C. § 3720A, and other applicable laws.

**Transfer**—The referral of the responsibilities for servicing, collecting, or compromising a delinquent debt, or for suspending or terminating collection action on a delinquent debt, from the creditor agency to FMS. For accounting and reporting purposes, however, the debt remains on the books and records of the creditor agency.

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**Section 4025—General Rule**

Creditor agencies must transfer all nonexempt debts that are delinquent more than 180 days to FMS for debt collection services. FMS strongly encourages creditor agencies to transfer all eligible delinquent debts to FMS for debt collection services before they are delinquent 180 days. FMS provides delinquent debt collection services to creditor agencies in compliance with applicable law. Creditor agencies are strongly encouraged to use all available debt collection tools.

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**Section 4030—Authority**
**4030.10—FMS Authority to Service Debts and Promulgate Regulations**

This TFM chapter is issued under the authority of Section 31001(m)(1) of the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-358 (1996), codified at 31 U.S.C. § 3711(g), and corresponding regulations codified at 31 CFR § 285.12. FMS, as a designated debt collection center, is responsible for collecting and otherwise servicing transferred debts. FMS is also responsible for promulgating regulations governing the roles and responsibilities of FMS and creditor agencies regarding the collection of delinquent Federal nontax debt.

**4030.20—FMS Authority to Charge Fees**

Per 31 U.S.C. § 3711(g)(6), FMS is authorized to charge fees to creditor agencies to cover FMS's costs of servicing transferred debts. Per 31 U.S.C. § 3717(e), creditor agencies are generally required to charge debtors for the costs of collection, including the fees charged by FMS for the servicing of such debts. For a further discussion of fees and costs, see Section 4045, Fees and Costs.

### **4030.30—FMS Authority to Compromise Debts and/or Collect Debts in Installments**

Per 31 U.S.C. §§ 3711(g)(1)(B), 3711(g)(4), and 3711(g)(5), and the authority delegated to FMS by the Department of Justice, FMS is authorized to take appropriate action to collect or compromise transferred debts. With regard to debts that have been transferred to FMS for debt collection services, FMS has the same authority available to the head of the creditor agency to compromise transferred debts or collect transferred debts in installments.

In addition, the Department of Justice has delegated to FMS the authority to compromise debts with a principal balance of up to \$500,000. FMS may accept proposed compromises of debts with a principal balance of over \$500,000 only with the approval of the Department of Justice.

FMS may collect and/or compromise debts in accordance with applicable Federal law, including the Federal Claims Collection Standards (31 CFR Parts 900-904). Prior to transferring debts, the creditor agency must provide to FMS a detailed description of any agency or debt-specific laws, policies, and procedures that govern the compromise and/or collection of its debts. See subsection 4035.10, Complete an Agency Profile Form.

### **4030.40—FMS Authority to Suspend and/or Terminate Collection Action**

Per 31 U.S.C. §§ 3711(g)(1)(B), 3711(g)(4), and 3711(g)(5), and the authority delegated to FMS by the Department of Justice, FMS is authorized to terminate collection action on transferred debts with a principal balance of up to \$500,000. FMS may approve the termination of collection action for debts with a principal balance of over \$500,000 only with the approval of the Department of Justice.

Per subsection 4035.20, Certify Debt, when a creditor agency transfers a

debt to FMS, the creditor agency certifies that the debt is valid, legally enforceable, and that all requisite due process has been completed. FMS may, but is not obligated to, suspend collection activity if FMS determines that the creditor agency's certification is incomplete, inaccurate, or unreliable, or if FMS determines that facts have changed since the creditor agency certified the debt and the debt is no longer valid and/or legally enforceable. In addition, FMS may suspend and/or terminate collection action in accordance with applicable Federal law, including the Federal Claims Collection Standards (31 CFR Parts 900-904).

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## **Section 4035—Creditor Agency Responsibilities**

### **4035.10—Complete an Agency Profile Form**

Each creditor agency must identify the programs for which FMS's debt collection services are required or desirable. For each such program, before transferring debts to FMS, the creditor agency must complete an agency profile form. Creditor agencies may combine programs with the same requirements on one agency profile form. Creditor agencies must update this form as necessary to reflect program changes. The agency profile form must be in the medium or media that FMS directs.

The creditor agency must, in the agency profile form, advise FMS of any statutory or regulatory provisions that uniquely affect its collection activities. The creditor agency should also describe any relevant policies it has with regard to the collection of its transferred debts.

If the head of the creditor agency does not have full authority with regard to the compromise of its debts and/or the collection of its debts in installments (or if there is a legal prohibition on the delegation of this authority to FMS), the creditor agency must fully describe such limitations in the agency profile form, including citations to specific legal authorities. The creditor agency also

must describe thoroughly the specialized process through which these debts can be compromised and/or collected in installments, including the relevant factors that would be considered through this specialized process. For these debts, the creditor agency must approve or disapprove any compromise agreements proposed by FMS within 10 business days of such a request, or within such other time period as allowed by FMS.

### **4035.20—Certify Debt**

The creditor agency must execute an annual written agreement with FMS certifying, among other things, that, at the time of the transfer of any debts:

- The debts are delinquent.
- The debts are valid.
- The debts are legally enforceable in the amount stated.
- There are no legal bars to collection.

AND

- The creditor agency has completed all requisite due process.

For the purpose of this certification requirement, the term "transferring debts" includes the transfer to FMS of any information or documentation related to a debt; any documentation or information related to a debtor; and any updates, changes, corrections, or modifications made to any debts or debtor information previously transferred to FMS.

The creditor agency must ensure that any person authorized to transfer a debt to FMS for the creditor agency understands that, by transferring the debt, he or she is making a certification to FMS under penalty of perjury. The creditor agency must ensure that only appropriate persons are authorized to transfer debts to FMS.

**4035.30—Comply With Relevant Laws and Authorize Use of All Appropriate Debt Collection Tools**

The creditor agency must comply with all relevant statutes and regulations, and must advise FMS of any statutory or regulatory provisions that uniquely affect the creditor agency’s debt collection activities. In the agency profile form, creditor agencies must authorize FMS to use all collection tools listed in subsection 4040.10, Collect and Compromise Transferred Debt, or provide a specific explanation of why a collection tool is not legally authorized. Alternatively, if, in consultation with FMS, the creditor agency determines that the use of a particular collection tool is not in the best interest of the Government, then the creditor agency must provide to FMS a written explanation of its determination. FMS, in its discretion, will make the final determination regarding whether the use of a collection tool is not in the best interest of the Government.

Creditor agencies must establish regulations and/or procedures with regard to:

- Collection of delinquent debt, generally;
- Collection of delinquent debt through administrative offset (including salary offset) and tax refund offset;
- Reporting delinquent debt to credit bureaus;
- Collection of delinquent debt through administrative wage garnishment;
- Responding to debt disputes and credit bureau disputes;
- Responding to requests for additional information and, if applicable, requests to accept proposed compromise or installment agreements;

AND

- Collection of delinquent debt through any other debt collection tools for which regulations and/or

established procedures are required.

Creditor agencies should consult with their counsel for assistance with establishing regulations and/or procedures.

**4035.40—Transfer Eligible Debts to FMS; Provide Debt and Debtor Information to FMS**

Creditor agencies must transfer all nonexempt debts that are delinquent more than 180 days to FMS for debt collection services, and are strongly encouraged to transfer all eligible debts sooner. After transfer, the creditor agency should cease all collection activity and communication with the debtor and must refer all inquiries from the debtor to FMS. The creditor agency remains solely responsible at all times for ensuring the continued validity and enforceability of the debt.

Before transferring a debt to FMS, the creditor agency must make written demand on the debtor for payment and must provide the debtor with all required due process.

At the time of transfer, the creditor agency must provide FMS, in the medium or media that FMS directs, the following information:

- Name of the debtor;
- Address of the debtor, if available;
- Taxpayer identification number, if available;
- Principal balance of the debt;
- Date on which the debt became delinquent;
- Applicable statute of limitations for pursuing litigation, if available;

AND

- Any other information FMS requires to be included in the transfer file.

In addition, at the time of transfer or as soon thereafter as practicable, the creditor agency must provide FMS with accurate, appropriate information, in the

medium or media that FMS directs, to facilitate the performance of FMS’s debt collection operations and to support the validity of the debt, including, if applicable:

- Copies of signed promissory notes;
- Copies of citations and/or notifications of fines or penalties;
- Copies of initial demand letters establishing debts;
- Copies of due-process notices;

AND

- Any other supporting documentation, as appropriate or as may be requested by FMS.

The creditor agency must, at the time of transfer and from time to time as it receives updated information, provide FMS with information about a debtor, in a timely manner, including:

- Updated addresses;
- Taxpayer identification numbers;

AND

- Other information needed to collect debts.

The creditor agency must reply within 10 business days to any request by FMS for information regarding a transferred debt or debtor, including requests for:

- Relevant documentation or accounting records.
- Information needed to respond to inquiries resulting from the Government’s collection efforts. Such inquiries may be from Congress, inspectors general, requestors under the Freedom of Information Act or the Privacy Act, or other relevant parties.

AND

- Information needed to respond to a dispute (whether received from the debtor or another source).

The creditor agency must promptly conduct all required reviews and hearings or must authorize FMS to do so on its behalf pursuant to a written agreement.

The creditor agency must promptly notify FMS about any litigation resulting from FMS's collection efforts or impacting the Government's debt collection authorities. The creditor agency also must assist FMS in defending litigation, resulting from FMS's collection efforts. In addition, with regard to FMS's efforts to collect debt through litigation, the creditor agency must, upon request, assist FMS by providing supporting documentation, live witnesses, and other litigation support.

#### **4035.50—Maintain Records**

The creditor agency must maintain timely and accurate delinquent debt records, including updated information such as debtor information and debt balances. The creditor agency remains the owner of the debt throughout the debt collection process.

Per subsection 4040.30, Modify Records, FMS will, if appropriate, update and/or modify its delinquent debt and debtor records with information obtained from its skiptracing and asset-location services. The creditor agency must notify FMS as soon as it learns that any such updates or modifications to such records are incorrect.

#### **4035.60—Recall and Return Transferred Debt**

The creditor agency must recall a transferred debt if:

- The debtor has filed for bankruptcy and the automatic stay is in effect.
- The debt is not enforceable.
- The debt is not delinquent.
- The debt is not valid or has been paid in full.
- The creditor agency discovers that it incorrectly certified the debt.

OR

- The creditor agency discovers any other reason that would render its certification invalid.

Upon the recall of a debt in accordance with this section or the return of a debt by FMS in accordance with subsection 4040.50, Return Transferred Debt, the creditor agency must service, collect, or compromise the debt, or must suspend or terminate collection action on the debt. If the creditor agency determines that termination of collection action is authorized and appropriate, it should consider whether administrative offset per 31 U.S.C. § 3716 might still be appropriate.

The creditor agency may transfer previously returned or recalled debts back to FMS for servicing, if appropriate.

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### **Section 4040—FMS Responsibilities**

#### **4040.10—Collect and Compromise Transferred Debt**

FMS, or its private collection contractor in accordance with FMS's contract requirements, will take appropriate action to collect and/or compromise transferred debts per applicable statutory and regulatory requirements. FMS, or its private collection contractor, will take one or more of the following actions, if authorized by the creditor agency in the agency profile form, as FMS deems appropriate:

- Send demand letters;
- Call the debtor;
- Refer the debt to TOP;
- Enter into repayment agreements;
- Enter into compromise agreements;
- Refer the debt to private collection contractors;
- Report the debt to credit bureaus;
- Gather information about the debtor, including purchasing credit reports to assist in the collection effort and using skiptracing and asset-location services;

- Administratively garnish wages after:
  - Locating the debtor's employer;
  - Sending any required due-process notice to the debtor;
  - Issuing the garnishment order to the employer;

AND

- Taking necessary steps to enforce the order against the employer, including, if necessary, initiating litigation;
- Refer the debt to the Department of Justice for litigation;
- Report compromised debt to the Internal Revenue Service on the appropriate Form 1099-C, if instructed to do so by the creditor agency;

AND

- Take any additional steps necessary to enforce recovery.

#### **4040.20—Maintain and Update Records**

FMS will make available to the creditor agency sufficient information for the creditor agency to update its delinquent debt records, maintain accurate debt balance information, reconcile its debt information, and run status reports on all collection activities. FMS will provide the creditor agency with a complete accounting of all fees charged (per Section 4045, Fees and Costs), if requested by the creditor agency.

As appropriate, FMS will provide the creditor agency with access to other relevant information regarding transferred debts.

#### **4040.30—Modify Records**

FMS will, if appropriate, update and/or modify its delinquent debt and debtor records with information obtained from its skiptracing and asset-location services. This information may include, among other things, contact information

for the debtor (including mailing addresses, physical addresses, phone numbers, and email addresses), alternative debtor names (including alternative spellings, maiden names, married names, nicknames, and other aliases), taxpayer identification numbers, and employer information.

**4040.40—Respond to Disputes and Inquiries**

FMS, or its private collection contractor in accordance with FMS’s contract requirements, will respond to all debtor inquiries during the time period that FMS is servicing the debt. As necessary, FMS will consult with the creditor agency to assist with its responses.

If a debtor (or someone on the debtor’s behalf) disputes the validity or enforceability of a debt, FMS may, if appropriate, submit such disputes to the creditor agency for resolution. Disputes may be based on assertions that the debt is not owed, that the debt was repaid, that the automatic stay in bankruptcy precludes collection, that the debt was discharged in bankruptcy, or a variety of other bases.

FMS will provide the information necessary for the creditor agency to respond to inquiries resulting from the Government’s collection efforts. Such inquiries may be from Congress, inspectors general, requestors under the Freedom of Information Act or the Privacy Act, or other relevant parties.

FMS will assist the creditor agency in defending litigation resulting from the Government’s collection efforts.

**4040.50—Return Transferred Debt**

FMS may, but is not required to, return a debt to the creditor agency if FMS determines that one or more of the following factors is met:

- The balance of the debt, as reported to FMS by the creditor agency, is \$0.
- FMS has been unable to locate the debtor.

- FMS has been unsuccessful in its debt collection efforts.
- The creditor agency has requested the debt be returned, and FMS, in its discretion, believes that return is appropriate.
- The creditor agency’s certification is incomplete, inaccurate, or unreliable, including because:
  - The debtor has filed for bankruptcy and the automatic stay is in effect.

OR

- The debt is invalid or unenforceable.
  - Facts have changed since the creditor agency certified the debt, and the debt is no longer valid and/or legally enforceable.
  - The debtor (if an individual) is deceased.
  - The debtor (if an entity) is no longer in business and has dissolved in accordance with applicable law.
  - The debtor has an inability to pay.
- OR
- FMS determines that return is appropriate.

A return based on a circumstance above is not a final determination by FMS that such a circumstance exists. The creditor agency must make the final determination about whether the circumstance exists.

**4040.60—Suspend and/or Terminate Collection Action**

FMS may suspend collection action on its own initiative or, if appropriate, at the request of the creditor agency.

If appropriate, upon return of a transferred debt with a principal balance of up to \$500,000, FMS may approve the termination of collection action. Return of a debt, by itself, does not constitute FMS’s approval to terminate collection action. However, unless otherwise specified, if FMS returns a debt with a principal balance of up to

\$500,000 for any of the following reasons, FMS will be deemed to have granted its approval to terminate collection action:

- FMS has been unable to locate the debtor.
- FMS has been unsuccessful in its debt collection efforts.
- FMS has discovered that the debtor (if an individual) is deceased, unless a claim may be filed against the decedent’s estate.

OR

- The debtor (if an entity) is no longer in business and has dissolved in accordance with applicable law.

The creditor agency is responsible for determining whether it is appropriate to terminate collection action.

**4040.70—Credit Collections to the Creditor Agency**

FMS will credit collections (less the fees charged to the creditor agency, per Section 4045, Fees and Costs) to the appropriate Agency Location Code via the Intra-governmental Payment and Collection System (IPAC).

If FMS’s collection efforts result in a collection of funds greater than the total amount of debt owed by a debtor or result in a collection of funds in violation of law, the creditor agency is responsible for refunding such erroneous collections, if such a refund is appropriate. If FMS is aware that an erroneous collection may have occurred, FMS will notify the creditor agency of the possible erroneous collection.

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**Section 4045—Fees and Costs**

**4045.10—Fees Charged to the Creditor Agency**

**4045.10a—FMS Fees**

The creditor agency must pay fees to FMS. The fees are set forth in the Debt Management Services Fee Schedule,



which FMS will make available to creditor agencies. Fees are based on all collections received after the transfer of the debt from the creditor agency to FMS (and before the debt has been returned to or recalled by the creditor agency), other than collections generated by the creditor agency through internal offset.

#### **4045.10b—Other Fees**

In addition to the fees described in subsection 4045.10a, FMS Fees, the creditor agency must pay other fees and charges due to FMS for debt collection-related costs, including fees charged by private collection contractors, the Department of Justice, or the Internal Revenue Service. These fees are set forth

in the Debt Management Services Fee Schedule.

#### **4045.10c—Refund of Fees**

FMS will retain its fees from amounts collected on behalf of the creditor agency, regardless of whether the collection on which the fee is based was, or is required to be, returned by the creditor agency to the debtor.

Notwithstanding, FMS will refund to the creditor agency any fees (if such fees are more than \$10):

- If FMS, through no fault of the creditor agency, collects an amount greater than the debt balance and charged fees on such overcollections;

OR

- If FMS erroneously charged the creditor agency a fee, regardless of whether FMS or the creditor agency caused the error.

#### **4045.20—Costs Charged to the Debtor**

Unless prohibited or otherwise provided for by law, the creditor agency, pursuant to 31 U.S.C. § 3717, must charge the debtor for the costs of processing and handling the transferred debts, including any fees the creditor agency is charged by FMS.

The creditor agency must credit each debt with all payments made by a debtor on account of a debt, including payments for fees paid by the creditor agency to FMS.

## **Contacts**

### ***Direct inquiries concerning this TFM chapter to:***

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# TREASURY FINANCIAL MANUAL

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