

GUIDELINES AND STANDARDS FOR COST RECOVERY

Comprehensive Collection Program

Effective July 1, 2012, Penal Code section 1463.007 under Senate Bill 857 (Stats. 2010, ch. 720), amends the standards by which a court or county may recover the costs of operating a comprehensive collection program (Attachment A). Collection costs (with the exception of capital expenditures) may be recovered from the collection of delinquent court-ordered fines, fees, forfeitures, penalties, and assessments imposed on infraction, misdemeanor, and felony cases before revenues are distributed to any other government entity.

A comprehensive collection program is a separate and distinct revenue collection activity that meets the following requirements:

1. Identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator.
2. Complies with requirements of subdivision (b) of Penal Code section 1463.010.
3. Engages in the following activities:
 - a. Attempts telephone contact with delinquent debtors for whom the program has a phone number to inform them of their delinquent status and payment options.
 - b. Notifies delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency.
 - c. Generates internal monthly reports to track collections data, such as age of debt and delinquent amounts outstanding.
 - d. Uses Department of Motor Vehicles information to locate delinquent debtors.
 - e. Accepts payments of delinquent debt by credit card.
4. Engages in at least five (5) of the following activities:
 - a. Sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.
 - b. Sends delinquent debt to the Franchise Tax Board's Interagency Intercept Collections Program.
 - c. Initiates driver's license suspension or hold actions when appropriate.
 - d. Contracts with one or more private debt collectors to collect delinquent debt.
 - e. Sends monthly bills or account statements to all delinquent debtors.
 - f. Contracts with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.
 - g. Coordinates with the probation department to locate debtors who may be on formal or informal probation.

- h. Uses Employment Development Department employment and wage information to collect delinquent debt.
- i. Establishes wage and bank account garnishments when appropriate.
- j. Places liens on real property owned by delinquent debtors when appropriate.
- k. Uses an automated dialer or automatic call distribution system to manage telephone calls.

Amendments to Penal Code section 1463.007 require programs to use at least 10 of 16 collection activity components. The first 5 activities listed in the code must be met, and 5 of the 11 remaining activities may be chosen by the individual collections program.

The amendments to Penal Code section 1463.007 also removed the following activities from the list of components that qualify a program for cost recovery:

- Filing of a claim or objection to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings; and
- Requesting credit reports to assist in locating delinquent debtors.

While programs can no longer count these activities toward meeting the 10 components required for cost recovery, programs still have the legal authority to perform such activities.

Staff Costs

Duty statements, time sheets, or other means of documentation are necessary to substantiate the percentage of time an employee or supervisor spends performing eligible comprehensive collection activities. Allocation of supervisory time is allowable, provided that the cost can be supported by documentation. Estimations are not allowable to substantiate the percentage of time an employee spends performing eligible collection activities. If a collecting entity does not use time sheets, it should be able to support personnel costs by using other means of documentation.

Time studies may be used as an acceptable substitute for actual time sheets, but they need to be representative of the total amount of actual time spent collecting eligible delinquent debt. Supporting documents such as duty statements and work calendars, while not providing actual time data, can provide the needed support to establish the sufficiency of the data collected. When time studies are used in place of time sheets, they must be adequately designed (i.e., of sufficient frequency, duration, and scope) and documented to support the extrapolation of the results to the actual hours spent collecting eligible delinquent debt. The court or county may determine the frequency, duration, and scope of a time study based on operational or staffing changes. Cost of salaries/wages and benefits of comprehensive collections program staff, including supervisory staff are recoverable. Time sheets are recommended for staff spending less than 100 percent of their time working on the comprehensive collection program's eligible debt. Each time sheet must account for all hours worked by the employee. Time sheets are not necessary for employees working 100 percent of their time on the comprehensive collection program.

Other Eligible Costs

Other eligible costs include the following:

- Costs of operating expenses and equipment associated with comprehensive collection program staff (court/county). Operating expenses and equipment should be allocated proportionately to the time worked on the comprehensive collection program.
- Commission costs are cost recoverable and may include those payable to a private collections vendor, the Franchise Tax Board, or an intra-branch program operating under a contract, participation agreement, standard agreement, or a memorandum of understanding (MOU).
- In lieu of developing an indirect cost rate, a program may use a standard rate equal to 10 percent of the direct salaries and wages involved in providing the service (excluding overtime, shift premiums, and fringe benefits). (Refer to the AOC's *Trial Court Financial Policies and Procedures Manual* or to *Office of Management and Budget (OMB) Circular A-87*.)

Eligible costs may be calculated using the sample Cost Recovery Report (Attachment B).

Revenues Collected in a Comprehensive Collection Program

Cost recovery in a comprehensive collection program is limited to revenues collected from the accounts in the program. Revenue collected from eligible accounts in a comprehensive collection program shall be deposited in the court or county treasury, and costs may be recovered before revenues are distributed to other governmental entities or programs. The court or county must be able to distinguish revenues collected from eligible accounts (and their related costs) separately from those accounts that do not meet the statutory requirements of Penal Code section 1463.007.

Separate and Distinct Revenue Collection Activity

A court or county that implements a comprehensive collection program must operate that program as a separate and distinct revenue collection activity. Such an activity is defined as one with the ability to identify and collect revenue owed on eligible accounts. Related costs of collection on eligible delinquent accounts should be documented on an ongoing basis. Collection agencies, the Franchise Tax Board, or an Intra-branch Program may be contracted to provide collection services on eligible delinquent accounts. A court or county collection program must require these collecting entities to maintain separate and distinct revenue collection activity information on eligible accounts. If a program fails to maintain this information, it may result in the disqualification of those programs from inclusion in a comprehensive collection program, as defined in Penal Code section 1463.007.

Distribution of Revenues

Revenues collected from accounts in a comprehensive collection program must be distributed monthly as required by other provisions of law and by Appendix C of the *Manual of Accounting*

and Audit Guidelines for Trial Courts. If a program’s operating costs for a given month exceed revenues collected, the excess costs may be carried forward within the same fiscal year (except for June collections) until eligible revenues are available to fully recover the eligible costs. For example, operating costs for June collections are “taken off the top” as part of the June reporting in accordance with local requirements and statute, but not more than 45 days after the month of collection or August. The net revenues (after cost recovery) available for distribution should be allocated to those accounts on which collections were made. Net revenues should be prorated to each distribution component of the account. Therefore, distributions to state, county, city, and court should be reduced by the eligible comprehensive collection costs in proportion to their share of the total revenues. However, victim restitution orders cannot be reduced and are *not* part of revenues that can be used for cost recovery.

As noted in the *Assembly Bill 3000 Court Surcharge Distribution Guidelines* of the State Controller’s Office, comprehensive collection program costs can be recovered before the other distributions provided in Penal Code section 1203.1d. Therefore, if a delinquent account is collected by installment payments, the costs associated with this program are not priority 4 distributions. However, as with all installment payment distributions, the remaining priorities specified in Penal Code section 1203.1d should be followed. Thus, after victim restitution is paid and the program costs are recovered, the installment payments are applied to distributions in the priority order mandated by that code section, as follows:

- Second priority—20 percent state surcharge
- Third priority—fines, penalty assessments, and restitution fines
- Fourth priority—all other reimbursable costs (such as court operations assessments, civil assessments, and costs unrelated to collection)*

* *Note:* First priority—victim restitution order payments received—are distributed before any program costs are recovered or any distributions are made to other entities.

Cost Recovery—Example

Once the cost of the program for a given month is determined and charged to the account, the remaining amount should then be distributed to the various governmental entities required by any other provision of law.

A comprehensive collection program should charge the cost of collections on a prorated basis, each month, against the revenue collected. An example of the distribution of cost on a prorated basis is depicted in Attachment C. Column A illustrates the percentage used to calculate the cost of collections. Column B illustrates the \$2,506,686 total gross revenue collected for each of the revenue accounts.

Example: The total gross revenue collected in the Courthouse Construction Fund equals \$206,377. The total amount of revenue is \$2,506,686. Therefore, \$206,377 divided by \$2,506, 6865 (100 percent) is 8.2 percent

Column C illustrates the \$464,140 total cost of collections based on the percentage in Column A, as well as the revenue collected for each of the revenue accounts in Column B. The \$2,042,546 in Column D is the net revenue amount that should be distributed to other government entities.

Discharge of Accountability

The court or county may perform collection activities related to the discharge of debt deemed uncollectible. Such activities may include researching and identifying uncollectible debt, preparation of reports, and the application and approval process as defined in Government Code section 25257- 25259.95. Costs may only be recovered in the same fiscal year in which the costs were incurred, with the appropriate documentation.

Definitions

The following definitions are provided to assist with the understanding of the standards for cost recovery.

Account: As used in these guidelines, “account” means an amount due on a case, regardless of the number of violations involved. The term does not refer to a record that was established to consolidate the accounting and record keeping for the collection of multiple cases for that individual.

Accounts Receivable: An accounts receivable is a set of receivables if paid in installments, pursuant to Penal Code section 1205 (d) or that are not paid forthwith.

Capital Expenditures: Capital expenditures must be excluded from the cost of operating a comprehensive collection program. Capital expenditures are made to acquire fixed assets. Fixed assets are tangible property of significant value that have a utility that extends beyond one year and are broadly classified as land, structures, improvements, and equipment. Depreciation associated with capitalized assets is not an allowable cost in a comprehensive collection program. Courts are required to use the \$5,000 capitalization threshold established by the Judicial Council in determining which acquisitions are considered capital expenditures. Counties are required to use the capitalization threshold established by their local Board of Supervisors.

Comprehensive Collections Programs: Comprehensive collections programs collect delinquent fines, fees, penalties, assessments, and forfeitures and meet the criteria under Penal Code section 1463.007. Revenues collected by a comprehensive collections program should be included in the Collections Reporting Template.

Delinquent Account: An account is considered to be delinquent the day after the payment is due regardless of whether an individual owes bail, full payment, or an installment payment. For the

purpose of cost recovery, once debt becomes delinquent it continues to be delinquent and may be subject to collection by a comprehensive collection program.

Enhanced Collections: Enhanced collections are non-forthwith collection activities related to enhancing collection programs where costs are incurred and paid directly by or reimbursed by the county, and are not cost recoverable. These collections are also included in the Collections Reporting Template.

Fines, Fees, Penalties, Assessments, and Forfeitures: Fines, fees, penalties, assessments, and forfeitures include all amounts owed by an individual on an infraction, misdemeanor, or felony case (other than parking).

Forthwith Payments: This collections category involves payments on the same day as the court order and generally involves no 'extra' cost. Forthwith payments are distinguished from enhanced collections primarily by the timing of the payments. Any of these associated costs should not be reported as an enhanced or delinquent collection cost. Forthwith payments are included as a separate category on the Collections Reporting Template.

Installment Payment: Installment payments or time payments are made periodically on an account. Cost recovery does not apply when an individual is paying a fine, fee, penalty, assessment, or forfeiture through time payments, unless he or she is delinquent according to the agreed-upon payment schedule. A delinquent account may be reinstated to installment payments, and costs associated with collection activities on this reinstated account are eligible for cost recovery.

Intra-Branch Program: An intra-branch program is a court or a county collection service provided under a written memorandum of understanding (MOU) to another court or county.

Operating Costs: Eligible operating costs of a comprehensive collection program may include, but are not limited to, salaries, wages, benefits, services and supplies, contractual collection costs, and indirect costs allocated to collection activities. Service and supply costs eligible for cost recovery may include, but are not limited to, communication, office supplies, postage, and data processing. Indirect costs and general administrative costs must be supported by documentation and have a reasonable basis for allocation.

Salaries, Wages, and Benefits: Personnel expenses (salaries, wages, and benefits) include permanent salaries and wages, temporary help, overtime, Social Security and Medicare, group insurance, retirement (nonjudicial), workers' compensation, unemployment insurance, other benefits (such as parking, public transit, state disability insurance, etc.).

Salary and Benefit Savings: Salary and benefit savings result from non-expenditure of costs related to salaries, wages, and benefits and are not cost recoverable.

Attachments

Attachment A – Penal Code section 1463.007

Attachment B – Cost Recovery Report

Attachment C – Distribution Template