

# **Guidelines and Standards for Cost Recovery**

## **Comprehensive Collection Program—Statutory Background**

Penal Code section 1463.007 sets the standards by which a court or county may recover the costs of operating a comprehensive collection program. Collections costs (except for capital expenditures) may be deducted from the collection of delinquent court-ordered fines, fees, forfeitures, penalties, and assessments imposed on infraction, and misdemeanor cases before revenues are distributed to any other governmental entity. Further, Penal Code section 1463.010 requires the Judicial Council to adopt guidelines (this document) that courts and counties must follow when implementing a comprehensive collection program.

## **Requirements of a Comprehensive Collection Program**

### **Key activities—delinquent debt collection**

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 the requirements of Penal Code section 1463.010(b).
3. Engages in the following five mandatory 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 of the following additional 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 for a failure to appear in court.

- 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.

**Other key activities—administering certain nondelinquent installment pay plans**

In 2021 the Legislature passed Assembly Bill 143 (Stats. 2021, ch. 79), which expanded the scope of the comprehensive collection program. Specifically, the Legislature amended the Government Code to create the Ability to Pay Program (ATP). Beginning with Government Code section 68645, the ATP requires the Judicial Council to establish an online tool for adjudicating infraction violations, as well as for determining a defendant’s ability to pay. By June 30, 2024, every court will be required to offer ability-to-pay determinations using the Judicial Council’s online tool. These online ability-to-pay determinations may result in a court placing a defendant on an installment payment plan.

Government Code section 68645.2(a)(10) allows a comprehensive collection program to recover costs associated with administering *nondelinquent installment payment plans ordered through the online tool*. A comprehensive collection program may recover *actual costs* for administering this subset of installment plans, subject to a cap of not more than \$35 per eligible plan. During an audit, by the Judicial Council or State Controller’s Office, the court and/or county must maintain records capable of demonstrating:

- The claimed cost of administering installment plans is limited to those originating from the Judicial Council’s online tool or in-person application for ability-to-pay determination (and does not include or allocate costs associated with other installment plans).
- The resulting cost applied to each eligible installment plan (i.e., plans to originate from the online tool or in-person application) does not exceed \$35 over the life of each installment plan.

## Cost Recovery Guidelines

### Eligible direct costs—personnel

Personnel costs must pertain to work directly related to eligible collection activities or to administering eligible nondelinquent installment pay plans. Eligible collection activities are described in PC 1463.007. Eligible installment plans are those originating from the online ability-to-pay tool authorized by the Judicial Council under Government Code section 68645.2 or from in-person applications for ability-to-pay determination.

Comprehensive collection programs are responsible for demonstrating the reasonableness of their personnel charges in relation to the work performed by their staff. Job duty statements, time sheets, or other means of documentation are necessary to substantiate the amount of time (and resulting costs) of employees performing eligible activities. For example, an employee who works 100 percent of the time on eligible collection activities may use an official job duty statement (or similar documentation) clarifying his or her collections-related responsibilities and their linkage to the comprehensive collection program. For other employees who work on a mix of eligible and noneligible activities, time sheets that account for the entire workday—or the use of periodic time studies substantiating the reasonableness of the charges—would be allowable forms of documentation. Estimates are not a sufficient basis for assigning costs to the comprehensive collection program.

When time studies are used in place of time sheets, they must be adequately designed (i.e., of sufficient frequency, duration, and scope) to support the reasonableness of the amounts charged (costs) of performing eligible activities. Although the court or county may generally determine the frequency, duration, and scope of a time study based on operational or staffing changes, it is expected that these studies will be reasonably representative of all employees working in the program. Nevertheless, time studies—at a minimum—must be:

- Performed at least annually to ensure the ongoing reasonableness of personnel costs charged to recovered delinquent court-ordered debt or to eligible nondelinquent installment plans.
- Documented with respect to the study's results and methodology; and
- Retained for a period of at least five years, consistent with the record retention requirements of the *Trial Court Financial Policies and Procedures Manual* (FIN Manual), or as recommended by the State Controller's Office, whichever is longer.

### Eligible direct costs—operating expenses and equipment

Other eligible direct costs may include the following:

- Costs of operating expenses and equipment directly associated with the comprehensive collection program's staff (court/county). These costs might include but are not limited to office supplies, telecommunications costs, and other expenses directly supporting program staff engaged in eligible activities.

- Third-party contractor and related commission costs for a collection agency are recoverable. For example, this might include the Franchise Tax Board, a private collection agency, or an intra-judicial branch program operating under a contract, agreement, or memorandum of understanding (MOU).
- If the use of a new case management system (CMS) will directly benefit the comprehensive collection program, the court must have a reasonable and documented basis for allocating a portion of the implementation costs to the comprehensive collection program. This documentation must include the court's methodology for allocating CMS implementation costs among the court's different funding sources. In most cases, it would be unlikely that the total CMS implementation costs would be recoverable from delinquent collections.

### **Other eligible costs—indirect costs**

In addition to recovering direct costs, a comprehensive collection program may recover other costs not directly attributable to the program—that is, indirect costs. Indirect costs are often general support costs such as from human resources, budgets, or information technology, where the costs incurred are not solely for the program's benefit. Indirect costs are often pooled and then allocated to different funding sources based on a methodology that ensures each funding source bears its fair share. Under the comprehensive collection program, these guidelines provide the following two options for recovering indirect costs:

- *Option 1.* The comprehensive collection program may use a court's indirect cost rate as approved by the Judicial Council (see the Indirect Cost Rate Proposal approval process in FIN Manual 15.02, Sec. 6.4).
- *Option 2.* The comprehensive collection program may use a de minimis rate of 10 percent that is applied only to direct salaries/wages of employees working in the program.

Courts are cautioned against claiming the same type of expense as both a direct and indirect cost. Courts should periodically review the comprehensive collection program's direct expenses in the Phoenix Financial System to ensure any cost centers typically associated with indirect costs (such as from human resources, information technology, budgets, or the executive office) are not being inappropriately charged as a direct expense. Audits may focus on these direct expenses to ensure they are directly attributable to the program's eligible activities and satisfy the previously discussed requirements for documenting eligible direct personnel and operating costs.

### **Recording Court Revenues and Expenditures for a Comprehensive Collection Program**

All of the court's expenses (direct and indirect)—and the revenue recovered to offset these expenses—must be recorded in Phoenix using special revenue fund 120007—Enhanced Collections. This includes both payments made to third-party collection agencies/contractors and revenue received from these agencies that are not later distributed to the state, county, or local

governments. Courts that do not use the enhanced collections fund in Phoenix either do not participate in a comprehensive collection program or do not incur expenses/receive revenue generated from the program. To ensure transparency, courts may not account for the revenue retained/expenses incurred from its comprehensive collection program in any other fund.

### **Limits on Cost Recovery**

For nondelinquent installment payment plans originating from the online ability-to-pay tool referenced in Government Code section 68645.2, the program may not recover more than \$35 over the life (i.e., repayment period) of the plan.

For delinquent court-ordered debt (criminal fines, fees, and forfeitures), the program's *unrecovered costs at the end of the fiscal year cannot be carried forward into subsequent fiscal years*. A program may only carry forward unrecovered costs to subsequent months within the same fiscal year. For example, the delinquent revenues recovered in September may be insufficient to cover that month's cost of collections (i.e., personnel costs, collection agency costs, etc.). In this scenario, the program may carry forward these unrecovered costs into subsequent months (and retain additional revenue) through the June collections period as reported to the State Controller via the state remittance (form TC-31) reporting process. The June reporting period—which results in distributions to the state within 45 days (or by mid-August)—is the program's last opportunity to recover its costs of collections for the fiscal year. Similarly, courts may not use current year revenues to “repay” its general fund for transfers made to the enhanced collections fund in prior fiscal years.

When unrecovered costs result in negative fund balance in the court's enhanced collections fund, the court may need to consider transferring non-court operations funding from its general fund and/or reduce the amount of indirect costs charged to the enhanced collections fund.

### **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 collections 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 recovered delinquent court-ordered debt**

Revenues collected from eligible delinquent accounts in a comprehensive collection program must be distributed monthly as required by [Penal Code section 1463.001](#). 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 for in Penal Code section 1203.1d. Therefore, if a delinquent account is collected by installment payments, the costs associated with this program are not fourth-priority 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,<sup>1</sup> 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).

**Cost recovery—example**

Once the cost of the program for a given month is determined and deducted before the distribution of revenue, the remaining amount should then be distributed to other governmental entities as required by any other provision of law.

On a monthly basis, a comprehensive collection program should charge the cost of collections against the revenue collected on a prorated basis. An example of the distribution of cost on a prorated basis is depicted in Attachment B (Distribution Template). 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 delinquent revenue collected for the Courthouse Construction Fund equals \$206,377. The total amount of all delinquent revenue collected is \$2,506,686. Therefore, \$206,377 divided by \$2,506,686 (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 governmental 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,

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<sup>1</sup> Victim restitution order payments received have first priority and are distributed before any program costs are recovered or any distributions are made to other entities.

preparation of reports, and the application and approval process as defined in [Government Code sections 25257–25259.95](#).

## **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, 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 collection programs.*** A comprehensive collection program collects delinquent fines, fees, penalties, assessments, and forfeitures (and installment payments from nondelinquent cases ordered under an ability-to-pay program) and meet the criteria under Penal Code section 1463.007. Revenues collected by a comprehensive collection program should be included in the Collections Reporting Template (Attachment A).

***Delinquent account.*** An account is considered 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.

***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 payment on the same day as the court order and generally involves no “extra” cost because the account is paid in full. 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, together with nondelinquent installment payments, as a separate category on the Collections Reporting Template.

***Installment payment.*** Installment payments or time payments (also known as accounts receivable) are made periodically on an account. Generally, 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. A court or county may recover costs associated with the administration of a nondelinquent installment plan that originated from the online ability-to-pay tool (Govt. Code, Section 68645.2). Recovered costs shall not exceed thirty-five (\$35) dollars per approved installment plan.

***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 collections costs, and costs associated with the collection of nondelinquent installment payments ordered under the online ability-to-pay tool. Indirect costs may also be recovered in accordance with these guidelines.

***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, and other benefits (such as parking, public transit, state disability insurance, etc.).

## **Attachments**

1. Attachment A: Collections Reporting Template
2. Attachment B: Distribution Template