

<b>FEDERAL COMMUNICATIONS COMMISSION</b> Washington, D.C. 20554  <b>FCC DIRECTIVE</b>	TITLE	
	<b>Forfeiture Tracking, Collections and Follow-up Systems</b>	
	Directive Number:  FCC INST 1157.5	Effective Date:  May 22, 2023

1. **PURPOSE:** This directive sets forth the Federal Communications Commission’s (FCC or Commission) policies and procedures relating to the FCC’s Civil Monetary Penalty Forfeiture Program (CMP Program). It summarizes the relevant Commission policies and procedures necessary to maintain accountability of receivables and administrative proceedings resulting in a forfeiture. The primary objectives of the CMP Program are to:
  - A. Ensure timely and uniform recording, tracking and monitoring of forfeiture proceedings;
  - B. Ensure timely deposits in the U.S. Department of the Treasury (Treasury) of remittances arising from forfeiture proceedings;
  - C. Ensure timely and accurate reporting to the FCC’s bureaus and offices of transactions and balances;
  - D. Ensure adequate internal controls, including separation of duties;
  - E. Ensure that the Office of General Counsel (OGC) refers to the U.S. Department of Justice (DOJ) forfeiture proceedings that meet DOJ acceptance standards in a timely manner; and
  - F. Maintain accountability of all forfeitures issued by the Commission.
  
2. **CANCELLATION:** This instruction supersedes FCCINST 1157.4, Forfeiture Tracking, Collections and Follow-up Systems, dated April 2016.
  
3. **SCOPE:** This directive applies to all bureaus and offices that issue, track, or enforce forfeitures, refer forfeitures to DOJ, or process remittances pertaining to forfeitures.
  
4. **AUTHORITY:**
  - A. Telecommunications Rules and Regulations, 47 CFR. §§0.111, 0.311, 0.314, 1.80, 1.1901.
  - B. Money and Finance, 31 U.S.C. §§ 3701, 3711.
  - C. Money and Finance Treasury, 31 CFR §§ 285, 901-903.
  - D. Forfeitures, 47 U.S.C. §§ 503, 504.
  
5. **DEFINITIONS:**
  - A. **Civil Monetary Penalty (CMP).** A monetary penalty or forfeiture proposed, assessed or enforced by the Commission pursuant to federal law. A CMP does not become a legally enforceable Debt owed to the Commission until: (1) a court of competent jurisdiction has issued a final order of payment; (2) partial payment of the CMP has been made; or (3) a

CD establishing that the CMP is owed has been executed. All CMPs that are legally enforceable Debts owed to the United States are reported as such for financial accounting purposes.

- B. Consent Decree (CD). An agreement resolving an investigation or forfeiture proceeding pertaining to a violation of the Communications Act, or a Commission rule, order, or authorization term or condition, through a voluntary contribution to the Treasury and future administrative compliance.
- C. Debt. An amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity (“Debtor”), except another federal agency.
- D. Demand Letter. The initial step of the Commission’s Debt collection procedures in which the Office of the Managing Director’s Financial Operations (OMD-FO), or a third party at the direction of OMD-FO, sends a letter and/or an invoice to a Debtor demanding full payment of a Debt by a certain date and providing notice as required by law.
- E. Forfeiture Order (FO). An order issued by the Commission, or by the Enforcement Bureau (EB) or the Media Bureau (MB) on delegated authority, assessing a CMP for a violation of the Communications Act, or a Commission rule, order, or authorization term or condition.
- F. Notice of Apparent Liability (NAL). A preliminary notice issued by the Commission, or by EB or MB on delegated authority, to the NAL recipient providing the legal and factual basis for the CMP, the CMP amount, and of the NAL recipient’s right to provide a written response to the NAL.

## 6. BACKGROUND:

The Commission, as well as EB and MB, acting under delegated authority, may issue an NAL proposing a CMP against any person or entity that appears to have violated the Communications Act, or a Commission rule, order, or authorization term or condition. The NAL will include a detailed description of the basis for the apparent violation and CMP, and will provide the NAL recipient a period of time (usually 30 days) to pay the CMP or respond in writing to the NAL. In certain instances, a citation, notifying a party of a violation of any of the foregoing and of an opportunity to respond, must be issued prior to the issuance of an NAL.

If the CMP is not paid in full in response to the NAL, the Commission, MB or EB, as appropriate, may cancel the CMP or issue a FO requiring payment of the CMP by a specific date. If the CMP is not paid, OGC may refer the FO to DOJ for enforcement if the case meets certain requirements, such as DOJ’s minimum monetary threshold. If DOJ accepts the case, it will file a complaint in a United States District Court for an order to enforce the FO. If the court enters a final order enforcing the forfeiture, the forfeiture becomes a Debt, and collection of the Debt by or on behalf of the Commission commences. Forfeitures that are

below DOJ's minimum monetary threshold or that DOJ otherwise declines to pursue do not become Debts and are eventually written off.

7. POLICY:

- A. Timing of Enforcement Actions. Assessment and enforcement of CMPs imposed by the Commission will be governed by procedures prescribed in 47 U.S.C. §§ 503 and 504 and 47 CFR § 1.80.
- B. Timing of Collection Actions. OMD-FO will not issue a Demand Letter or pursue collection of a CMP until it becomes a Debt.
- C. Delinquent Debt. OMD-FO will transfer delinquent Debt to Treasury's Debt Management Services for collection on the Commission's behalf in accordance with applicable Debt collection authorities, including 31 U.S.C. § 3711, 47 CFR § 1.1912(b), and 31 CFR § 285.12. Upon transfer to the Treasury, the Commission will cease all collection activity related to the Debt and the Debt will remain on the Commission's books.
- D. Installment Payments and Partial Payments. Under Commission rules, the Commission may permit payment of a CMP Debt in installments under the terms of an installment payment plan administered by OMD-FO.
- E. Payment of CMPs. Payment of CMPs by credit card or by Automated Clearing House (ACH) must be made by using the Commission Registration System (CORES). Instructions for payment by wire transfer are at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>. All CMP payments are deposited into the miscellaneous receipts fund of the Treasury.
- F. Collection of Interest, Penalties, and Assessments. Interest and penalties will be assessed on delinquent Debt as required by 31 U.S.C. § 3717, 31 CFR § 901.9, and 47 CFR § 1.1940.
- G. Write-Off of Debt and Suspension and Termination of Collection Activity. The Commission, through OMD-FO, will follow the requirements and procedures in 31 CFR §903.1 – 903.3, 47 CFR § 1.1916, and OMB Cir. A-129, to write-off uncollectible Debt and to suspend or terminate collection activity. Subsequently, the Commission may close-out the Debt and issue the Debtor the Internal Revenue Service's Form 1099-C (Cancellation of Debt).
- H. Effect of a Bankruptcy Filing on Collection Activity. Upon notification that a Debtor has filed bankruptcy, the Commission shall terminate collection of the Debt, except as permitted by the United States Bankruptcy Code, and in consultation with OGC. OGC shall be responsible for working with DOJ counsel to file a proof of claim for the Debt and to represent the Commission's interests in the bankruptcy case, and for coordinating with OMD-FO regarding the Debt.

8. ROLES AND RESPONSIBILITIES:

A. Chief Financial Officer. OMD's Chief Financial Officer's and its designees' responsibilities include:

- (1) Timely recording and updating the Commission's financial system as relates to CMPs, including CMP payments;
- (2) Processing documents and remittances received through CORES from Treasury, through pay.gov, and those forwarded to the Commission;
- (3) Maintaining financial files of legally enforceable CMP Debts and related correspondence as well as supporting documentation for all Intra-Governmental Payment and Collection (IPAC) transactions received from DOJ or Treasury, and post IPAC payment receipt(s);
- (4) Referring all legally enforceable CMP Debts that are 120 days past due to Treasury for further collection, writing-off and closing out CMP Debt, and suspending or terminating collection activities, as appropriate;
- (5) Ensuring compliance with the Commission's Debt collection procedures and policies;
- (6) Updating EB, MB and OGC, as appropriate, on the payment status of CMPs; and
- (7) Obtaining OGC's legal advice, as appropriate, on procedures pertaining to notices of bankruptcy, matters involving claims, administrative procedures, and/or litigation.

B. EB and MB. The responsibilities of EB and MB include:

- (1) Initiating investigations and issuing NALs and FOs in accordance with their delegated authority and reviewing and responding to requests for reconsideration or mitigation, where appropriate;
- (2) Negotiating and entering into CDs, where appropriate;
- (3) Providing notice of any NAL, FO, or CD and subsequent actions to OMD-FO;
- (4) Maintaining supporting documentation consistent with the Commission's record-keeping policies pertaining to each forfeiture proceeding initiated until the proceeding is completed;
- (5) Upon OMD-FO notification that a forfeiture has not been paid, forwarding the forfeiture case file to the Litigation Division of OGC for review and referral to DOJ; and
- (6) Forwarding to OMD-FO any request by a CMP Debtor for an installment payment plan.

C. Litigation Division of OGC. The responsibilities of the Litigation Division of OGC include:

- (1) Reviewing forfeiture case files referred by the EB or MB to determine further disposition of the case (e.g., whether the case should be referred to DOJ or to the relevant bureau for additional documentation; whether to recommend to OMD-FO that collection of the CMP be terminated);

- (2) Issuing a final notice letter to the violator that the Commission has ordered payment of a forfeiture, and, where applicable, informing the violator that the forfeiture may be referred to DOJ for enforcement if payment is not received;
  - (3) Referring forfeiture cases that meet the requirements set forth in 31 CFR § 904 and all applicable documents (e.g., Claim Collection Litigation Report) to DOJ for enforcement and providing assistance to DOJ in the enforcement action;
  - (4) Updating DOJ of any payments or other matters affecting the enforcement action, and OMD-FO and relevant bureau or office of the case status and disposition (e.g., partial payment, suit filed, cases declined by DOJ, etc.);
  - (5) Notifying OMD-FO and the relevant bureau or office if DOJ has determined that a forfeiture is uncollectible so that OMD-FO and the relevant bureau or office may terminate and suspend collection activity; and
  - (6) Furnishing legal advice to OMD-FO and the relevant bureau or office on matters involving claims, bankruptcy, administrative procedures, and/or litigation.
9. EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately and shall be implemented promptly upon distribution.



Mark Stephens  
Managing Director