



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

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FINANCIAL ACCOUNTING SERVICES DIRECTORATE

DEBT MANAGEMENT, RECOVERY AND WRITE OFF POLICY

Debt Management, recovery and write-off policy- COGTA EC

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Date completed	29 July 2022
Date of Approval	See Hon MEC approval date
Date Last Amended	31 March 2019

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Date for next Review	As and when need arises (when there is a change in Legislation, Prescripts and/or Practice Notes).
Related Policies/SOP	Pay point Management SOP SOP on exit management

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SIGN OFF

I. Head of Department

I, Mr A.A. Fani in my capacity as the Head of Department, have **recommended** this Debt Management, Recovery and Write off Policy of the Cooperative Governance and Traditional Affairs for approval by the Honourable Member of Executive Council.


I am satisfied and concur with the contents of this Debt Management, Recovery and Write-off Policy. The development and implementation of this policy will assist in ensuring that the department will be able to manage, recover and write off debts in compliance with Section 38(1)(c)(i) and Section 40(1)(a) of the Public Finance Management Act.

SIGNED	
DESIGNATION	Head of Department: Mr A.A. Fani of Department of Cooperative Governance and Traditional Affairs
DATE	20/10/2022

II. Executive Authority

The department of Cooperative Governance and Traditional Affairs has unprecedented opportunity to improve the livelihood of the people by effectively rendering services that are expected to provide within its constitutional mandate and delegated authority.

I have envisaged a department that has the required capacity to respond adequately to challenges of our people. I, therefore, trust that guidance from this Debt Management, Recovery and Write-off Policy will contribute to the effectiveness of asset management in the department in compliance with the Public Finance Management Act. Act 1 of 1999 as amended and the Treasury Regulations.

SIGNED	
DESIGNATION	MEC: Honourable Z.A. Williams of Department of Cooperative Governance and Traditional Affairs
DATE	10/11/2022.

1. INTRODUCTION

- 1.1. Section 38(1)(c)(i) Public Finance Management Act (PFMA), 1999 (Act No.1 of 1999) as amended by Act No. 29 of 1999 read in conjunction with Treasury Regulations 11.2.1 (a) and (b) requires the accounting officer to take effective and appropriate steps to timeously collect all monies due to the department.
- 1.2. Furthermore, the accounting officer is required to maintain proper accounts and records for all the debtors. Section 45 places the onus on each official within the Department to take responsibility for the effective, efficient, economical, and transparent use of financial and other resources within that official’s area of responsibility. The development of this policy is triggered by the above backdrop.
- 1.3. The implementation of this policy will assist the department in complying with the above legal prescripts.

2. DEFINITIONS

2.1 To this policy the following definition is applicable:

#	DEFINITION	DESCRIPTION
1	Debt	means money owed to the department/state.
2	Debtor	means a person/entity/organisation etc who owes the department money
3	Simple debt	means a non-interest debt
4	Complex debt	means an interest-bearing debt
5	Mora period	means a waiting period set by an authority, a suspension of activity.
6	Mala Fides	means an action carried out in bad faith or with intent to deceive or defraud
7	Minister	means Minister of Finance
8	HOD	Means the Head of Department who is also the Accounting Officer of the Department
9	D	Means the Director
10	CFO/ACFO	Means the Chief Financial Officer or Acting CFO
11	Department/ or Cogta EC	Means Department of Cooperative Government and Traditional Affairs- Eastern Cape

#	DEFINITION	DESCRIPTION
12	Suspense Accounts Unit/section	means the section responsible for management, recovery, and write-off of debts under financial accounting services directorate
13	Prescribed debt	legal principle in terms of which a debtor's liability to pay an outstanding debt is extinguished after the passing of prescribed period/s.
14	Impairment loss	means a loss in the future economic benefits or service potential of an asset.
15	FAS directorate	means Financial Accounting Services Directorate

3. REGULATORY FRAMEWORK

- i. Public Finance Management Act 1 of 1999 as amended by Act 29 of 1999 (PFMA)
- ii. Treasury Regulations 11
- iii. Prescription Act, 1969 (ACT NO.68 OF 1969)
- iv. Government Notice No. R200 dated 6 February 1987
- v. Government Notice No. 4653 of 2000

4. PURPOSE OF THE POLICY

The purpose of this policy is:

- 4.1. To provide departmental employees with a uniform policy on the management and control of debts owed to the Department.
- 4.2. To provide a framework of control measures to the Department, for implementing an effective, efficient, transparent, and consistent mechanism for the management and recovery of debts in terms of applicable legislation and prescripts.
- 4.3. To provide circumstances where debt considered irrecoverable and/or prescribed will be written off.

5. SCOPE OF APPLICATION

5.1. This policy is applicable to all employees, traditional leaders, and other stakeholders.

6. DEBT CLASSIFICATION

6.2 Where the state has suffered a loss or damage through the act of an employee whether that person is still an employee or ex-employee of the state), or any other person.

6.3 Where a salary, wage or allowance was erroneously or inadvertently paid to an employee/ traditional Leader.

6.4 Where an individual or an organization/entity breached a contract; and

6.5 Where an erroneous or overpayment was made to a creditor, institution, or private body.

6.6 And any other classifications that may arise.

In order to comply with Treasury regulation 11.2(a), a debt must be recorded in the general ledger (books) of the department as soon as it is discovered.

7. DEBT TYPES

7.1. Simple debt

A simple debt must be raised whenever the department has discovered that: -

7.1.1. It suffered a financial loss without an intention to deceive or defraud.

7.1.2. The HOD through suspense accounts section shall issue debt notification letters to debtor/s.

7.2. Complex debt or interest-bearing debt

A complex debt must be raised whenever it is discovered that there are:

7.2.1 Salary related overpayments which originate when employee's services are terminated, and such overpayments are discovered.

7.2.2 Erroneous payments to service providers or institutions or any other private body.

7.2.3 Breach of contract or loan agreements; and

7.2.4 Debts which originate due to mala fides actions of employees, private bodies, etc.

The Head of Department through suspense accounts section shall issue debt notification letters to debtors informing the person of the debt owed as per the departmental books.

8. INTEREST TO BE LEVIED ON DEBTS OWING TO THE STATE

8.1 Section 80(1)(b) of the PFMA provides that the Minister, by notice in the National Gazette, must determine a uniform interest rate applicable to all other debts which must be paid into a revenue fund.

8.2 Debts to the state resulting from the service relationship between public servants and the state shall be recovered **without** interest, with the exception of the following categories of debt, which shall be levied **with** interest at a rate as determined by the Minister in terms of section 80(1) (b) of the Public Finance Management Act of 1999:-

8.2.1. Wrongly granted remuneration, as defined in section 38 of the Public Service Act, 1994 where the person concerned has left the employ of the State, or where the monetary advantage resulted from his or her own fraudulent action. or

8.2.2. Loss and/or damage which originates as a result of circumstances where *mala fides* or the intentional causing of losses or damage were present, or where the person concerned has left the employ of the State; or

8.2.3. Breach of contract or loan agreements.

8.3 Debts to the state by debtors who are not in the employ of the state, are to be recovered **with** interest at a rate as determined by the Minister in terms of section 80(1)(b) of the Public Finance Management Act of 1999, with the exception of the following categories of debt, which are to be recovered **without** interest: -

8.3.1 Remuneration granted in error, where the person is still in the employ of the state; and

8.3.2 Losses or damages caused unintentionally and without "*mala fide*" by persons still in the employ of the State.

9. INTEREST ON OUTSTANDING DEBTS

9.1 Before interest may start to accrue, the debtor must be placed in *mora*. This *mora* period lasts for 30 days. After the 30 days, during which the debt is not settled, interest starts accruing i.e., 31 days after the debt has been raised.

9.2 If interest has been arranged by means of an agreement, such as study contracts, etc. interest starts accruing on the day that the payment is due; no *mora* period is applicable as the debtor is aware of the debt in terms of the conditions of the agreement.

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9.3 In terms of Government Gazette No. 21887 – notice 4653 of 2000, interest should be charged against debts owing by serving employees in respect of debts arising from wrongly granted remuneration or losses and damages which originated because of circumstances where *mala fides* or intentional causing of losses or damages were present. Should such employee leave the services of the state, interest should be charged on outstanding balance as from the date of leaving service.

10. DEBT RECORDS

10.1 In terms of Treasury Regulation 11.2.1(b) the department is required to maintain proper records accounts and records of all debtors. To give effect to this regulation, the following must be practiced religiously:

10.1.1 Debtors' records must be filed and properly maintained by designated employees.

10.1.2 Debtor's accounts must be kept up to date.

10.1.3 Access to debt files should be limited to Suspense Accounts unit.

11. RECOVERY OF DEBT, LOSSES, OR DAMAGES

The Department must effectively manage and control all debts, and the following recovery procedures must be followed in the management of debts:

11.1 Debts owing to the State may, at the discretion of the Head of Department, be recovered by means of instalments, except in cases where the conditions of payment are determined by law or agreement.

11.2 In determining the amount of instalment to be paid and the period of payment, the debtor's standing and financial position shall be taken into cognizance in determining the period of payment.

11.3 The debt must be recovered as soon as possible, at a maximum of 25% of net monthly salary, where net salary is defined as gross salary less statutory deductions.

11.4 When it appears that the State has suffered a loss or damage through an act of an employee, whether or not the person is still in the employ of the State, the Head of Department must recover the value of the loss or damage from the person responsible subject to evaluation of justifiable conditions that lead to the loss or damage.

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- 11.5 Any outstanding travel and subsistence advance, where the relevant claim has already been rendered, should be recovered from an employee's salary, unless the employee can provide evidence to prove the contrary.
- 11.6 Any overpayments to creditors, institutions or private bodies and employees must be disallowed and recovered within the affected financial year. Where regular payments are made to suppliers, the amount shall be recovered from the first subsequent payment to the supplier.
- 11.7 Any amount that is not a legitimate charge against a vote account must immediately be disallowed to a disallowance or debt account, until it is recovered.
- 11.8 Estate notices in the Government Gazette must be checked regularly to enable the Department to institute claims against insolvent and deceased estates in respect of persons owing money to the State.
- 11.9 When an official leaves the public service and debt exists or arises, the debt must, at the discretion of the Head of Department, be recovered from any remuneration and/or benefits due to the person i.e. pro-rata service bonus, leave gratuity, severance pay, pension benefit etc. In the case where outstanding balance of debt is recovered from Pension benefits, three (3) months interest must be added to the total debt owing by employee. This will ensure that the correct debt amount is recovered from Pension benefits.
- 11.10 Should a debtor default on the payments agreed to, the outstanding balance of the debt (where possible) must be recovered in one lump sum.
- 11.11 Where a debtor is not in the employ of the Department, the Department must ensure that the debtor receives a demand for payment of the debt as soon as possible.
- 11.12 In instances where the employee refuses to acknowledge the debt or is denying the debt, the matter will be referred to the HOD for appropriate action which may include referral to legal services to be tested in law through the legal recovery process. Summons may be issued by state attorney against the person.

12. TRACING OF DEBTORS

- 12.1 On an annual basis or when it is deemed necessary, the department must conduct a debt verification process. The department should explore all avenues available to trace debtors, serve letters of demand and recover the debt owing whilst ensuring the most effective, efficient, and economic results are achieved.

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- 12.2 In terms of paragraph 11.2.1(b) of the Treasury Regulations a matter should be referred to the State Attorney, where economical, to consider a legal demand and possible legal proceedings in a court of law.
- 12.3 Utilizing all the information available in department's files/system.

13. METHODOLOGY TO BE FOLLOWED ON IDENTIFICATION OF ESTIMATE OF IMPAIRMENT OF RECEIVABLES

- 13.1 In terms of Modified Cash Standards updated in May 2018 chapter 9, paragraph 45(b) "the department shall also disclose the methodology applied by the department to calculate the impairment loss".
- 13.2 The department shall follow all the required steps to recover all monies owed i.e., debt notification letter issued, debt verification conducted, legal assistance sought etc.
- 13.3 In terms of Accounting Manual (paragraph 6.4 of page 20) it is required that the department assess whether there is any objective evidence that a financial asset recognized or recorded, in the primary or secondary financial information respectively, is impaired.
- 13.4 Objective evidence that a financial asset is impaired can be because of the occurrence of one or more of the following events:
 - 13.4.1 Significant financial difficulty experienced by the debtor;
 - 13.4.2 Delays in payments (including interest payments) or failure to pay/defaults; or
 - 13.4.3 It is probable that the borrower/debtor will enter sequestration or other financial reorganization.

The Department shall list all those debtors who have gone through the above steps and their ageing is greater than 3 years, but there are still no recoveries made as estimate of impairment of receivables.

The estimate of impairment list may also include debts that are even less than 3 years old, provided that the department have exhausted all the recovery, verification processes in terms of this policy.

14. PRESCRIPTION OF DEBTS

- 14.1 Debts that have not been interrupted by summons in a court of law and have prescribed will be written off in terms of Prescription Act 68 of 1969, section 11(d).
- 14.2 In terms of Section 11, the periods of prescription of debts shall be the following:

- 14.2.1 Thirty years in respect of-
- (i) any judgement debt;
 - (ii) any debt secured by mortgage bond;
 - (iii) any debt in respect of any taxation imposed or levied by or under any law; and
 - (iv) any debt owed to the state in respect of any share of the profits, royalties, or any similar consideration payable in respect of the right to minerals or other substances.
- 14.3 Fifteen years in respect of any debt owed to the state and arising out of an advance or loan of money or a sale or lease of land by the state to the debtor unless a longer period applies in respect of the debt in question in terms of paragraph (a).
- 14.4 Six years in respect of a debt arising from a bill of exchange or another negotiable instrument or from a notarial contract unless a longer period applies in respect of any other debt.
- 14.5 Save where an act of Parliament provides otherwise, three years in respect of any other debt.
- 14.6 The legal services office will be provided with list of debts at least half yearly in order to ensure that proper follow up is being made legally to prevent debts from being prescribed and to follow up through legal process on matters submitted to legal services directorate. This shall only apply to debtors where the department have raised and have incurred a debt (i.e. there is financial loss to the department incurred). Legal assistance and clarity related to debt matters may be requested from legal services directorate from time to time for purpose of recovery, way forward and legal assistance on debt related matters incurred by the department.

15. WRITING OFF DEBTS OWING TO THE STATE

- 15.1 In terms of Treasury Regulation 11.4, the accounting officer may only write off debts owed to the state if he or she is satisfied that:
- 15.1.1 All reasonable steps have been taken to recover the debt and the debt is irrecoverable, or he/she is convinced that: -
- (i) recovery of the debt would be uneconomical.
 - (ii) recovery would cause undue hardship to the debtor or his/her dependants; and/or
 - (iii) it would be to the advantage to the state to effect a settlement of the claim or to waive the claim.
- 15.2 All debts written off must be disclosed in the Annual Financial Statements, indicating the policy in terms of which the debt was written off.
- 15.3 The traditional leaders that are deceased must be written off in instances where the

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department cannot recovery any money from the traditional leader. This applies to traditional leaders that are only deceased and not entitled to a gratuity.

- 15.4 The accounting officer must ensure that all debts written off are done in accordance with this policy.

16. CONDITIONS OF WRITE OFF

In order for the department to write off debt in satisfaction of the requirements stated in 15 above, the following conditions must be satisfied:

- 16.1 Debts that have prescribed in terms of paragraph 14 above.
- 16.2 Debts not recovered from deceased employees, where their estates have been finalised, and recovery of the debts from the family is not possible.
- 16.2.1 Debts owed by debtors that cannot be traced, notwithstanding compliance with the provisions in paragraph 12 above.
- 16.2.2 Debts where no source documentation is available to substantiate or prove the claims, provided that the Head of Department must have satisfied him/herself that all reasonable steps have been taken to locate the source documents.
- 16.2.3 Debts where the debtors have emigrated without paying the debts and the debtors' whereabouts are unknown.
- 16.2.4 Debts owed by employees who have left the public service, and are now destitute, provided that the Head of Department must have satisfied him/herself that the debtors are in fact destitute.
- 16.2.5 The debt where a traditional leader that is deceased and not entitled to any gratuity and/or amount due and payable to a traditional leader, and the department is unable to get the monies back.
- 16.2.6 Debts owed by ex-employees amounting to less than R3 000.00 where the debtors are no longer employed by the State, provided that the provisions in paragraph 7.5.1 have been complied with; and
- 16.2.7 Debts owed by persons or institutions where the probability of recovery is remote and it is not in the department's interest to pursue such debts, which includes, but is not limited to, circumstances where:

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- (i) the deceased was the breadwinner of a family who continued to receive payment of the deceased's salary after his/her death, and who have no means to repay the debt.
- (ii) payments were received by persons other than the deceased employee's immediate family, and the identification of the debtor is not possible; and
- (iii) no Executor, Administrator, Liquidator or Curator has been appointed in terms of Section 4(1) of the Regulations published under Government Notice No. R200 dated 6 February 1987.

17. MANAGEMENT REPORTING

- 17.1 Management information concerning the status of all debtors of the department shall be provided to the Head of Department monthly.

18. IMPLEMENTATION AND REVIEW OF POLICY

- 18.1 This policy will be implemented from the date of approval by the Member of the Executive Council of Cooperative Governance and Traditional Affairs.
- 18.2 This policy will be reviewed as and when the need arises and/or new prescripts are issued by National Treasury.

19. CONTRAVENTION OF POLICY

- 19.1 Any failure to comply with this policy and its provisions may constitute financial misconduct and any employee found to be transgressing this policy will be subjected to a disciplinary enquiry in terms of the Public Services Act, 1999 and other relevant legislation.
- 19.2 The non-compliance to this policy will be reported to the accounting officer to consider enforcing consequence management.