

Department of Veterans Affairs

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hearing, the hearing official may offer the debtor the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official declines to offer a telephone conference call, the debtor shall be provided an oral hearing permitting the personal appearance of the debtor, his or her personal representative, and witnesses. Witnesses shall testify under oath or affirmation.

(4) In all other cases where a debtor requests a hearing, a paper hearing shall be provided. The debtor shall be provided an opportunity to submit material for the record. A paper hearing shall consist of a review of the written evidence of record by the designated hearing official.

(f) *Statutes of limitation; multiple debts.* When collecting multiple debts by administrative offset, VA shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 31 CFR 901.3(a)(4), VA may not initiate offset to collect a debt more than 10 years after VA's right to collect the debt first accrued (with certain exceptions as specified in 31 CFR 901.3(a)(4)).

(g) *Centralized administrative offset.* (1) When VA refers delinquent debts to Treasury for centralized administrative offset in accordance with 31 CFR part 285, VA must certify that:

(i) The debts are past due and legally enforceable; and

(ii) VA has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section.

(2) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

(h) *Computer Matching and Privacy Act waiver.* In accordance with 31 U.S.C. 3716(f), the Secretary of the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process

requirements enumerated in 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section have been met. The certification of a debt in accordance with paragraph (g) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g).

(i) *Requests by creditor agencies for offset.* Unless the offset would not be in VA's best interest, or would otherwise be contrary to law, VA will comply with requests by creditor agencies to offset VA payments (except for current salary or benefit payments) made to a person indebted to the creditor agency. However, before VA may initiate offset, the creditor agency must certify in writing to VA that the debtor has been provided:

(1) Written notice of the type and amount of the debt and the intent of the creditor agency to use administrative offset to collect the debt;

(2) The opportunity to inspect and copy agency records related to the debt;

(3) The opportunity for review within the agency of the determination of the indebtedness; and

(4) The opportunity to make a written agreement to repay the debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[52 FR 42105, Nov. 3, 1987, as amended at 54 FR 34980, Aug. 23, 1989; 69 FR 62194, Oct. 25, 2004]

§ 1.912a Collection by offset—from VA benefit payments.

(a) *Authority and scope.* VA shall collect debts governed by § 1.911 of this part by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. Certain military service debts shall be collected by offset against current or future compensation or pension benefit payments to the debtor under authority of 38 U.S.C. 5301(c), as provided in paragraph (e) of this section.

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(b) *Notification.* Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been notified in writing of the matters described in § 1.911(c) and (d) and paragraph (c) of this section.

(c) *Deferral of offset.* (1) If the debtor, within thirty days of the date of the notification required by paragraph (b) of this section, disputes, in writing, the existence or amount of the debt in accordance with § 1.911(c)(1), offset shall not commence until the dispute is reviewed as provided in § 1.911(c)(1) and unless the resolution is adverse to the debtor.

(2) If the debtor, within thirty days of the date of notification required by paragraph (b) of this section, requests, in writing, waiver of collection in accordance with § 1.963 or § 1.964, as applicable, offset shall not commence until the Department of Veterans Affairs has made an initial decision on waiver.

(3) If the debtor, within thirty days of the notification required by paragraph (b) of this section, requests, in writing, a hearing on the waiver request, no decision shall be made on the waiver request until after the hearing has been held.

(4) VA will pursue collection action once an adverse initial decision is reached on the debtor's request for waiver and/or the debtor's informal dispute (as described in § 1.911(c)(1)) concerning the existence or amount of the debt, even if the debtor subsequently pursues appellate relief in accordance with parts 19 and 20 of this title.

(d) *Exceptions.* Offset may commence prior to the resolution of a dispute or a decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911(d) shall be made at the time offset begins or as soon thereafter as possible.

(Authority: 38 U.S.C. 5314, Ch. 37)

(e) *Offset of military service debts.* (1) In accordance with 38 U.S.C. 5301(c), VA shall collect by offset from any current or future compensation or pension benefits payable to a veteran under laws administered by VA, the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan pre-

scribed in subchapter I or II of 10 U.S.C. chapter 73.

(2) Offsets of a veteran's compensation or pension benefit payments to recoup indebtedness to the military services as described in paragraph (e)(1) of this section shall only be made by VA when the military service owed the debt has:

(i) Determined the amount of the indebtedness of the veteran;

(ii) Certified to VA that due process in accordance with the procedures prescribed in 31 U.S.C. 3716 have been provided to the veteran; and

(iii) Requested collection of the total debt amount due.

(3) Offset from any compensation or pension benefits under the authority of 38 U.S.C. 5301(c) shall not exceed 15% of the net monthly compensation or pension benefit payment. The net monthly compensation or pension benefit payment is defined as the authorized monthly compensation or pension benefit payment less all current deductions.

(Authority: 38 U.S.C. 5301(c) and 5314)

[48 FR 1055, Jan. 10, 1983, as amended at 52 FR 42106, Nov. 3, 1987; 57 FR 47263, Oct. 15, 1992; 69 FR 62194, Oct. 25, 2004]

§ 1.913 Liquidation of collateral.

(a) VA should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt, if the debtor fails to pay the debt within 180 days after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor, unless such action is expressly required by statute or contract.

(b) When VA learns that a bankruptcy petition has been filed with respect to a debtor, VA should seek legal advice from VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to