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that any debt delinquent for more than 180 days be transferred to Treasury for collection.

(e) VA should respond promptly to communications from debtors and should advise debtors who dispute debts, or request waiver, to furnish available evidence to support their contentions.

(f) Prior to referring a debt for litigation, VA should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification may be given as part of a demand letter under paragraph (c) of this section or in a separate letter.

(g) When VA learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, VA should immediately seek legal advice from either VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless VA determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After VA seeks legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. VA should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If VA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is prohibited in most cases by the automatic stay. However, VA should seek legal advice from VA's General Counsel or Regional Counsel to determine whether payments to the debtor and payments of other agencies available for offset may be frozen by VA until relief from the automatic stay can be obtained from the bankruptcy court. VA also should seek legal advice from VA's General Counsel or

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Regional Counsel to determine whether recoupment is available.

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

[69 FR 62193, Oct. 25, 2004]

§ 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with the procedures set forth in 31 CFR 901.3, as well as 31 CFR part 285, VA shall collect debts by administrative offset from payments made by VA to a debtor indebted to VA. Also in accordance with 31 CFR 901.3(b), as well as 31 CFR part 285, VA shall refer past due, legally enforceable non-tax debts which are over 180 days delinquent to Treasury for collection by centralized administrative offset (further procedures are set forth in paragraph (g) of this section). This section does not pertain to offset from either VA benefit payments made under the authority of 38 U.S.C. 5314 or from current salary, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments are found in § 1.912a. Procedures for offset from current Federal salary are found in §§ 1.980 through 1.995. NOTE: VA cannot offset, or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.953 and §§ 1.980 through 1.995, any VA home loan program debt described in 38 U.S.C. 3726 unless the requirements set forth in that section have been met.

(b) *Notification.* Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, VA is required to provide the debtor with written notice of:

(1) The nature and amount of the debt;

(2) VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of

the debt, or to request a hearing on any of these matters;

(5) That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this section within 30 days of the date of this notice; and

(6) The opportunity to enter into a written agreement with VA to repay the debt in lieu of offset.

(c) *Deferral of offset.* (1) If the debtor, within 30 days of the date of the notification required by paragraph (b) of this section, disputes in writing the existence or amount of the debt or the amount of the scheduled offset, offset shall not commence until the dispute is reviewed and a decision is rendered by VA adverse to the debtor.

(2) If the debtor, within 30 days of the date of the required notification by VA, requests in writing the waiver of collection of the debt in accordance with § 1.963, § 1.963a, or § 1.964, offset shall not commence until VA has made an initial decision to deny the waiver request.

(3) If the debtor, within 30 days of the required notification by VA, requests in writing a hearing on the issues found in paragraphs (c)(1) and (2) of this section, offset shall not commence until a decision is rendered by VA on the issue which is the basis of the hearing.

(d) *Exceptions.* (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset (for example, if VA first learns of the debt when there is insufficient time before a final payment would be made to the debtor to allow for prior notice and opportunity for review or waiver consideration). In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible. VA shall promptly refund any money that has been collected that is ultimately found not to have been owed to the Government.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this

section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963, § 1.963a, or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(3) The procedures set forth in paragraph (b) of this section may be omitted when the debt arises under a contract that provides for notice and other procedural protections.

(4) Offset may commence without the notification required by paragraph (b) of this section when the offset is in the nature of a recoupment. As defined in 31 CFR 900.2(d), recoupment is a special method for adjusting debts arising under the same transaction or occurrence.

(e) *Hearing.* (1) After a debtor requests a hearing, VA shall notify the debtor of the form of the hearing to be provided; *i.e.*, whether the hearing will either be oral or paper. If an oral hearing is determined to be proper by the hearing official, the notice shall set forth the date, time, and location of the hearing. If the hearing is to be a paper review, the debtor shall be notified that he or she should submit his or her position and arguments in writing to the hearing official by a specified date, after which the record shall be closed. This date shall give the debtor reasonable time to submit this information.

(2) Unless otherwise required by law, an oral hearing under this paragraph is not required to be a formal evidentiary type of hearing.

(3) A debtor who requests a hearing shall be provided an oral hearing if VA determines that the matter cannot be resolved by review of documentary evidence. Whenever an issue of credibility or veracity is involved, an oral hearing will always be provided the debtor. For example, the credibility or veracity of a debtor is always an issue whenever the debtor requests a waiver of collection of the debt. Thus, a hearing held in conjunction with a waiver request will always be an oral hearing. If a determination is made to provide an oral hearing, the hearing official may offer

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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.

(b) *Notification.* Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been