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Approved: October 18, 2004.

Mark E. Matthews,*Deputy Commissioner for Services and Enforcement.***Gregory F. Jenner,***Assistant Secretary of the Treasury.*

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Parts 1 and 2**

RIN 2900-AK10

Standards for Collection, Compromise, Suspension, or Termination of Collection Effort, and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromises; Salary Offset Provisions; Delegations of Authority**AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: This final rule revises the Department of Veterans Affairs (VA) regulations concerning the collection, compromise, suspension, termination, and referral of debts owed to VA. The revision clarifies and simplifies debt collection standards and reflects changes to Federal debt collection procedures under the Debt Collection Improvement Act of 1996. VA is also amending regulations pertaining to the administration of regional office Committees on Waivers and Compromises, as well as provisions pertaining to debt collection and to the Chief Financial Officer in the delegations of authority regulations. Other nonsubstantive changes are made for purposes of clarification.

DATES: *Effective Date:* November 24, 2004.**FOR FURTHER INFORMATION CONTACT:**

Peter Mulhern, Cash and Debt Management Division (047GC1), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-5570.

SUPPLEMENTARY INFORMATION: On December 29, 2003, VA published in the **Federal Register** (68 FR 74893) a proposed rule to bring VA's debt collection regulations into compliance with the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (April 26, 1996), the subsequent revision of the Federal Claims Collection Standards (FCCS)(31 CFR parts 900 through 904) by the Department of the Treasury (Treasury) and the Department of Justice in 2000, and with Treasury's additional rules in 31 CFR part 285. VA's current debt collection regulations include tools such as offset of VA benefit payments, assessment of interest and late payment charges, use of consumer reporting and private collection agencies, and Federal salary offset. We proposed to add to VA's debt collection regulations more collection tools now authorized by the DCIA and revised FCCS. These tools include centralized administrative offset through the use of the Treasury Offset Program (TOP), the transfer or referral of delinquent debt to Treasury for collection (cross-servicing), and administrative wage garnishment. We also proposed to amend our debt collection regulations by deleting provisions that are either obsolete or duplicative of Treasury and Treasury/DOJ regulations, as well as to ensure that our regulations are consistent with statutory mandates and that they are clearly written.

In addition, VA proposed to amend a regulation pertaining to the Committees on Waivers and Compromises to allow each station Director the authority to appoint the person responsible for the Committee's administrative control. Our current regulation, which states that the station Fiscal Officer must have administrative control authority, does not allow the station Director any discretion in this matter.

We further proposed to amend a regulation so that VA's Chief Financial Officer (CFO) would have the ability to redelegate debt collection authority to administration heads and staff office directors as the CFO deems appropriate.

We provided a 60-day comment period which ended on February 27, 2004. We received two submissions in response to our invitation for comments on the proposed regulations. One, from an individual, discussed the individual's experience with VA after VA informed him that an overpayment existed due to his son's dropping out of college, and said that VA had withheld almost all of a monthly payment of benefits (which he asserted was without prior notice). He said that the VA

employee he contacted had not been aware of an allegedly larger amount VA owed him due to an increase in the number of his children. He asserted that VA's efficiency in the measures involved in collecting a debt are far ahead of those involved in paying veterans their benefits, and asked for help in putting "customer needs (benefit payments) first." He did not say whether he thought rulemaking changes could provide the help he was requesting nor whether adoption of the proposed rule would itself help, and we see no need for changes in the proposed rule to be made based on this submission. The other submission, from the Disabled American Veterans (DAV), is discussed below.

DAV states that our proposed new paragraph (c)(4) in 38 CFR 1.912a violates 38 U.S.C. 5314(b). This new paragraph states that VA will begin collection action from VA benefit payments after an initial adverse decision on a debtor's request for waiver or the debtor's informal dispute of the existence or amount of a benefit debt. DAV argues that there is no statutory change to section 5301(c) or section 5314 justifying the addition of this provision, and that VA provides no explanation of this change in the preamble. DAV notes that the preamble cites the DCIA as the authority for most of the changes for our proposed rulemaking. DAV notes further that the DCIA's principal amendments to strengthen debt collection authority included amendments to the administrative offset provisions of 31 U.S.C. 3716. DAV correctly states that while collections under 38 U.S.C. 5301(c) must be conducted in accordance with procedures prescribed in 31 U.S.C. 3716, collections under 38 U.S.C. 5314 are not subject to the general provisions applicable to other claims collections as set forth in 31 U.S.C. 3716. According to DAV, there is no statutory authority or other explanation for our proposed new paragraph (c)(4) in 38 CFR 1.912a.

The preamble to the proposed rule did contain an explanation that encompassed the proposed change to add paragraph (c)(4) to 38 CFR 1.912a, since it is one of the changes that was proposed to ensure that our debt collection regulations are consistent with statutory mandates and clearly written (68 FR 74893, 74894). DAV is correct that there is no statutory change to 38 U.S.C. 5301(c) or 5314 that pertains to the addition of this provision. However, we believe that DAV is incorrect in stating that our proposed new paragraph violates section 5314(b).

Nothing in section 5314(b) requires VA to suspend administrative offset pending a final decision by the Board of Veterans' Appeals (BVA). The requirements of 38 U.S.C. 5314(b) are to be met by "reasonable efforts to notify" the person in compliance with § 5314(b)(1) and (b)(3) and by a determination described in section 5314(b)(2). Under section 5314(b)(2), the Secretary is merely required to make "a determination" with respect to a dispute of the existence or amount of the debt or with respect to a request for waiver, or to determine that the time required to make such a determination before making deductions would jeopardize the Secretary's ability to recover the full amount of such indebtedness through deduction from such payments.

DAV states that there is no compelling basis to begin collection immediately after an initial adverse decision, except where there are "real reasons to determine that delay would jeopardize eventual collection of debt." DAV's language is different than the statutory standards in section 5314(b)(2). The necessary finding concerns whether delay would jeopardize the ability to recover the debt by deduction from payments of VA benefits. When VA is making a final payment or a one-time payment, and the debtor is not receiving a continuous benefit payment, VA does indeed have a basis for determining that delay would jeopardize its ability to use offset for collection of a debt.

DAV argues further that 38 U.S.C. 5314 makes no distinction between initial determinations and appellate determinations. DAV also believes a debtor's right to appeal to BVA is as much a part of the "prescribed administrative process" referred to in section 5314(b)(1) as the initial determination.

The requirement in 38 U.S.C. 5314(b)(1) for VA to notify the debtor of the right to dispute the existence and amount of the debt, or the right to request waiver, through "prescribed administrative processes" does not, as DAV argues, apply to both an initial decision at the regional office level and an appellate decision by BVA. VA has consistently under section 5314 taken the position that collection action may begin after an initial adverse determination on the validity and amount of the debt or an initial adverse determination on the waiver request. A reading of the current regulations supports this position. For example, the last sentence in 38 CFR 1.911(c) states: "Except as provided in § 1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding." Furthermore,

§ 1.912a(c)(1) states that " * * * offset shall not commence until the dispute is reviewed as provided in § 1.911a(c)(1) [sic] [§ 1.911(c)(1); this final rule corrects the inadvertent failure to reflect the redesignation of § 1.911a as § 1.911 (52 FR 42105)(November 3, 1987)] and unless the resolution is adverse to the debtor." The procedure provided in § 1.911(c)(1) is an informal dispute only. VA's regulations further provide in § 1.912a(c)(2) that " * * * offset shall not commence until the Department of Veterans Affairs has made an initial decision on waiver." Thus, VA's current regulations in 38 CFR 1.911 and 1.912a already authorize VA to begin collection from benefit payments after an adverse informal decision on the existence or amount of a benefit program debt or an initial adverse decision on a request for waiver of such debt. Similarly, we have consistently taken the position under section 5314(b)(2) that if VA finds that delay to make a determination on such a dispute or request would jeopardize collection by offset, VA is authorized to begin collection. Nothing in either the current § 1.911 or § 1.912a requires VA to suspend collection action until a final decision is rendered by BVA. VA's regulations are also consistent with Treasury's regulations for offset, which do not require the exhaustion of all administrative remedies prior to collection by offset (see 31 CFR 901.3(b)(4) and 901.3(c)(2)(i)). New paragraph (c)(4) in § 1.912a is merely intended to clarify our regulations by reflecting an already existing practice.

DAV argues that delay in collection would not cause adverse consequences to the Government comparable to the harm that collection of a contested debt can cause to an individual veteran. DAV also asks that VA revise the proposed rules "to make them more consistent with the pro-veteran nature of VA's administrative processes." We believe that this final rule accords with Congressional concern for the needs of veterans as well as of taxpayers in general. For example, the legislative history of 38 U.S.C. 5314 shows a legislative intent that VA aggressively pursue debt collection and a concern that failing to do so is a disservice to veterans, and is unfair to the veterans who do repay their overpayments.

DAV also has several questions and concerns about VA's proposed new regulation (38 CFR 1.923) on administrative wage garnishment (AWG). This proposed regulation is based on Treasury's AWG regulation (31 CFR 285.11) and is authorized by 31 U.S.C. 3720D and 38 U.S.C. 501. New § 1.923 provides AWG procedures, including procedures for hearings. Since

we have decided that only VA debts that have been referred to Treasury's cross-servicing program will be subject to AWG, our regulation describes certain responsibilities of both Treasury and VA for many of the AWG procedures. It should be noted that VA is not required to refer a debt to Treasury unless the debt is more than 180 days delinquent. Thus, any debt that eventually becomes subject to AWG will be more than 180 days delinquent.

DAV describes the authority delegated to Treasury by Congress (DCIA at 31 U.S.C. 3720D) to promulgate regulations concerning AWG procedures and hearings as quasi-legislative authority and questions whether it can be subdelegated to another agency, such as VA.

31 U.S.C. 3720D establishes authority for the use of AWG by "the head of an executive, judicial, or legislative agency." At section 3720D(h), Congress mandates that the Secretary of Treasury shall issue regulations to implement section 3720D. In our view, Congress has already by statute given AWG authority directly to each agency head, and under that statute in combination with VA's rulemaking authority in 38 U.S.C. 501, VA has ample authority to issue regulations concerning its administration of its AWG authority. We do not agree with DAV that the grant of rulemaking authority to Treasury under 31 U.S.C. 3720D is exclusive. The statute contains no language showing such an intent. In our view, it does not deprive agencies of other general rulemaking authority they have with respect to their statutory responsibilities. Thus, there is no need for VA to rely on any "subdelegation" from Treasury, which DAV asserts would be invalid.

In addition, DAV also questions whether VA has authority to issue regulations governing actions by Treasury. VA's AWG regulation does not dictate or govern actions by Treasury. Rather, VA's regulation describes actions that Treasury is already required to perform on debts referred to its cross-servicing program.

DAV states that VA's proposed regulation lacks the clarity of Treasury's regulation. DAV finds that VA's proposed regulation requires the reader to shift back and forth between our regulation and Treasury's. DAV feels that VA debtors will probably not be familiar with Treasury's regulation. While both statements may be true, it is not unusual for VA's debt collection regulations to refer to Treasury's regulations, which are intended as guidance for executive agencies to follow in developing agency-specific

regulations. For the reasons discussed below, we believe that the references serve a useful purpose and should be retained.

At this point, VA intends to use AWG on debts that have been referred to the Treasury Cross-Servicing Program. Once a debt is referred to this collection program, Treasury will provide all of the notification to both debtor and employer. VA will only be responsible for conducting a hearing, if one is requested. However, in the future, it is possible that VA may decide to implement AWG without referral to Treasury. VA would then be responsible not only for the hearing, but all other aspects of the AWG process. Consequently, we referred to possible actions by both VA and Treasury, as well as to Treasury's regulation, throughout the proposed regulation. Admittedly, this is somewhat cumbersome, but we feel it is necessary to do so in order to address all possible contingencies.

DAV objects to the fact that proposed § 1.923(b)(3) requires the debtor to be notified of the right to request a hearing, rather than notified simply of the right to a hearing. DAV believes that small differences in language, such as this, are not inconsequential and can lead to misunderstandings. We agree with DAV's position and in this final rule we are making a change from proposed § 1.923(b)(3) accordingly.

Treasury's regulation provides, at 31 CFR 285.11(f)(3)(i), that "the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issue in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity." DAV states that proposed § 1.923(c) appears to leave the decision of whether to afford an oral hearing more completely to the discretion of the hearing official than does the Treasury regulation. VA's version provides, in DAV's view, no guidance as to when an issue in dispute cannot be resolved by review of the documentary evidence and must be resolved by an oral hearing.

In proposed § 1.923(c), we believe the reference to 31 CFR 285.11(f) provides sufficient guidance for the hearing official to determine whether an oral or paper hearing would be accorded the debtor. VA's proposed language does not give more discretion to the hearing official in determining the type of hearing than as provided for in Treasury's regulation. However, in order to provide more specific guidance on this issue, we are in this final rule

adding the phrase "for example, when the validity of the claim turns on the issue of credibility or veracity" to the end of the second sentence of proposed § 1.923(c)(1). This language is taken directly from 31 CFR 285.11(f)(3)(i).

DAV next states that the specific hearing procedures prescribed in proposed § 1.923(c)(1) conflict with VA hearing procedures and the associated rights of VA claimants. Specifically, in VA's administrative proceedings, a claimant has the right to request a hearing at any stage in the process, and according to DAV, the term "hearing" means an oral hearing. DAV argues that the right to an oral hearing is one of the basic elements of due process imposed by 38 CFR part 3. DAV asserts that the rules applicable to BVA also make it clear that the term "hearing" pertains to oral hearings. Notwithstanding the Treasury rule, DAV believes that it is fundamentally unfair that the decision on whether to afford an oral hearing is at the discretion of the hearing official. If VA has the latitude to make its own rules on these hearing procedures, DAV believes VA has the latitude to offer an oral hearing for all debtors that desire one. DAV also feels the oral hearing should be recorded and preferably transcribed, since any decision under § 1.923 will be subject to appellate review where testimonial evidence will be pertinent. Our proposed § 1.923(c)(1) provides that the hearing official must maintain a summary record of the proceedings, but is not required to produce a transcript of the hearing. The Treasury regulation at 31 CFR 285.11(f)(9) only requires a summary record and we believe this to be sufficient.

In publishing § 1.923, VA has no intention of depriving veterans and other VA benefit claimants of any rights they are entitled to under title 38 of the U.S. Code or under 38 CFR part 3. However, § 1.923 is intended to authorize AWG for all debts owed VA, not just those debts that are the result of participation in a benefits program under title 38. Our reference to 38 CFR 1.911(c)(1) in § 1.923(c)(6) is intended to distinguish these rights (of veterans and other benefit claimants) from the rights of debtors whose debts are not resulting from participation in a VA benefit program. The intent is to recognize the right to dispute the existence and amount of a benefit debt in accordance with § 1.911(c)(1) and to allow any existing VA regional office or BVA decision to be incorporated by reference and become the basis of the hearing official's decision. Thus, a veteran and any other claimant as defined in 38 U.S.C. 5100 would retain any rights

under VA statute and regulations if he or she disputed the existence and amount of a benefit debt that eventually became subject to AWG. The AWG regulations do not confer on veterans or other claimants an additional opportunity to challenge the debt or to request a waiver, as these rights were available to them at the initial notification of indebtedness.

DAV states that § 1.923(c)(5), which is modeled on § 285.11(f)(8), violates existing law and cites 38 U.S.C. 5107 and *Gilbert v. Derwinski*, 1 Vet. App. 49, 54 (1990), as authority for their position. Section 1.923(c)(5) states that VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt, after which the debtor must show, by a preponderance of the evidence, that no debt exists or the amount of the debt is incorrect. DAV cites the fact that a more liberal burden of proof applies to veterans and other claimants under VA law because a veteran need only demonstrate that there is an approximate balance of positive and negative evidence in order to prevail.

As stated above, § 1.923 is intended to authorize AWG for all debts owed VA, not just those debts that are the result of participation in a benefits program under title 38 of the U.S. Code. The burden of proof described in § 1.923(c)(5) is applicable to all debts owed VA. However, a debtor can dispute the existence and amount of a debt arising out of participation in a VA benefits program in accordance with § 1.911(c)(1) and appeal any adverse decision under 38 CFR parts 19 and 20. Under such procedures, the debtor would be under the more liberal burden of proof. Prior decisions rendered under procedures set forth in 38 CFR applicable to the benefit would become the basis of the hearing official's decision, as stated in our earlier discussion of § 1.923(c)(6). In all probability, by the time a debt reaches the AWG process, veterans and other claimants would have already had the opportunity to exercise any rights under the benefit debt process and the debt would be merely a debt owed to the Federal government.

Finally, Treasury's 31 CFR 285.11 states that the hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (APA). VA's proposed § 1.923(c)(7) merely restates the same thing. DAV correctly points out that VA's administrative adjudicative processes for VA benefits are not subject to the APA. DAV states that § 1.923(c)(7) needs to be revised; otherwise this proposed rule would

remove BVA from the process, and in so doing, would preclude review by the U.S. Court of Appeals for Veterans Claims.

Again, any decision concerning the existence or amount of a debt arising out of participation in a VA benefits program will be made in accordance with the procedures set forth in 38 CFR applicable to the benefit. Any such decision will be the basis of a hearing official's AWG decision. As stated above, by the time a debt reaches the AWG process, veterans and other claimants have already had the opportunity to exercise any rights under the benefit debt process and the debt would be merely a debt owed to the Federal government.

In addition to the changes discussed above as a result of comments we received, we are making in the final rule changes from the proposed rule by adding or revising authority citations; removing redundant language or unnecessary cross-references; in the instruction for § 1.919, redesignated as § 1.915, correcting an inadvertent error by revising the amendments to paragraph (f)(2) to reflect that we are removing paragraph (f)(2) and its authority citation and reserving paragraph (f)(2); removing a reference in proposed new § 1.923 to a now-obsolete Treasury form number and referring instead to "a Treasury-approved" form; adding language to § 1.907, Definitions, to promote clarity in understanding the provisions of §§ 1.900 through 1.953; and making other nonsubstantive changes for purposes of clarity or of a technical nature. The Regulatory Flexibility Act paragraph in this preamble also reflects correcting changes.

This final rule makes a nonsubstantive clarifying change to the second sentence of proposed § 1.963a(b), which stated that, "[g]enerally," collection of an overpayment of employees' pay, expenses, and allowances will be "against equity and good conscience" if the overpayment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver. The qualifying term "[g]enerally," reflects that VA Committees on Waivers and Compromises retain discretion to determine that collection would not be against equity and good conscience in some instances involving overpayments due to administrative error without fault on the part of the employee, such as in cases where the windfall to the employee or the burden to the

government by reason of the overpayment would be inequitably large or where VA promptly advised the claimant of a potential overpayment and the possibility of collection. In this final rule, we have added the phrase "and waiver would not otherwise be inequitable" to the second sentence of § 1.963a(b) in order to reiterate and clarify that the determination ultimately turns on the equities of each case, as provided in the preceding sentence. This change does not alter the meaning of the proposed rule.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the provisions of the proposed rule as a final rule without change except as noted above.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule primarily affects individuals. It only occasionally affects a small entity, and its economic impact would not be a significant one on a substantial number of small entities. The economic impact on small entities would be solely related to the rule's provisions for collection of an entity's indebtedness to VA or garnishment of wages of an entity's employee determined to be indebted to VA. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

There is no applicable Catalog of Federal Domestic Assistance number.

List of Subjects

38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

38 CFR Part 2

Delegations of authority.

Approved: October 15, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 1 and 2 are amended as follows:

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. The authority citation preceding § 1.900 is revised to read as follows:

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

■ 3. Section 1.900 is revised to read as follows:

§ 1.900 Prescription of standards.

(a) The standards contained in §§ 1.900 through 1.953 are issued pursuant to the Federal Claims Collection Standards, issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) in parts 900 through 904 of 31 CFR, as well as other debt collection authority issued by Treasury in part 285 of 31 CFR, and apply to the collection, compromise, termination, and suspension of debts owed to VA, and the referral of such debts to Treasury (or other Federal agencies designated by Treasury) for offset and collection action and to DOJ for litigation, unless otherwise stated in this part or in other statutory or regulatory authority, or by contract.

(b) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

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

■ 4. Section 1.901 is revised to read as follows:

§ 1.901 No private rights created.

Sections 1.900 through 1.953 do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any

other person, nor shall the failure of VA to comply with any of the provisions of §§ 1.900 through 1.953 be available to any debtor as a defense.

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

■ 5. Section 1.902 is revised to read as follows:

§ 1.902 Antitrust, fraud, and tax and interagency claims.

(a) The standards in §§ 1.900 through 1.953 relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice (DOJ) has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in §§ 1.900 through 1.953 relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, VA shall promptly refer the case to DOJ. At its discretion, DOJ may return the claim to VA for further handling in accordance with the standards in §§ 1.900 through 1.953.

(b) Sections 1.900 through 1.953 do not apply to tax debts.

(c) Sections 1.900 through 1.953 do not apply to claims between Federal agencies.

(d) Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

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

■ 6. Section 1.903 is revised to read as follows:

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.953 precludes VA settlement, waiver, compromise, or other disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in Title 31 CFR parts 900 through 904. See, for example, the Federal Medical Care Recovery Act (42 U.S.C. 2651 *et seq.*)

and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of VA generally take precedence over 31 CFR parts 900 through 904.

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

■ 7. Section 1.904 is revised to read as follows:

§ 1.904 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, VA may demand the return of specific property or the performance of specific services.

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

■ 8. Section 1.905 is revised to read as follows:

§ 1.905 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single debt in determining whether the debt is one of less than \$100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension, or termination of collection activity.

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

■ 9. Section 1.906 is revised to read as follows:

§ 1.906 Required administrative proceedings.

(a) In applying §§ 1.900 through 1.953, VA is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing contained in §§ 1.900 through 1.953 is intended to foreclose the right of any debtor to an administrative proceeding, including appeals, waivers, and hearings provided by statute, contract, or VA regulation (see 38 U.S.C. 3720(a)(4) and 5302 and 42 U.S.C. 2651–2653).

(Authority: 38 U.S.C. 501, 3720(a)(4), 5302; 42 U.S.C. 2651 through 2653).

■ 10. Section 1.907 is revised to read as follows:

§ 1.907 Definitions.

(a) The definitions and construction found in the Federal Claims Collection Standards in 31 CFR 900.2(a) through (d), and the definitions in the provisions on administrative wage garnishment in 31 CFR 285.11(c) shall apply to §§ 1.900

through 1.953, except as otherwise stated.

(b) As used in §§ 1.900 through 1.953, *referral for litigation* means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to a VA Regional Counsel for legal action.

(c) As used in §§ 1.900 through 1.953, *VA benefit program* means medical care, home loan, and benefits payment programs administered by VA under Title 38 of the United States Code, except as otherwise stated.

(d) As used in §§ 1.900 through 1.953, *Treasury* means the United States Department of the Treasury.

(Authority: 31 U.S.C. 3701, 3711; 38 U.S.C. 501, 5316).

■ 11. The authority citation preceding § 1.910 is removed.

■ 12. Section 1.910 is revised to read as follows:

§ 1.910 Aggressive collection action.

(a) VA will take aggressive collection action on a timely basis, with effective follow-up, to collect all claims for money or property arising from its activities.

(b) In accordance with 31 U.S.C. 3711(g) and the procedures set forth at 31 CFR 285.12, VA shall transfer to Treasury any non-tax debt or claim that has been delinquent for a period of 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action. This requirement does not apply to any debt that:

- (1) Is in litigation or foreclosure;
- (2) Will be disposed of under an approved asset sale program;
- (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;
- (4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;
- (5) Will be collected under internal offset procedures within 3 years after the debt first became delinquent; or
- (6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. VA may request that the Secretary of the Treasury exempt specific classes of debts.

(c) In accordance with 31 U.S.C. 3716(c)(6) and the procedures set forth in 31 CFR part 285, VA shall notify Treasury of all past due, legally enforceable non-tax debt that is over 180 days delinquent for purposes of

administrative offset, including tax refund offset and federal salary offset. (Procedures for referral to Treasury for tax refund offset are found at 31 CFR 285.2 and procedures for referral to Treasury for federal salary offset are found at 38 CFR 1.995 and 31 CFR 285.7.)

(Authority: 31 U.S.C. 1311, 1316; 38 U.S.C. 501, 5314; 31 CFR part 285).

■ 13. Section 1.911 is amended by:

■ A. Revising paragraphs (a), (b), (c)(3), (d)(4), (d)(5), (f)(1), and (f)(5), and the authority citation at the end of the section (f)(5).

■ B. Adding paragraphs (d)(6) and (d)(7).

The revisions and additions read as follows:

§ 1.911 Collection of debts owed by reason of participation in a benefits program.

(a) *Scope.* This section applies to the collection of debts resulting from an individual's participation in a VA benefit or home loan program. It does not apply to VA's other debt collection activities. Standards for the demand for payment of all other debts owed to VA are set forth in § 1.911a. School liability debts are governed by § 21.4009 of this title.

(b) *Written demands.* When VA has determined that a debt exists by reason of an administrative decision or by operation of law, VA shall promptly demand, in writing, payment of the debt. VA shall notify the debtor of his or her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.

(c) * * *

(3) *Appeal.* In accordance with parts 19 and 20 of this title, the debtor may appeal the decision underlying the debt.

(d) * * *

(4) That collection may be made by offset from current or future VA benefit payments (see § 1.912a). In addition, the debtor shall be advised of any policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; any other remedies to enforce payment of the debt, including administrative wage garnishment, Federal salary offset, tax refund offset, and litigation; and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for administrative offset or collection.

(5) That interest and administrative costs may be assessed in accordance with § 1.915, as appropriate;

(6) That the debtor shall have the opportunity to inspect and copy records; and

(7) That the debtor shall have the opportunity to enter into a repayment agreement.

* * *

(f) * * *

(1) Appellate rights, in parts 19 and 20 of this title;

* * *

(5) The assessment of interest and administrative costs, in § 1.915.

(Authority: 38 U.S.C. 501, 5302, 5314).

■ 14. Section 1.911a is added to read as follows:

§ 1.911a Collection of non-benefit debts.

(a) This section is written in accordance with 31 CFR 901.2 and applies to the demand for payment of all debts, except those debts arising out of participation in a VA benefit or home loan program. Procedures for the demand for payment of VA benefit or home loan program debts are set forth in § 1.911.

(b) Written demand as described in paragraph (c) of this section shall be made promptly upon a debtor of VA in terms that inform the debtor of the consequences of failing to cooperate with VA to resolve the debt. Generally, one demand letter is sufficient, but subsequent letters may be issued. In determining the timing of the demand letter, VA should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with §§ 1.950 through 1.953. When necessary to protect VA's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under 38 CFR 1.900 through 1.953, including immediate referral for litigation.

(c) The written demand letter shall inform the debtor of:

(1) The basis for the indebtedness and any rights the debtor may have to seek review within VA, including the right to request waiver;

(2) The applicable standards for imposing any interest or other late payment charges;

(3) The date by which payment should be made to avoid interest and other late payment charges and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed;

(4) The name, address, and phone number of a contact person or office within the agency;

(5) The opportunity to inspect and copy VA records related to the debt; and

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

(d) In addition to the items listed in paragraph (c) of this section, VA should include in the demand letter VA's willingness to discuss alternative methods of payment and its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies. The letter should also indicate the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, Federal salary offset, tax refund offset, administrative offset, and litigation) and the requirement 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 Regional Counsel to determine whether recoupment is available.

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

■ 15. Section 1.912 is amended by:

■ A. Revising paragraphs (a), (c)(2), (d)(1), (d)(2), and (f).

■ B. Adding paragraphs (d)(3), (d)(4), (g), (h), and (i).

The revisions and additions read as follows:

§ 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.

* * * * *

(c) * * *

(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.

* * * * *

(d) * * *

(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.

* * * * *

(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).

■ 16. Section 1.912a is amended by:

■ A. In paragraph (b), removing “§ 1.911a(c) and (d)” and adding, in its place, “§ 1.911(c) and (d)”.

■ B. In paragraph (c)(1), removing “§ 1.911a(c)(1)” and adding, in its place, “§ 1.911(c)(1)”.

■ C. In paragraph (d), removing “§ 1.911a(d)” and adding, in its place, “§ 1.911(d)”.

■ D. Adding paragraph (c)(4) to read as follows:

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

* * * * *

(c) * * *

(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.

* * * * *

§§ 1.913, 1.914, and 1.915 [Removed]

■ 17. Sections 1.913, 1.914, and 1.915 are removed.

§ 1.916 [Redesignated as § 1.913]

■ 18. Section 1.916 is redesignated as new § 1.913 and is revised to read as follows:

§ 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 proceeding under paragraph (a) of this section.

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

§ 1.917 [Redesignated as § 1.914]

■ 19. Section 1.917 is redesignated as new § 1.914 and is revised to read as follows:

§ 1.914 Collection in installments.

(a) Whenever feasible, VA shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, VA may accept payment in regular installments. VA should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible. If VA agrees to accept payments in regular installments, VA should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If

possible, the installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments should be obtained in appropriate cases. However, VA may accept installment payments if the debtor refuses to execute a written agreement or to give security.

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

§ 1.918 [Removed]

■ 20. Section 1.918 is removed.

§ 1.919 [Redesignated as § 1.915]

■ 21. Section 1.919 is redesignated as new § 1.915 and is amended by:

■ A. Revising paragraphs (a) and (c).

■ B. In paragraph (d), removing “§ 1.919” and adding, in its place, “this section”.

■ C. Removing paragraph (f)(2) and its authority citation, and reserving paragraph (f)(2).

■ D. Revising paragraph (g).

The revisions read as follows:

§ 1.915 Interest, administrative costs, and penalties.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, and subject to 38 U.S.C. 3485(e) and 5302, VA shall assess:

(1) Interest on all indebtedness to the United States arising out of participation in a VA benefit, medical care, or home loan program under authority of Title 38, U.S. Code.

(2) Interest and administrative costs of collection on such debts described in paragraph (a)(1) of this section where repayment has become delinquent (as defined in 31 CFR 900.2(b)), and

(3) Interest, administrative costs, and penalties in accordance with 31 CFR 901.9 on all debts other than those described in paragraph (a)(1) of this section.

* * * * *

(c) The rate of interest charged by VA shall be based on the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and shall be adjusted annually by VA on the first day of the calendar year. Once the rate of interest has been determined for a particular debt, the rate shall remain in effect throughout the duration of repayment of that debt.

When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, VA may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not

be charged on accrued interest and administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, interest and administrative costs that accrued but were not collected under the defaulted agreement shall be added to the principal under the new agreement.

* * * * *

(g) Administrative costs assessed under this section shall be the average costs of collection of similar debts, or actual collection costs as may be accurately determined in the particular case. No administrative costs of collection will be assessed under this section in any cases where the indebtedness is paid in full prior to the 30-day period specified in paragraph (e) of this section, or in any case where a repayment plan is proposed by the debtor and accepted by VA within that 30-day period, unless such repayment agreement becomes delinquent (as defined in 31 CFR 900.2(b)).

(Authority: 31 U.S.C. 3717; 38 U.S.C. 501, 5302, 5315).

§ 1.920 [Removed]

■ 22. Section 1.920 is removed.

§ 1.921 [Removed]

■ 23. Section 1.921 is removed.

§ 1.922 [Redesignated as § 1.916]

■ 24. Section 1.922 is redesignated as new § 1.916 and is amended by:

■ A. Revising paragraph (d)(2)(i).

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 1.916 Disclosure of debt information to consumer reporting agencies (CRA).

* * * * *

(d) * * *

(2)(i) In accordance with § 1.911 and § 1.911a, VA shall notify each individual of the right to dispute the existence and amount of the debt and to request a waiver of the debt, if applicable.

* * * * *

(Authority: 31 U.S.C. 3711(e); 38 U.S.C. 501, 5701(g) and (i)).

§ 1.923 [Redesignated as § 1.917]

■ 25. Section 1.923 is redesignated as new § 1.917 and is amended by:

■ A. Revising paragraph (b) introductory text.

■ B. Adding paragraphs (c) through (e).

The revision and additions read as follows:

§ 1.917 Contracting for collection services.

* * * * *

(b) In accordance with 31 U.S.C. 3718(d), or as otherwise permitted by

law, collection service contracts may be funded in the following manner:

* * * * *

(c) VA shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, VA may refer debts to private collection contractors pursuant to a contract between VA and a private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. See 31 U.S.C. 3711(g), 31 CFR 285.12(e), and 38 CFR 1.910.

(d) VA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) VA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

(Authority: 31 U.S.C. 3718; 38 U.S.C. 501).

■ 26. Section 1.924 is redesignated as § 1.918 and is amended by revising paragraphs (a) and (b) and the authority citation at the end of the section to read as follows:

§ 1.918 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to compromise or collect a debt in accordance with §§ 1.900 through 1.953, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) VA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

* * * * *

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

■ 27. Section 1.925 is redesignated as § 1.919 and is amended by revising paragraphs (a) and (b)(3) and the authority citation at the end of the section to read as follows:

§ 1.919 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, and in accordance with 31 CFR 901.3(d), VA may request that money which is due and payable to

a debtor from either the Civil Service Retirement and Disability Fund or FERS be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management (OPM) in accordance with such regulations prescribed by the Director of OPM. (See 5 CFR 831.1801 through 831.1808). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment. See § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) * * *

(3) VA has complied with §§ 1.911, 1.911a, 1.912, 1.912a, and 31 CFR 901.3, to the extent applicable, including any required hearing or review.

* * * * *

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716; 38 U.S.C. 501).

■ 28. Section 1.926 is redesignated as § 1.920 and amended by revising paragraphs (a), (c)(6), and (e), and the authority citation at the end of the section, to read as follows:

§ 1.920 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of collection action. Collection action may include the offsetting of the debt from any current or future payment, except salary (see paragraph (e) of this section), made by such Federal or State agency to the person indebted to VA.

* * * * *

(c) * * *

(6) Other applicable notices required by §§ 1.911, 1.911a, 1.912, and 1.912a.

* * * * *

(e) The referral by VA of a VA debt to another agency for the purpose of salary offset shall be done in accordance with 38 CFR 1.980 through 1.995 and regulations prescribed by the Director of the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

■ 29. Section 1.927 is redesignated as new § 1.921 and is revised to read as follows:

§ 1.921 Analysis of costs.

VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of

alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

(Authority: 31 U.S.C. 3711–3719; 38 U.S.C. 501).

■ 30. Section 1.928 is redesignated as new § 1.922 and is revised to read as follows:

§ 1.922 Exemptions.

(a) Sections 1.900 through 1.953, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of §§ 1.900 through 1.953 when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

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

■ 31. New § 1.923 is added to read as follows:

§ 1.923 Administrative wage garnishment.

(a) In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, VA or Treasury may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to VA. VA may pursue wage garnishment independently in accordance with this section or VA or Treasury may pursue garnishment after VA refers a debt to Treasury in accordance with § 1.910 of this part and 31 CFR 285.12. For the purposes of this section, any reference to Treasury also includes any private collection agency under contract to Treasury.

(b) At least 30 days prior to the initiation of garnishment proceedings,

VA or Treasury shall send a written notice, as described in 31 CFR 285.11(e), by first class mail to the debtor's last known address. This notice shall inform the debtor of:

(1) The nature and amount of the debt;

(2) The intention of VA or Treasury to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;

(3) An explanation of the debtor's rights, including the opportunity:

(i) To inspect and copy VA records pertaining to the debt;

(ii) To enter into a written repayment agreement with VA or Treasury under terms agreeable to VA or Treasury, and;

(iii) To a hearing in accordance with 31 CFR 285.11(f) and paragraph (c) of this section concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(3)(ii) of this section.

(c) Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies.

(1) The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity. The hearing official shall establish the time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hearing shall be borne

by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(2) If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record.

(3) If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph (b) of this section, then VA or Treasury shall not issue a withholding order as described in paragraph (d) of this section until the debtor is afforded the requested hearing and a decision rendered. If the debtor's written request for a hearing is not received within 15 business days following the mailing of the notice described in paragraph (b) of this section, then the hearing official shall provide a hearing to the debtor, but will not delay issuance of a withholding order as described in paragraph (d) of this section, unless the hearing official determines that the delay in filing was caused by factors beyond the debtor's control.

(4) The hearing official shall notify the debtor of:

(i) The date and time of a telephone conference hearing;

(ii) The date, time, and location of an in-person oral hearing, or;

(iii) The deadline for the submission of evidence for a written hearing.

(5) Except as provided in paragraph (c)(6) of this section, VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt, after which the debtor must show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In general, this means that the debtor must show that it is more likely than not that a debt does not exist or that the amount of the debt is incorrect. The debtor may also present evidence that terms of the repayment agreement are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law.

(6) If the debtor has previously contested the existence and/or amount of the debt in accordance with § 1.911(c)(1) or § 1.911a(c)(1) and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become

the basis of the hearing official's decision on such matters.

(7) The hearing official shall issue a written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA or Treasury. The decision will be the final action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*). The decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis, and conclusions, and;

(iii) The terms of the repayment schedule, if applicable.

(d) In accordance with 31 CFR 285.11(g) and (h), VA or Treasury shall send a Treasury-approved withholding order and certification form by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing. If a timely request for a hearing has been filed by the debtor, then VA or Treasury shall send a withholding order and certification form by first class mail to the debtor's employer within 30 days after a final decision is made to proceed with the garnishment. The employer shall complete and return the certification form as described in 31 CFR 285.11(h).

(e) After receipt of the garnishment order, the employer shall withhold the amount of garnishment as described in 31 CFR 285.11(i) from all disposable pay payable to the applicable debtor during each pay period.

(f) A debtor whose wages are subject to a wage withholding order under 31 CFR 285.11 may request a review, under the procedures set forth in 31 CFR 285.11(k), of the amount garnished. A request for review shall only be considered after garnishment has been initiated. The request must be based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship that limit the debtor's ability to provide food, housing, clothing, transportation, and medical care for himself/herself and his/her dependents.

(Authority: 31 U.S.C. 3720D; 38 U.S.C. 501; 31 CFR 285.11).

■ 32. New § 1.924 is added to read as follows:

§ 1.924 Suspension or revocation of eligibility for federal loans, loan insurance, loan guarantees, licenses, permits, or privileges.

(a) In accordance with 31 U.S.C. 3720B and the procedures set forth in 31 CFR 285.13 and § 901.6, a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance unless

exempted under paragraph (d) of this section or waived under paragraph (e) of this section.

(b) Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

(c) For the purposes of this section only, a debt is in a delinquent status if the debt has not been paid within 90 days of the payment due date or by the end of any grace period provided by statute, regulation, contract, or agreement. The payment due date is the date specified in the initial written demand for payment. Further guidance concerning the delinquent status of a debt may be found at 31 CFR 285.13(d).

(d) Upon the written request and recommendation of the Secretary of Veterans Affairs, the Secretary of the Treasury may grant exemptions from the provisions of this section. The standards for exemptions granted for classes of debts are set forth in 31 CFR 285.13(f).

(e)(1) VA's Chief Financial Officer or Deputy Chief Financial Officer may waive the provisions of paragraph (a) of this section only on a person-by-person basis.

(2) The Chief Financial Officer or Deputy Chief Financial Officer should balance the following factors when deciding whether to grant a waiver:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal government; and

(ii) Whether the granting of the financial assistance to the person is contrary to the government's goal of reducing losses by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (e)(2)(i) and (e)(2)(ii) of this section, the Chief Financial Officer or Deputy Chief Financial Officer should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of the total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) A centralized record shall be retained of the number and type of waivers granted under this section.

(f) In non-bankruptcy cases, in seeking the collection of statutory penalties, forfeitures, or other similar types of claims, VA may suspend or revoke any license, permit, or other privilege granted a debtor when the debtor inexcusably or willfully fails to

pay such a debt. The debtor should be advised in VA's written demand for payment of VA's ability to suspend or revoke licenses, permits, or privileges. VA may suspend or disqualify any lender, contractor, or broker who is engaged in making, guaranteeing, insuring, acquiring, or participating in loans from doing further business with VA or engaging in programs sponsored by VA if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time, or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury.

(g) In bankruptcy cases, before advising the debtor of the intention to suspend or revoke licenses, permits, or privileges, VA should seek legal advice from VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

(Authority: 31 U.S.C. 3720B; 38 U.S.C. 501).

■ 33. The authority citation preceding § 1.930 is removed.

■ 34. Sections 1.930 through 1.936 are revised to read as follows:

§ 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.936 of this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. VA may exercise such compromise authority when the amount of the debt due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice (DOJ). If VA receives an offer to compromise any debt in excess of \$100,000, VA should evaluate the compromise offer using the same factors as set forth in § 1.931 of this part. If VA believes the offer has merit, it shall refer the debt to the Civil Division or other appropriate division in DOJ using a Claims Collection Litigation Report (CCLR). The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer.

DOJ approval is not required if VA decides to reject a compromise offer.

(c) The \$100,000 limit in paragraph (b) of this section does not apply to debts that arise out of participation in a VA loan program under Chapter 37 of Title 38 of the U.S. Code. VA has unlimited authority to compromise debts arising out of participation in a Chapter 37 loan program, regardless of the amount of the debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.931 Bases for compromise.

(a) VA may compromise a debt if it cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) VA is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning VA's ability to prove its case in court.

(b) In determining the debtor's inability to pay, VA will consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) VA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. VA should consider the applicable exemptions available to the debtor under State and Federal law in determining the ability to enforce collection. VA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning VA's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases

should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for VA's claim. In determining the risks involved in litigation, VA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) VA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, VA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle.

(f) VA generally will not accept compromises payable in installments. If, however, payment of a compromise in installments is necessary, VA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, VA will also obtain security for repayment.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, VA will obtain a current financial statement from the debtor showing the debtor's assets, liabilities, income, and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.932 Enforcement policy.

VA may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if VA's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by VA's acceptance of the sum to be agreed upon.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.933 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, VA will pursue collection activity against all debtors, as appropriate. VA will not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) VA will ensure that a compromise agreement with one debtor does not release VA's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.934 Further review of compromise offers.

If VA is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within its delegated compromise authority, it may refer the offer to VA General Counsel or Regional Counsel or to the Civil Division or other appropriate division in the Department of Justice (DOJ), using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to the agency with instructions or advice.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.935 Consideration of tax consequences to the Government.

In negotiating a compromise, VA will consider the tax consequences to the Government. In particular, VA will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§ 1.936 Mutual releases of the debtor and VA.

In all appropriate instances, a compromise that is accepted by VA shall be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and VA and its officials, past and present, are released and discharged from any and all claims and causes of action that the debtor may have arising from the same transaction. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all

claims and causes of action against VA and its officials related to the transaction giving rise to the compromised debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

§§ 1.937 and 1.938 [Removed]

■ 35. Sections 1.937 and 1.938 are removed.

■ 36. Sections 1.940 and 1.941 are revised to read as follows:

§ 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.944 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, VA may suspend or terminate collection under this part with respect to the debt.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If VA believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, it shall refer the debt to the Civil Division or other appropriate division in DOJ, using the Claims Collection Litigation Report (CCLR). The referral should specify the reasons for VA's recommendation. If, prior to referral to DOJ, VA determines that a debt is plainly erroneous or clearly without legal merit, VA may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

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

§ 1.941 Suspension of collection activity.

(a) VA may suspend collection activity on a debt when:

- (1) It cannot locate the debtor;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, VA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

- (1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, and with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.911a, 1.912, and 1.912a, pending VA action on requests for administrative review of the existence or amount of the debt or a request for waiver of collection of the debt. However, collection action will be resumed once VA issues an initial decision on the administrative review or waiver request.

(d) When VA learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless VA can clearly establish that the automatic stay does not apply, has been lifted, or is no longer in effect. VA shall seek legal advice immediately from either the VA General Counsel or Regional Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by VA to the debtor until relief from the automatic stay is obtained.

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

■ 37. Section 1.942 is amended by adding paragraphs (g) and (h) to read as follows:

§ 1.942 Termination of collection activity.

* * * * *

(g) *Discharge in bankruptcy.* Generally, VA shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. VA may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge.

(h) Before terminating collection activity, VA should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the

debt. The termination of collection activity does not preclude VA from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

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

■ 38. Section 1.943 is revised and § 1.944 is added to read as follows:

§ 1.943 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, VA may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

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

§ 1.944 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), VA shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under §§ 1.940 through 1.943 and is governed by the Internal Revenue Code (see 26 U.S.C. 6050P). When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in §§ 1.900 through 1.953. When VA discharges a debt in full or in part, further collection action is prohibited. Therefore, VA should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, VA must terminate debt collection action.

(b) Upon discharge of an indebtedness, VA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26

CFR 1.6050P-1. VA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on VA's behalf.

(c) When discharging a debt, VA must request that any liens of record securing the debt be released.

(d) 31 U.S.C. 3711(i)(2) requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), VA may not discharge a debt until the requirements of § 3711(i)(2) have been met.

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

§ 1.950 Authority citation preceding [Removed]

■ 39. The authority citation preceding § 1.950 is removed.

■ 40. Sections 1.950 through 1.953 are revised to read as follows:

§ 1.950 Prompt referral.

(a) VA shall promptly refer debts to Department of Justice (DOJ) for litigation where aggressive collection activity has been taken in accordance with §§ 1.900 through 1.953, and such debts cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 1.930 through 1.936 and §§ 1.940 through 1.944. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and other late payment charges, shall be referred to the Civil Division or other division responsible for litigating such debts at DOJ. Debts for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in §§ 1.900 through 1.953, and, in any event, well within the period for initiating timely lawsuits against the debtors. VA shall make every effort to refer delinquent debts to DOJ for litigation within 1 year of the date such debts last became delinquent. In the case of guaranteed or insured loans, VA should make every effort to refer these delinquent debts to DOJ for litigation within 1 year from the date the loan was

presented to VA for payment or reinsurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. VA shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. VA should advise DOJ of the collection activities that have been utilized to date, and their result. VA shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. VA shall immediately notify DOJ of any payments credited to the debtor's account after referral of a debt under this section. DOJ shall notify VA, in a timely manner, of any payments it receives from the debtor.

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

§ 1.951 Claims Collection Litigation Report (CCLR).

(a) Unless excepted by the Department of Justice (DOJ), VA shall complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. VA shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) VA shall indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim.

(c) VA shall also use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

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

§ 1.952 Preservation of evidence.

VA must take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove its claims in court. VA ordinarily should include certified copies of the documents that form the basis for the claim when referring such claims to DOJ for litigation. VA shall provide originals of such documents immediately upon request by DOJ.

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

§ 1.953 Minimum amount of referrals to the Department of Justice.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, VA shall not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other minimum amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) shall promptly notify referring

agencies if the Attorney General changes this minimum amount.

(b) VA shall not refer claims of less than the minimum amount prescribed by the Attorney General unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with VA's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to VA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) VA should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys, in DOJ, prior to referring claims valued at less than the minimum amount.

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

§ 1.954 [Removed]

■ 41. Section 1.954 is removed.

■ 42. Section 1.955 is amended by revising paragraphs (b) through (d) to read as follows:

§ 1.955 Regional Office Committees on Waivers and Compromises.

* * * * *

(b) *Selection.* The Director shall designate the employees to serve as Chairperson, members, and alternates. Except upon specific authorization of the Under Secretary for Benefits, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(c) *Control and staff.* The administrative control of each Committee on Waivers and Compromises is the responsibility of the station's Fiscal Officer. However, the station Director has the authority to reassign the administrative control function to another station activity, rather than the Fiscal Officer, whenever the Director determines that such reassignment is appropriate. The quality control of the professional and clerical staff of the Committee is the responsibility of the Chairperson.

(d) *Overall control.* The Assistant Secretary for Management is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.

* * * * *

■ 43. Section 1.956 is amended by:

■ A. Revising paragraphs (a)(2)(i) and (a)(2)(ii).

■ B. Removing paragraph (a)(2)(iii).

■ C. Redesignating paragraph (a)(2)(iv) as new paragraph (a)(2)(iii).

■ D. Revising newly redesignated paragraph (a)(2)(iii).

■ E. Adding paragraph (a)(2)(iv).

■ F. Revising paragraphs (a)(3) and (b).

The revisions and addition read as follows:

§ 1.956 Jurisdiction.

(a) * * *

(2) Arising out of operations of the Veterans Health Administration:

(i) Debts resulting from services furnished in error (§ 17.101(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§ 17.101(b) of this chapter).

(iii) Other claims arising in connection with transactions of the Veterans Health Administration (§ 17.103(c) of this chapter).

(iv) Fiscal officers at VA medical facilities are authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c) of this chapter).

(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584).

(b) The Under Secretary for Benefits may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section.

* * * * *

■ 44. Section 1.957 is amended by:

■ A. Revising paragraphs (a)(1) introductory text and (a)(1)(iii).

■ B. Removing paragraph (a)(3).

The revisions read as follows:

§ 1.957 Committee authority.

(a) * * *

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in the following debt categories:

* * * * *

(iii) Services erroneously furnished (§ 17.101(a)).

* * * * *

■ 45. Section 1.958 is revised to read as follows:

§ 1.958 Finality of decisions.

A decision by the regional office Committee, operating within the scope of its authority, denying waiver of all or part of a debt arising out of participation

in a VA benefit or home loan program, is subject to appeal in accordance with 38 CFR parts 19 and 20. A denial of waiver of an erroneous payment of pay and allowances is subject to appeal in accordance with § 1.963a(a). There is no right of appeal from a decision rejecting a compromise offer.

(Authority: 38 U.S.C. 501 and 7104).

■ 46. Section 1.963a is revised to read as follows:

§ 1.963a Waiver; erroneous payments of pay and allowances.

(a) The provisions applicable to VA (including refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances, and travel, transportation, and relocation expenses and allowances, are set forth in 5 U.S.C. 5584. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are delegated all authority granted the Secretary under 5 U.S.C. 5584 to deny waiver or to grant waiver in whole or in part of any debt regardless of the amount of the indebtedness. Committee members also have exclusive authority to consider and render a decision on the appeal of a waiver denial or the granting of a partial waiver. However, the Chairperson of the Committee must assign the appeal to a different Committee member or members than the member or members who made the original decision that is now the subject of the appeal. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances, and travel, transportation, and relocation expenses and allowances, under 5 U.S.C. 5584: §§ 1.955(a) through (e)(2), 1.956(a)(introductory text) and (a)(3), 1.959, 1.960, 1.963a, and 1.967(c).

(b) Waiver may be granted under this section and 5 U.S.C. 5584 when collection would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver of the claim, and waiver would not otherwise be inequitable. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and

fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard will depend upon the facts existing in each case.

(c) An application for waiver must be received within 3 years immediately following the date on which the erroneous payment was discovered.

(Authority: 5 U.S.C. 5584; 38 U.S.C. 501).

■ 47. Section 1.965 is amended by removing paragraph (b)(3).

■ 48. Section 1.966 is amended by adding an authority citation at the end of the section to read as follows:

§ 1.966 Scope of waiver decisions.

* * * * *

(Authority: 38 U.S.C. 501, 5302).

■ 49. Section 1.970 is amended by removing “§§ 1.900 through 1.937” and adding, in its place, “§§ 1.930 through 1.936” and by revising the authority citation at the end of the section to read as follows:

§ 1.970 Standards for compromise.

* * * * *

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

■ 50. Section 1.980 is amended by:

■ A. Revising paragraphs (a) and (b).

■ B. Redesignating paragraphs (f) and (g) as paragraphs (h) and (i).

■ C. Adding new paragraphs (f) and (g).

■ D. Revising newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 1.980 Scope.

(a) In accordance with 5 CFR part 550, subpart K, the provisions set forth in §§ 1.980 through 1.995 implement VA's authority for the use of salary offset to satisfy certain debts owed to VA.

(b) These regulations apply to offsets from the salaries of current employees of VA, or any other agency, who owe debts to VA. Offsets by VA from salaries of current VA employees who owe debts to other agencies shall be processed in accordance with procedures set forth in 5 CFR part 550, subpart K.

* * * * *

(f) These regulations do not apply to a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of

the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(g) These regulations do not apply to any adjustment to collect a debt amounting to \$50 or less, if at the time of such adjustment, or as soon thereafter as practicable, the individual is provided with written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(h) These regulations do not preclude the compromise, suspension, or termination of collection action under the Federal Claims Collection Standards (FCCS) (31 CFR parts 900–904) and VA regulations 38 CFR 1.930 through 1.944.

* * * * *

■ 51. Section 1.982 is amended by revising paragraphs (a), (b), and (c)(3) to read as follows:

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.

(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or appropriate designee first provides the employee with a minimum of 30 calendar days written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under 38 CFR parts 19 and 20 and the time for pursuing such an appeal has not expired (§ 20.302), the Secretary or appropriate designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in 38 CFR parts 19 and 20 and will contain the determination and information required by § 1.983(b)(1) through (5), (7), (9), (10), and (12) through (14). The notice will also state that the employee may request a hearing on the offset schedule under the procedures set forth in § 1.984 and such a request will stay the commencement of salary offset.

(c) * * *

(3) That the employee may request a waiver of the debt pursuant to 38 CFR 1.911(c)(2) subject to the time limits of 38 U.S.C. 5302.

* * * * *

■ 52. Section 1.983 is amended by revising paragraphs (b)(8) and (b)(13) to read as follows:

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under laws administered by VA.

* * * * *

(b) * * *

(8) The VA employee's right to request an oral or paper hearing on the

Secretary or appropriate designee's determination of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner shall conduct such a hearing for any VA employee. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official, may also conduct an oral or paper hearing at the request of a non-VA employee on the determination by an appropriately designated official of the employing agency of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a hearing request is filed by the non-VA employee as prescribed by the employing agency.

* * * * *

(13) The employee's right, if applicable, to request waiver under 5 U.S.C. 5584 and 38 CFR 1.963a and any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

* * * * *

■ 53. Section 1.984 is amended by:

■ A. In paragraph (a), removing "20 calendar days" and adding, in its place, "30 calendar days".

■ B. In paragraph (b), removing "20 day period" and adding, in its place, "30-day period".

■ 54. In § 1.989, paragraph (a) is amended by removing "20 calendar days" and adding, in its place, "30 calendar days".

■ 55. In § 1.990, paragraph (a) is amended by removing "20 calendar days" and adding, in its place, "30 calendar days".

■ 56. Section 1.991 is amended by:

■ A. In paragraph (a), removing "§§ 1.982, 19.1 through 19.200 or § 1.988" and adding, in its place "§ 1.982 or § 1.988, or parts 19 and 20".

■ B. Revising paragraph (d) to read as follows:

§ 1.991 Procedures for salary offset: when deductions may begin.

* * * * *

(d) If an employee retires, resigns, or his or her employment ends before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to procedures for administrative offset (*see* 5 CFR 831.1801 through 831.1808, 31 CFR 901.3, and 38 CFR 1.912).

■ 57. Section 1.992 is amended by revising paragraph (c) and the authority citation following paragraph (c) to read as follows:

§ 1.992 Procedures for salary offset.

* * * * *

(c) Imposition of interest, penalties, and administrative costs. Interest, penalties, and administrative costs shall be charged in accordance with 31 CFR 901.9 and 38 CFR 1.915.

(Authority: 5 U.S.C. 5514; 38 U.S.C. 501).

■ 58. Section 1.995 is added to read as follows:

§ 1.995 Requesting recovery through centralized administrative offset.

(a) Under 31 U.S.C. 3716, VA and other creditor agencies must notify Treasury of all debts over 180 days delinquent so that recovery of such debts may be made by centralized administrative offset. This includes those debts that VA and other agencies seek from the pay account of an employee of another Federal agency via salary offset. Treasury and other disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part.

(b) Prior to submitting a debt to Treasury for the purpose of collection by offset, including salary offset, VA shall provide written certification to Treasury that:

(1) The debt is past due and legally enforceable in the amount submitted to Treasury and that VA will ensure that any subsequent collections are credited to the debt and that Treasury shall be notified of such;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred to Treasury for offset within 10 years after VA's right of action accrues;

(3) VA has complied with the provisions of 31 U.S.C. 3716 and 38 CFR 1.912 and 1.912a including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) VA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and 38 CFR 1.980 through 1.994 including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a hearing.

(c) Specific procedures for notifying Treasury of debts for purposes of collection by centralized administrative

offset are contained in the 31 CFR 285.7. VA and other creditor agencies may notify Treasury of debts that have been delinquent for 180 days or less, including debts that VA and other creditor agencies seek to recover from the pay of an employee via salary offset. (Authority: 31 U.S.C. 3716; 38 U.S.C. 501).

PART 2—DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

■ 2. Section 2.6 is amended by:

■ A. Revising the heading of paragraph (c).

■ B. In paragraph (c)(1), removing "Assistant Secretary for Finance and Information Resources Management" and adding, in its place, "Assistant Secretary for Management".

■ C. In paragraph (c)(2), removing "Assistant Secretary for Finance and Information Resources Management" each time it appears and adding, in its place, "Assistant Secretary for Management".

■ D. Revising paragraph (d).

■ E. In paragraph (e), removing the heading of paragraph (e)(4) introductory text, and revising the authority citations following paragraphs (e)(4)(iii) and (e)(9).

The revisions read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(c) *Office of Management.*

* * * * *

(d) *Assistant Secretary for Management (Chief Financial Officer); administration heads and staff office directors.* The Assistant Secretary for Management (Chief Financial Officer) is delegated authority to take appropriate action (other than provided for in paragraphs (e)(3) and (e)(4) of this section) in connection with the collection of civil claims by VA for money or property, as authorized in § 1.900, *et seq.* The Assistant Secretary for Management (Chief Financial Officer) may redelegate such authority as he/she deems appropriate to administration heads and staff office directors.

(Authority: 38 U.S.C. 501, 512).

(e) * * *

(4) * * *

(iii) * * *

(Authority: 31 U.S.C. 3711(a)(2); 38 U.S.C. 501, 512).

* * * * *

(9) * * *

(Authority: 38 U.S.C. 501, 512, 1729(c)(1)).

* * * * *

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR 17

RIN 2900-AK29

Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA's medical regulation to give Fiscal Officers at VA medical facilities the authority to waive veterans' debts arising from the medical care co-payments. This change in regulation will codify an existing 1995 delegation of authority to Fiscal Officers from the Secretary of Veterans Affairs. The purpose of this 1995 delegation was to increase the efficiency of the waiver process.

DATES: Effective Date: This rule shall become effective on November 24, 2004.

FOR FURTHER INFORMATION CONTACT: Eileen P. Downey, Business Policy, Veterans Health Administration, Chief Business Office (16), 810 Vermont Avenue, NW., Washington DC 20420, (202) 254-0347.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 20, 2004 (69 FR 21075), we proposed amending 38 CFR 17.105 to give Fiscal Officers at VA medical facilities the authority to waive veterans' debts arising from the medical care co-payments.

We asked interested parties to submit comments on or before June 21, 2004. We received no comments. Based on the rationale noted above and as set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule will have no such effect on

State, local or tribal governments, or the private sector.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information in 38 CFR 17.105 (c) referencing VA Form 5655, under the provision of the Paperwork Reduction Act (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this final rule. The Office of Management and Budget has approved this information collection in VA Form 5655 under control number 2900-0165.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The final rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), the final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, 64.024 and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 15, 2004.

Anthony J. Principi,
Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.105 is amended by:

■ A. In paragraph (a), removing “§ 17.101(a)” and adding, in its place, “§ 17.102”.

■ B. Redesignating paragraph (c) as (d).

■ C. Adding a new paragraph (c).

■ D. Adding the OMB information collection approval number parenthetical immediately following paragraph (d).

■ E. Adding an authority citation at the end of the section.

The additions read as follows:

§ 17.105 Waivers.

* * * * *

(c) *Of charges for copayments.* If the debt represents charges for outpatient medical care, inpatient hospital care, medication or extended care services copayments made under §§ 17.108, 17.110 or 17.111 of this chapter, the claimant must request a waiver by submitting VA Form 5655 (Financial Status Report) to a Fiscal Officer at a VA medical facility where all or part of the debt was incurred. The claimant must submit this form within the time period provided in § 1.963(b) of this chapter and may request a hearing under § 1.966(a) of this chapter. The Fiscal Officer may extend the time period for submitting a claim if the Chairperson of the Committee on Waivers and Compromises could do so under § 1.963(b) of this chapter. The Fiscal Officer will apply the standard “equity and good conscience” in accordance with §§ 1.965 and 1.966(a) of this chapter, and may waive all or part of the claimant's debts. A decision by the Fiscal Officer under this provision is final (except that the decision may be reversed or modified based on new and material evidence, fraud, a change in law or interpretation of law, or clear and unmistakable error shown by the evidence in the file at the time of the prior decision as provided in § 1.969 of this chapter) and may be appealed in accordance with 38 CFR parts 19 and 20.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0165.)

(Authority: 38 U.S.C. 501, 1721, 1722A, 1724)

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