

## Department of Veterans Affairs

## § 1.942

claim exceeds \$100,000, exclusive of interest and other late payment charges, then the authority to suspend or terminate collection action rests solely with the Department of Justice. If VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standards set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (see § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection regardless of the amount involved, without the concurrence of the Department of Justice. If VA decides not to suspend or terminate collection action on the claim, Justice Department approval is not required.

(Authority: 31 U.S.C. 3711)

[57 FR 47264, Oct. 15, 1992]

### § 1.941 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. The following sources shall be used to locate missing debtors: Telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service (§ 1.924), other Federal agencies, employers, relatives, credit agency locate reports, and credit bureaus. Suspension as to a particular debtor should not prohibit the early liquidation of any security held for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations, in order to permit the timely filing of a suit, if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the

entry of judgment should not be delayed because of his/her missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payments on the debt owed to VA or effect a compromise at the time, but his/her future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running again, or

(2) Future collection can be affected by offset, notwithstanding the statute of limitations, with due regard to the 10 year limitation prescribed by 31 U.S.C. 3716(c)(1), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been suspended temporarily, and such temporary suspension is likely to enhance the debtor's ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.912, and 1.912a, pending agency action on requests for administrative review or waiver.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

### § 1.942 Termination of collection activity.

Termination of collection activity involves a final determination. Collection activity may be terminated on cases previously suspended. The Department of Veterans Affairs may terminate collection activity and consider closing the agency file on a claim which meets any one of the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: Age

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and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

(b) *Inability to locate debtor.* The debtor cannot be located, no security remains to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote.

(c) *Death of debtor.* The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

(d) *Cost will exceed recovery.* The cost of further collection effort is likely to exceed the amount recoverable.

(e) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(f) *Claim cannot be substantiated by evidence.* VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

[32 FR 2615, Feb. 8, 1967, as amended at 52 FR 42111, Nov. 3, 1987]

#### § 1.943 Transfer of claims.

When VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which VA holds a judgment by assignment or otherwise shall be referred to the Department of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justi-

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fied, except where VA has authority for handling its own litigation.

(Authority: 31 U.S.C. 3711)

[52 FR 42111, Nov. 3, 1987]

#### REFERRALS TO GAO, DEPARTMENT OF JUSTICE, OR IRS

AUTHORITY: Sections 1.950 to 1.954 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: 52 FR 42111, 42112, Nov. 3, 1987, unless otherwise noted.

#### § 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive collection action and the observance of §§ 1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by VA must be referred to the GAO for review and approval, prior to referral to the Department of Justice, unless VA has been granted an exception by the GAO.

(c) When the merits of VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the Department of Veterans Affairs shall refer the matter to the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.