

### § 1.913

laws administered by VA, the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of 10 U.S.C. chapter 73.

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

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

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

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

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

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

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

### § 1.913 Liquidation of collateral.

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

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

### 38 CFR Ch. I (7-1-08 Edition)

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)

[69 FR 62195, Oct. 25, 2004]

### § 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)

[69 FR 62195, Oct. 25, 2004]

### § 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

## Department of Veterans Affairs

## § 1.915

(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.

(b) Every party entering into an agreement with the Department of Veterans Affairs for repayment of indebtedness in installments shall be advised of the interest charges to be added to the debt. All debtors being provided notice of indebtedness, including those entering into repayment agreements, shall be advised that upon the debt becoming delinquent, or in the case of repayment of already delinquent debts, interest and the administrative costs of collection will be added to the principal amount of the debt.

(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.

(d) Interest on amounts covered by this section shall accrue from the date the initial notice of the debt is mailed to the debtor. Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to ac-

crue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 5302 of title 38 U.S.C., and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government's best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) [Reserved]

(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

## § 1.916

## 38 CFR Ch. I (7-1-08 Edition)

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)

[46 FR 62057, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987. Redesignated and amended at 69 FR 62195, Oct. 25, 2004]

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

(a) The Department of Veterans Affairs may disclose all information determined to be necessary, including the name, address, Department of Veterans Affairs file number, Social Security number, and date of birth, to consumer reporting agencies for the purpose of—

(1) Obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by VA or indebted in any other manner to VA;

(2) Obtaining a consumer report in order to assess an individual's ability to repay a debt when such individual has failed to respond to the Department's demand for repayment or when such individual has notified the Department that he/she will not repay the indebtedness; or

(3) Obtaining the location of an individual in order to conduct program evaluation studies as required by 38 U.S.C. 527 or any other law.

(b) Information disclosed by the Department of Veterans Affairs under paragraph (a) of this section to consumer reporting agencies shall neither expressly nor implicitly indicate that an individual is indebted to the United States nor shall such information be recorded by consumer reporting agencies in a manner that reflects adversely upon the individual. Prior to disclosing this information, the Department of Veterans Affairs shall ascertain that consumer reporting agencies with which it contracts are able to comply with this requirement. The Department of Veterans Affairs shall also make reasonable efforts to insure compliance by its contractor with this requirement.

(c) Subject to the conditions set forth in paragraph (d) of this section, infor-

mation concerning individuals may be disclosed to consumer reporting agencies for inclusion in consumer reports pertaining to the individual, or for the purpose of locating the individual. Disclosure of the fact of indebtedness will be made if the individual fails to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number.

(d)(1) Prior to releasing information under paragraph (c) of this section, the Department of Veterans Affairs will send a notice to the individual. This notice will inform the individual that—

(i) The Department of Veterans Affairs has determined that he or she is indebted to the Department of Veterans Affairs;

(ii) The debt is presently delinquent; and

(iii) The fact of delinquency may be reported to consumer reporting agencies after 30 days have elapsed from the date of the notice.

(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.

(ii) If the Department of Veterans Affairs has not previously notified the individual of the rights described in paragraph (d)(2)(i) of this section, the Department of Veterans Affairs will include this information in the notice described in paragraph (d)(1) of this section. The individual shall be afforded a minimum of 30 days from the date of the notice to respond to it before information is reported to consumer reporting agencies.

(3) The Department of Veterans Affairs will defer reporting information to a consumer reporting agency if the individual disputes the existence or amount of any debt or requests waiver of the debt within the time limits set forth in paragraph (d)(2)(ii) of this section. The Department of Veterans Affairs will review any dispute and notify the individual of its findings. If the