

VA Financial Policies and Procedures
Suspension of Collection Action

CHAPTER 1H

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0101 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures relating to the suspension of collection action on debts owed VA, as authorized in 31 U.S.C. 3711, *Collection and Compromise*; 31 C.F.R. Part 903, *Standards for Suspending or Terminating Collection Activity*; and 38 C.F.R. Sections 1.940-1.944, *Standards for Suspending or Terminating Collection Activity*.

010101 AUTHORITY FOR SUSPENSION OF COLLECTION ACTION. VA may suspend collection action on debts equal to or less than \$100,000, as specifically authorized by 31 U.S.C. 3711(a)(3).

010102 ACTIONS FOR SUSPENSION OF COLLECTION ACTION. VA may suspend collection activity on a debt when (1) a debtor cannot be readily located; (2) a debtor's financial condition is expected to improve in the future; or (3) a debtor has requested a waiver of collection or an administrative review of the existence or amount of the debt.

0102 POLICIES

010201 AUTHORITY FOR SUSPENSION OF COLLECTION ACTION. VA will review suspension requests recognizing the impact of the statute of limitations (SOL) on debt collection activities. The SOL states that every action for money damages by the United States, which is founded upon any contract expressed or implied in law or fact, shall be barred unless the complaint is filed within 6 years after the right of action accrues or within 1 year after final decisions have been rendered in applicable administrative proceedings required by contract or law, whichever is later (28 U.S.C. 2415).

010202 ACTIONS FOR SUSPENSION OF COLLECTION ACTION. VA will notify debtors of their rights by promptly forwarding demand letters, advising them of remedies available to satisfy debts, and informing them of the consequences of failure to cooperate with VA. In exercising its suspension authority, VA will ensure a debtor's request to suspend debt collection is reviewed by the appropriate individual or office having jurisdiction (see 010403). Refer to Volume XII, Chapter 1, "*VA Debt Collection Standards*," for the required information related to debt or demand letters.

A. VA will suspend collection action when a request for waiver or dispute of the debt is received within 30 days of notification to the debtor, when the debtor cannot be readily located, or when it becomes evident the debtor is not in a financial position to make payment or to offer a compromise.

B. VA will document the reason and applicable standard on the accounts receivable record when suspending collection action.

C. When collection action is temporarily suspended, VA will establish and review the suspension decision every six months at a minimum.

0103 AUTHORITY AND REFERENCES

010301 28 U.S.C. 2415, Time for Commencing Actions Brought by the United States

010302 28 U.S.C. 2416, Time for Commencing Actions Brought by the United States - Exclusions

010303 31 U.S.C. 3711(a)(3), Collection and Compromise

010304 31 C.F.R. Part 903, Standards for Suspending or Terminating Collection Activity

010305 38 C.F.R. Sections 1.940 through 1.944, Standards for Suspending or Terminating Collection Action

0104 ROLES AND RESPONSIBILITIES

010401 The Secretary of Veterans Affairs has the authority, which cannot be delegated¹, to suspend or terminate debt collection action, or to refund amounts collected after death, as follows:

A. The Secretary may suspend or terminate debt collection against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, during a period when the Coast Guard operated as a service in the Navy (31 U.S.C. 3711(f)(3)).

B. The Secretary may not collect all or any part of a VA program benefit debt owed to the United States by an individual who is a member of the Armed Forces or a Veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, when the termination of collection action is in the best interest of the United States (38 U.S.C. 5302A). Debts associated with the Housing Program (38 U.S.C. Chapter 37) are exempt from this special authority action.

010402 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. Responsibilities include the direction, management and provision of policy guidance and oversight of VA's financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

¹ The restriction on the delegation of this authority is found in 38 C.F.R. 1.945, published in the Federal Register as a proposed regulation on August 7, 2009. The regulation is currently being prepared for publication as a final regulation.

010403 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chiefs of the Finance Activities, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

010404 Delegations of Authorities.

A. The Chief of the Finance Activity and the Director of the Debt Management Center (DMC) may suspend collection action on debts up to \$40,000 exclusive of interest and administrative costs when the documented facts of the case indicate such action is justified.

B. For debts greater than \$40,000 and up to \$100,000 (exclusive of interest and other charges), the Administrations' Chief Financial Officers (CFOs) and the Deputy Assistant Secretary (DAS) for Finance have authority to suspend debt collection action. The CFOs and the DAS may redelegate this authority, as they deem appropriate, to the Chiefs of the Finance Activities and to the Director of the DMC, respectively.

C. For debts over \$100,000, VA will refer the request for suspension along with a Claims Collection Litigation Report to the Department of Justice (DOJ) through the appropriate Regional Counsel (RC) for disposition authority. VA will coordinate collection action with the Department of the Treasury (Treasury) or DOJ when debts are referred to these agencies for enforced collection action.

010405 The Board of Veterans' Appeals (BVA) reviews benefit claim determinations made by local VA offices and issues decisions on appeals of those determinations. BVA members include administrative law judges or attorneys who are experienced in Veteran laws and in reviewing benefit claims. They are the only ones who may issue BVA decisions. For more information on BVA, refer to 38 U.S.C. 7103-7104.

010406 The Committee on Waivers and Compromises (COWC) is a decision-making panel composed of one or more persons (38 C.F.R. 1.955(d)). The COWC may be part of a centralized system or a regional office committee system. Refer to Volume XI for detailed information on COWC.

010407 The Debt Management Center (DMC) located in St Paul, MN, is responsible for collecting debts resulting from an individual's participation in VA education, pension or disability compensation programs within the DMC's jurisdiction. The DMC consults with Veterans and their families in the management and liquidation of their benefit debts. In addition, the DMC has authority to offset Veterans Health Administration (VHA) first-party pharmacy co-payment debts after the debt has become 90 days old.

010408 The RC and designated staff attorneys are authorized, in any matter within the jurisdiction of the VA General Counsel, delegated or otherwise assigned to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents. The RC is authorized to, and shall,

under the guidance of the General Counsel, provide legal services, advice and assistance to VA installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the RC may delegate to staff members or other VA attorneys authority to perform, to the extent specified, any legal function under the professional direction of the RC. The RC may modify, suspend, or rescind any authority delegated hereunder. For more information on the RC, refer to 38 C.F.R. 14.501.

0105 PROCEDURES

010501 AUTHORITY FOR SUSPENSION OF COLLECTION ACTION. When VA has determined a debt exists, it will promptly demand, in writing, payment of the debt. VA will notify the debtor of his/her rights, available remedies to satisfy the debt and the consequences of failure to cooperate with VA in collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.² Suspension of debt collection actions should not preclude VA from pursuing debt collection and completing all the necessary procedures before the expiration of the SOL timeframes.

010502 ACTIONS FOR SUSPENSION OF COLLECTION ACTION.

A. VA will suspend collection action when one or more of the following conditions exist and have been documented:

1. The debtor cannot be readily located, but there is reason to believe a future collection may be sufficiently productive to justify periodic review and action on the debt.
2. The debtor has been located but owns no substantial equity or assets and cannot make payment or offer a compromise. However, the debtor's future prospects justify retention of the debt for periodic review and action. This type of case should be suspended only if one or more of the following conditions apply:
 - a. The debtor has made written acknowledgment of the debt or made a partial payment causing the SOL to start anew. Where there is a voluntary payment or written acknowledgment, the SOL is extended to 6 years from the date of payment or acknowledgment. When more than one party is indebted and not all parties are making payment or acknowledging the debt, timely action should be taken against such party or parties who are not making payment or have not acknowledged the debt.
 - b. The debtor meets the exclusions set out in 28 U.S.C. 2416 causing the SOL to be delayed or stopped temporarily. Excluded from the basic 6-year period are all periods the debtor is out of the country; is a minor, or is mentally incompetent; under diplomatic immunity; and any other period excluded in 28 U.S.C. 2416. The advice of the RC should be sought in doubtful cases.

² Refer to Volume XII, Chapter 1, "VA Debt Collection Standards," for the required information related to debt or demand letters.

- c. Regardless of the SOL, the debtor's future disposable pay may be offset.
 - d. The debtor's inability to pay may be temporary based on financial data available from a credit report, financial statement, or field examination. In such cases, the debtor will be informed the collection action has been suspended until an agreed-upon date. The reasons for such action will be clearly stated and a statement will be provided indicating what the debtor is expected to do by the due date. If the need to cancel the existing repayment plan is a factor, VA will advise the debtor that suspension action is conditional on the debtor not incurring additional obligations and on repaying the debt as a priority.
3. The debtor requires more time to pay the debt and has requested collection action be delayed until a future date.
 4. The debtor requests a waiver within 30 days of the date of the indebtedness notice. In accordance with 38 C.F.R. 1.912 and 1.912a, collection action will be suspended until an initial determination is made on the debtor's request for waiver.
 - a. If the waiver request is denied and no additional instructions are given, the offset will be initiated and will continue even if the debtor subsequently appeals the waiver denial decision to BVA or other appropriate authority.
 - b. If the waiver request is denied and the ruling includes a provision for suspension, even if the debtor did not specifically request suspension, VA will suspend collection as determined in the ruling.
 5. The debtor has filed a bankruptcy petition. 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 the automatic stay does not apply, has been lifted, or is no longer in effect.
 6. Once the conditions causing the suspension action (in 1-5 above) are reversed, VA will lift the suspension action and resume collections in the manner most advantageous to the Government.
 7. If the debtor's waiver request is not received within 30 days but within the timeframe for waiver consideration (180 days for benefit debts, 1 year for home loan debts, and 3 years for employee debts), VA will consider the waiver request and inform the debtor the collection action will continue, including offset from VA benefit payments, current salary, or other payments, until such time as the waiver request has been either approved or rejected by VA. If approved, VA will refund any money previously collected; if rejected, VA will continue to withhold money from the debtor.
- B. VA will determine the approval of suspension of collection action, based on the documented information, as applicable to the particular case:

1. Statement of the amount of indebtedness (including any credit);
 - a. Original principal amount of the debt;
 - b. Principal reduction, if any (including reduction by offset of VA benefits);
 - c. Current principal balance;
 - d. Current accrued interest, if any;
 - e. Other current accrued costs or charges if any; and
 - f. Current amount of indebtedness.
 2. Itemized statement of allowances due the debtor from VA for educational assistance, disability compensation, pension, insurance, or other benefits.
 3. VA Form 5655, *Financial Status Report*, or a current credit report on the debtor, and/or verification of employment.
 4. Status (or liquidation) of any related security or assets for the debt.
 5. Applicable SOL, the date it began to run, whether it has expired, and whether and when it started anew, if there was a suspended period of time.
 6. Status (or execution) of any related promissory notes.
 7. Known possibilities of collection by offset in the future, to include the source, amount and possible offset date.
 8. Circumstances showing the likelihood of the debtor's future acquisition of assets which may be acquired to satisfy or substantially reduce the debt.
 9. Statement of efforts made to locate the debtor when the debtor cannot be located.
- C. VA will establish suspension dates based on the facts pertinent to each individual debt.
1. In general, VA will establish the initial suspension date no more than six months from the date of the suspension decision (see 010502A4) to allow for adequate time for administrative collection action. The 6-month period should also allow for the debt to be referred to the RC in a timely manner when the conditions for referral have been met (see Volume XII, Chapter 1G, *Referrals for Enforced Collection - Litigation*).

2. VA will document the reason for suspension and the applicable standard(s) applied on the accounts receivable record. If the Chief of the Finance Activity or the Director of the DMC is unsure whether suspension action is appropriate, the Cash and Debt Management Division in VA Central Office will be contacted for advice.

3. VA will review each case upon expiration of the suspension period. The review will include an update of VA records and files to determine if the debtor's ability to pay has changed (e.g., obtain current credit report or require debtor to complete a new VA Form 5655, Financial Status Report). If information is obtained identifying the debtor as able to pay, VA will advise the debtor and resume collection action regardless of any previously-established suspension date (see 010502A4).

0106 DEFINITIONS

010601 Compromise. An offer and acceptance of a partial payment in settlement and full satisfaction of the offeror's indebtedness as it exists at the time the offer is made. It is a final settlement, binding on the parties to the compromise, unless procured by fraud, misrepresentation of a material fact or mutual mistake of fact.

010602 Financial Status Report (VA Form 5655). A VA form used by debtors to list their current income, expenses and financial condition.

010603 Suspension of Collection Action. Temporary delay of collection actions on a debt owed to VA.

010604 Waiver. A decision that conditions exist under the applicable statutes (38 U.S.C. 5302 and 5 U.S.C. 5584) and implementing regulations (38 CFR 1.955-1.969, 17.105) that prohibit recovery by VA of certain debts as defined in the statutes and regulations, including interest and other late payment charges assessed on such debts.

0107 RESCISSIONS

010701 VA Handbook 4800.5 Suspension of Collection Action

0108 QUESTIONS

Questions concerning these financial policies and procedures should be directed as follows:

VHA	VHA Accounting Policy (Outlook)
VBA	VAVBAWAS/CO/FINREP (Outlook)
All Others	OFP Accounting Policy (Outlook)