

SUSPENSION OF COLLECTION ACTION

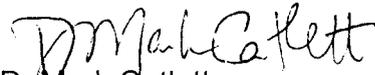
1. **REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 23.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes the procedural guidelines for the suspension of collection activity involving debts owed to VA.
3. **RESPONSIBLE OFFICE:** Cash and Debt Management Division (047GCI), Office of the Deputy Assistant Secretary for Finance.
4. **RELATED DIRECTIVE:** VA Directive 4800, Debt Management,
5. **RESCISSIONS:** VA Manual MP-4, Part VIII, Chapter 23, dated September 22, 1992.

CERTIFIED BY:



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BY DIRECTION OF THE SECRETARY
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Distribution:

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SUSPENSION OF COLLECTION ACTION

1. PURPOSE AND SCOPE. This handbook establishes standardized Department-wide procedures for administering the suspension of collection action.

2. RESPONSIBILITY. The Chief of the fiscal activity must ensure that appropriate procedures in accordance with this Handbook are followed for administering the suspension of collection action.

3. LEGAL AND REGULATORY AUTHORITY

a. **Legal Authority.** The Federal Claims Collection Act (FCCA) of 1966 (Pub. L. 89-508) gave Federal agencies the authority to suspend collection action on debts with principal amounts under \$20,000. The Administrative Dispute Resolution Act (Pub. L. 101-552) dated November 15, 1990, raised the suspension threshold to \$100,000. Debts over \$100,000 must be referred to the Department of Justice (DOJ) through the appropriate Regional Counsel (RC) for disposition authority.

b. **Statutes and Regulations.** The standards set forth in 38 CFR Sections 1.940 through 1.943, pursuant to 31 U.S.C. 371 I(a)(3), and 31 CFR Sections 903.1 and 903.2, apply to the suspension of collection action of debts due VA.

4. STANDARDS FOR SUSPENSION. The standards for suspension are found in 38 CFR Section 1.941 and 31 CFR Part 903. Collection action will be suspended when one or more of the conditions listed below have been documented.

a. **Inability to Locate Debtor.** Collection action may be suspended temporarily on a claim when the debtor cannot be located and there is reason to believe that future collection may be sufficiently productive to justify periodic review and action on the debt.

b. **Financial Condition of Debtor.**

(1) The debtor has been located but owns no substantial equity in realty and cannot now make payment or effect a compromise. However, the debtor's future prospects justify retention of the debt for periodic review and action. This type 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 statute of limitations to start running anew, or

(b) The debtor meets the exclusions set out in 28 U.S.C. 2416 and MP-4, Part VIII, Chapter 6, Statute of Limitations (to be replaced by VA Handbook 4800.13), causing the statute of limitations to be tolled or stopped temporarily, or

(c) Future collection can be effected by offset notwithstanding the statute of limitations, or

(d) Financial data has become available from a credit report, financial statement, or field examination indicating that inability to pay may be temporary.

In such cases, the debtor should be informed collection action has been suspended until a specified date. The reasons for such action will be clearly stated and a statement will be provided indicating what the debtor is expected to do on or before that date. If liquidation of current installment contracts is a factor in the suspension action, the letter should advise the decision was conditional on the debtor not incurring additional obligations and the debt to VA must be repaid on a priority basis.

(2) The debtor requires more time to pay the debt and has requested collection action be delayed until some future date.

c. Request for Waiver.

(1) The debtor requests a waiver within 30 days of the date of the notice of indebtedness. Offset from VA benefit payments, current salary, or other payments shall not commence until an initial decision is rendered on the request for waiver. However, offset will commence once an initial decision is made to deny the waiver request. If the debtor subsequently appeals such a decision to the Board of Veterans Appeals (BVA) or other appropriate authority, collection action will not be resumed pending the appellate decision, but offset will continue (See VA Handbook 4800.3, Waiver of Debts, paragraph 3.h.).

(2) A decision of a Committee on Waivers and Compromises (COWC) or the BVA holds that financial hardship has not been substantiated and the decision specifically states that even though the debtor may not be able to make immediate repayment arrangements, he/she should be able to pay the debt within the foreseeable future. The waiver denial letter may include information concerning suspension even if the debtor does not specifically request suspension.

5. REQUISITES FOR MAKING SUSPENSION DECISION

a. In reviewing a case for approval of suspension of collection action, decisions will be based on as much of the documented information, indicated below, as is applicable to the particular case:

- (1) Statement of the amount of indebtedness, indicating any credit; i.e.,
 - (a) the 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) total 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 205655, Financial Status Report, or a current credit report on the debtor, and/or verification of employment.

(4) Whether there was any security for the debt, and if so, the status of the liquidation of that security.

(5) The applicable statute of limitations, the date it began to run; whether it has expired and whether and when it started running anew, if tolled.

(6) Whether or not the debtor executed a promissory note and, if so, its status.

(7) Known possibilities of collection by offset in the future and such information as is available as to a probable date of offset, source, and amount.

(8) Circumstances showing the likelihood of the debtor's future acquisition of assets which could be reached to satisfy or substantially reduce the debt.

(9) When the debtor has not been located, a statement of efforts made to locate the debtor.

6. ESTABLISHING SUSPENSION DATES Suspension dates will be established based on the facts pertinent to the individual debt. For cases other than those for which a specific date is requested by the debtor or established on the basis of financial ability to pay, the first suspension date established should be no more than six months from the date of the decision to suspend. The case will be reviewed upon expiration of the suspension period. The review should include an update of VA records and files to determine if there is any new information as to the debtor's ability to pay (e.g., obtain current credit report or require debtor to complete a new VA Form 20-5655, Financial Status Report). When this information indicates an ability to pay, collection action is to be resumed immediately. Additionally, whenever information is learned that indicates an ability to pay, collection action is resumed without regard to any previously established suspension date. The purpose of the 6-month period is to allow sufficient time for administrative collection action so that when the conditions for referral have been met, the debt can be referred timely to the Regional Counsel (see MP-4, Part VIII, Chapter 24, Referrals for Enforced Collection (to be replaced by VA Handbook 4800.12)).

7. FISCAL OFFICERS' AUTHORITY TO SUSPEND DEBTS

a. VA Directive 4800 delegates to the CFOs for VBA and VHA and the DAS for Finance the authority to suspend collection action on any debt of \$100,000 or less, exclusive of interest and other charges, for a period justified by the circumstances. The CFOs and the DAS may redelegate this authority as they deem appropriate per VA Directive 4800, paragraph 3.b. Due to the volume of suspensions that should be expected, it is recommended that the CFOs delegate substantial authority, through the CFO structure, to the chiefs of the fiscal activities, and that the DAS for Finance delegate substantial authority to the Chief of the Debt Management Center. Collection action may be suspended when requested by the debtor for a valid reason or when the documented facts of the case indicate that such action is justified.

b. Debts over \$100,000 must be referred, with a Claims Collection Litigation Report (CCLR), to the Department of Justice (DOJ) through the appropriate Regional Counsel (RC) for disposition authority. Once the RC has approved the referral, the request will be sent to VACO (047GCI) for submission to DOJ.

c. The reason for suspension and the applicable standard(s) that were applied must be documented on the accounts receivable record. If the Chief of the fiscal activity is unsure whether suspension action is appropriate, (047GCI) should be contacted for advice.