

VA Financial Policies and Procedures  
Compromise of Debts - COWC

CHAPTER 5

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## 0501 OVERVIEW

This chapter provides guidance to help in the implementation of the policies and procedures set forth in the statutes and regulations with respect to the compromise of debts due the United States arising out of activities of the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), National Cemetery Administration (NCA) and other activities of the agency.

A compromise is 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.

The Debt Management Center (DMC) will consider all compromise offers on debts within its jurisdiction. Compromise offers on other debts (e.g., erroneous payment of pay and allowances, medical care and services for Veterans determined ineligible for care, etc.) will be considered by the Pension Maintenance Centers (PMCs) located at the Milwaukee, Philadelphia or St. Paul Regional Offices. The RPOs will consider all compromise offers on Chapter 32 education debts. The St. Louis RPO will consider all compromise offers on Restored Entitlement for Survivors (REPS) debts. If a regional office Committee system is used, rather than the centralized Committee, see Chapter 1, paragraph 010509.

VHA and VBA Fiscal Officers have the authority to accept a compromise offer on debts not in excess of \$1,000, exclusive of interest and other late payment charges. A Fiscal Officer can reject an offer of compromise, regardless of the amount of the offer. However, a Fiscal Officer can only accept a compromise offer of 50 percent or more on the total amount of the debt, but can also recommend to the Committee of jurisdiction that a compromise offer of less than 50 percent be accepted.

VHA and VBA debts in excess of \$1,000, exclusive of interest and other late payment charges, will be forwarded to the Committee on Waivers and Compromises of jurisdiction. See Chapter 1 paragraph 010509 for jurisdiction of all other VA debts.

## 0502 POLICIES

050201 VA may accept a compromise offer only when advantageous to the Government. The factors that establish practical advantages are discussed in [38 C.F.R. 1.930](#) through [1.936](#).

050202 VA will accept compromise offers most of which will be for a lump sum payment payable in full 30 days from the date of acceptance of the offer.

### **0503 AUTHORITY AND REFERENCES**

050301 5 U.S.C. 5584, Claims for Overpayment of Pay and Allowances and of Travel, Transportation and Relocation Expenses and Allowances

050302 28 U.S.C. 2415, Time for Commencing Actions Brought by the United States

050303 28 U.S.C. 2416, Time for Commencing Actions Brought by the United States - Exclusions

050304 31 U.S.C. 3711, Collection and Compromise

050305 38 U.S.C. 3720, Powers of Secretary

050306 38 U.S.C. 5302, Waiver of Recovery of Claims by the United States

050307 38 C.F.R. 1.900, Prescription of Standards, through 1.970, Standards for Compromise

050308 38 C.F.R. 1.930, Scope and Application, through 1.936, Mutual Releases of the Debtor and VA

050309 38 C.F.R. 1.955, Regional Office Committee on Waivers and Compromises

050310 38 C.F.R. 1.956, Jurisdiction

050311 38 C.F.R. 1.957(a)(2)(B), Committee Authority

050312 38 C.F.R. 1.958, Finality of Decisions

050313 38 C.F.R. 36.4318, Refunding of Loans in Default

050314 38 C.F.R. 1.962, Waiver of Overpayments

050315 38 C.F.R. 17.102, Charges for Care or Services

050316 38 C.F.R. 17.105, Waivers

050317 38 C.F.R. 17.62, Definitions

### **0504 ROLES AND RESPONSIBILITIES**

050401 The Assistant Secretary for Management/Chief Financial Officer (CFO), as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309, oversees all financial management activities relating to the Department's programs and operations. Specific 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.

050402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

050403 Statutory Authority. The authority of the Secretary to compromise debts is contained in [38 U.S.C. 3720](#) and Federal Claims Collection Act ([31 U.S.C. 3711](#)). [38 U.S.C. 3720](#) authorizes the compromise of debts due the United States, regardless of the amount, that result from payment of a claim under the guaranty or insurance of loans, liquidation of direct loans, liquidation of loans acquired under [38 C.F.R. 36.4318](#) and liquidation of vendee accounts. The Federal Claims Collection Act authorizes compromise of debts not exceeding \$100,000, exclusive of interest and other late payment charges, arising out of VA activities.

050404 Delegation. This authority has been delegated, under certain limitations, to Committees on Waivers and Compromises (Committee), established pursuant to [38 C.F.R. 1.955](#). General principles governing the compromise of debts owed to the Government are set forth in [38 C.F.R. 1.930](#) through [1.936](#).

050405 Compromise Authority – Debt Management Center (DMC). A special Committee on Compromises at the DMC has compromise authority on all benefit debts not in excess of \$100,000 under its collection jurisdiction. Exceptions to this statement are Chapter 32 debts, which are the responsibility of the 4 education Regional Processing Offices (Atlanta, Buffalo, Muskogee and St. Louis) and Restored Entitlement Program for Survivors (REPS), which is the sole responsibility of the St. Louis Regional Processing Office.

050406 Committee Authority

A. The Committee will, as to Loan Program Debts covered by [38 C.F.R. 1.956](#):

1. Accept or reject a compromise offer regardless of the amount of the debt.

B. The Committee will, as to Other Than Loan Program Debts and non-benefit debts:

1. Accept or reject a compromise offer on a debt that is not more than \$100,000 (exclusive of interest and other late payment charges).

2. Reject a compromise offer on any debt, regardless of the amount.

3. Recommend approval of a compromise offer on a debt that exceeds \$100,000, exclusive of interest and other late payment charges. When the claim exceeds

\$100,000, the authority to accept the offer lies exclusively with the Department of Justice. The Committee will evaluate it, using factors set forth in this section. If the Committee believes the compromise offer to be advantageous to the Government, then the Committee will state its conclusion, and the reasons for its conclusion, in a written memorandum to the chairperson. The chief of the fiscal office or Committee administrative control function will also complete a CCLR (Claims Collection Litigation Report). If the amount of debt is over \$100,000, the Committee recommendation and CCLR will be forwarded to the Office of Financial Policy for referral to the Department of Justice. The Office of Financial Policy may coordinate with the Office of Inspector General (50) or Office of General Counsel (02) prior to referral to the Department of Justice.

**Note:** Pursuant to [38 C.F.R. 1.957\(b\)\(2\) & \(3\)](#), the chief of the finance office at both VBA and VHA offices as to debts arising within their jurisdictions, are authorized to: (1) accept compromise offers of 50 percent or more on a total debt not greater than \$1,000, exclusive of interest and other late payment charges, regardless of whether there has been a prior denial of waiver; and (2) reject any offer of compromise on a total debt not greater than \$1,000, exclusive of interest and other late payment charges, regardless of whether there has been a prior denial of waiver. Compromise offers of less than 50 percent that are not rejected by the chief of the finance office will be referred to the Committee on Waivers and Compromises of jurisdiction for resolution. A special Committee on Compromises at the DMC has compromise authority on all benefit debts not in excess of \$100,000 under its collection jurisdiction.

## 0505 PROCEDURES

### 050501 Exclusions

A. The Committee may not consider offers of compromise:

1. When the debt has already been referred to the Department of Justice or the Regional Counsel for enforced collection or for other matters. In such cases, the compromise offer will be forwarded to either the Office of Financial Policy for referral to the Department of Justice or to the Regional Counsel for a case within their jurisdiction or for referral to the U.S. Attorney.
2. On a debt when:
  - a. There is an indication of fraud;
  - b. There is a presentation of a false claim or the misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim;
  - c. It is based in whole or in part on conduct in violation of the antitrust laws; or

d. It arises from an exception made by the Government Accountability Office (GAO) in the account of an accountable officer.

#### 050502 Restrictions

An offer of a percentage of a debtor's profits or of stock in a debtor corporation will not be accepted in compromise of a claim.

#### 050503 Offer of Compromise by VA Employee (Regular or Fee Basis)

Action on an offer of compromise by a VA employee, or a person authorized to perform services of any kind for VA on a fee basis, will be processed in the same manner as a waiver request by a VA employee, as set forth in Chapter 1, paragraph 010507.

#### 050504 Application of Standards

A. Basic Elements. Elements for consideration in acceptance or rejection of a compromise offer are:

1. Inability to pay the full amount within a reasonable time (3-5 years), or refusal to pay in full and the Government's inability to enforce collection in full within a reasonable time (3-5 years).
2. Probabilities of legal action.
3. Costs of collecting debt.
4. Value of immediate payment.
5. Combination of factors.

B. Inability or Refusal to Pay in Full.

1. In determining whether to accept or reject a compromise offer from a debtor:
  - a. Who asserts inability to pay the debt in full within a reasonable time (3-5 years), or
  - b. Who refuses to pay the debt in full, and the Government cannot enforce collection in full within a reasonable time, the following factors, among others, may be considered:
    - (1) Age and health of the debtor.
    - (2) Present and potential income, including the income of the spouse. In considering the prospective ability of the debtor to pay the indebtedness, it should be remembered that the time for commencing actions brought by the United States is six years after the right of action accrues ([28 U.S.C. 2415](#) and [2416](#)).

(3) Inheritance prospects.

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

(5) The availability of assets (including personal and real property or equity therein, owned by the debtor) or income that may be attached by enforced collection proceedings.

(6) If the debtor is a Government employee subject to Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), the amounts of a debtor's credit in the Civil Service Retirement System fund or FERS fund are subject to offset when the debtor applies for a refund of such amounts.

(7) The benefits to which the debtor is entitled under laws administered by VA are subject to offset against any debt due VA.

2. A compromise affected under this subparagraph will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, taking into account the exemptions available to the debtor and the cost and time that collection will take.

3. Compromise offers will not be accepted based solely on the obligor's financial statement. The amount of evidence to be developed or the extent of verification required will depend on the facts of the case.

C. Probabilities of legal action.

1. Genuine doubt as to the ability of the Government to prove its claim in full in court, either because of the legal issues involved or because of a bona fide dispute as to the facts, may be considered in connection with a compromise offer.

2. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities of full or partial recovery of a judgment, having due regard for the availability of witnesses and other evidentiary support for the Government claim and related practical considerations.

3. In questions of legal merit and probabilities of legal action, in the absence of a precedent opinion, the Committee, through the chairperson, will request an opinion from the Regional Counsel. If the Government is unlikely to obtain a judgment, the additional factor of assessment of court costs against the United States may be considered in relation to the compromise offer.

D. Costs of Collecting Debt.

1. If the cost of collecting the debt justifies the enforced collection of the full amount, the compromise offer will be rejected. There are always administrative costs in VA and GAO and additional costs to the Department of Justice in collecting in full through enforced collection procedures. Consequently, consideration of the cost factor in relation to a compromise offer will be the usual practice.

2. Another factor for consideration is the delay of the Government's receiving the money. Care will be exercised not to over-discount the debt because of administrative costs and delay in collection. These costs would be relatively substantial in relation to a small debt and inconsequential in relation to the settlement of large debts.

E. Combination of Factors. Since the basic question before the Committee in deciding to accept or reject a compromise offer is the advantage to the Government, each of the factors mentioned above, so far as applicable, will be considered, both separately and with their total effect, and weighed against the offer.

F. Value of Immediate Payment. Inability to pay the debt in full within a reasonable time (3-5 years), inability of the Government to enforce collection in full within a reasonable time and costs of collection (having regard for the time it will take to effect collection), raise the element of value to the Government in having the use of the amount offered in compromise for the period between such compromise and the date the full amount would be recovered. Thus, a compromise offer to pay now is to be evaluated against the total interval that would necessarily elapse if collection in full was effected through enforced collection procedures.

#### 050505 Requisites for Submission to Committee

A. No case will be submitted to the Committee for consideration of a compromise offer until the obligor's current indebtedness is determined. Any referral to the Committee will include the following:

1. The date of the establishment of the debt and a statement of the amount of the debt, indicating any credit, i.e.: (1) the original amount of the debt; (2) principal reduction, if any; (3) principal balance as of the date of request for waiver or offer of compromise; (4) interest and other late payment charges, if any, accrued to the date of such request; and (5) total amount of debt ((3) + (4))

2. An itemized statement of allowances due the Veteran from VA for subsistence, disability compensation, pension, insurance or other Veteran's benefits and the amount of any benefits that have been withheld. This information will be obtained from VA records.

3. VA Form 5655, Financial Status Report, completed in full or, in other than loan cases, other satisfactory financial data.

4. A current credit report on the obligor and verification of employment, when allegations of ability to pay are uncorroborated or inconsistent with evidence in the file
5. A statement whether the debtor is or has been a U.S. Government employee subject to CSRS or FERS and, if so, the amount the debtor has to his or her credit in either CSRS or FERS.
6. The debtor's written offer of compromise or the written offer of a third party made on behalf of the debtor.

#### 050506 Routing

When an offer of compromise is received in a station, it will be routed to the finance office or Committee administrative control function to compile the information set forth above, e.g., the statements of indebtedness and of benefits due and withheld. No further collection efforts will be exerted against the debtor until the decision on the compromise offer is received. The completed file will be sent to the chairperson for referral to the Committee.

#### 050507 Committee Action on Receipt of Offer of Compromise

- A. Assignment of Panel. On receipt of an offer of compromise, the chairperson of the Committee will delegate a panel as described in Chapter 1, section 0101, paragraphs 4 and 5, to consider the offer. At least one member will have special competence in the activity in which the debt arose.
- B. Decision. On the facts before it, the Committee will take such action as is authorized in paragraph 050403. If the decision of the panel is unanimous, that will be the Committee decision. If the panel cannot reach a unanimous decision, the disagreement will be indicated on VA Form 4-1838 by signature and the word "Disagree". The words "No Decision-Referred to Full Committee" will be stamped or endorsed across the form. The initial form will be attached to a new VA Form 4-1838 reflecting the decision of the full Committee. The chairperson will then convene the full Committee to consider and decide the case by majority vote.
- C. Disposition. Decisions and recommendations will be recorded on VA Form 4-1838, Decision on Compromise Case. Unanimous panel decisions will be signed only by panel members indicating their respective correspondence symbols. The chairperson will record the Committee decision and release VA Form 4-1838, with the complete file, to the administrative control function and representative, if any. If a compromise offer is accepted, the debtor will be informed of any resulting charges to entitlement.
- D. Rejection of Compromise Offer. When rejecting a compromise offer, the Committee will state the reasons for rejection. As part of the determinations, the Committee will decide and state either (1) no compromise offer will be accepted based on the current facts or (2) another compromise offer will be considered, specifying the amount. The

debtor will be advised accordingly. In this connection, decision writers will carefully write their reasons for rejection in a manner that would allow for later transcription, verbatim, into the subsequent letter notifying the debtor of the rejection.

**050508 Reconsideration of Compromise Offer**

A decision on an offer of compromise may be revised or modified on the basis of any information that would warrant a change. Receipt of such information will initiate handling in the same manner as an initial offer of compromise.

**050509 Subsequent Higher Compromise Offer**

When, after rejection of a compromise offer, a new and higher offer is made, it will be handled in the same manner as an initial offer of compromise. The new decision of the Committee may refer to the previous rejection decision.

**050510 Compromise Payable in Installments**

A. Offers to compromise a debt by payment in installments are to be discouraged (see paragraph 050202). When such an offer can be elicited, it should be advantageous to the Government, i.e., proportionately greater in total amount than would be acceptable in a lump sum offer. Its acceptance will be conditional upon a written agreement for:

1. The initial payment and subsequent payments (including interest and other late payment charges) at stated intervals
2. Reinstatement of the prior indebtedness (abrogation of compromise) upon default of any installment, less principal sums paid thereon, and
3. The balance of the original total debt will be due as of the date of default.

B. In states and jurisdictions where permitted, VA will attempt to obtain an executed confess-judgment note (after obtaining a current Department of Justice form) from a debtor whenever the total amount of the deferred installments exceed \$750 and the claim is unsecured. Such notes may also be sought when an unsecured obligation of a lesser amount is involved.

1. When attempting to obtain confess-judgment notes, VA will provide debtors with a written explanation of the consequences of signing the note and will maintain documentation sufficient to demonstrate that the debtor signed the note knowingly and voluntarily.
2. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases.

3. Installment payments may be accepted even if the debtor refuses to execute a confess-judgment note or give other security.

4. When a pre-approved form (see above) is not available, any attempt to obtain or execute a confess-judgment note will be done in coordination with the Regional Counsel.

C. Normally, no compromise offer in installments will be approved when collection of the total compromised amount would extend beyond 3 years or periodic payments would be less than \$50. Installment payments of less than \$50 per month will be accepted only if justifiable on the grounds of financial hardship or some other reasonable cause.

#### 050511 Compromise Offer by Joint Debtor

1. When two or more debtors are jointly indebted to VA, the Committee may accept a compromise offer made by one of the debtors and authorize the issuance of an appropriate instrument to relieve him/her from further liability to the United States for this debt, (e.g., a covenant not to sue him/her or, in the event the debt has been reduced to judgment, not to request execution, garnishment or other writ for collection or enforcement of the judgment).

2. Payment of any individual share of a joint debt may constitute consideration, as well as justification for entering into a covenant not to sue or for any other agreement with respect to the remainder of the joint indebtedness, whether or not reduced to judgment. In implementing such an agreement, any executed document to release or satisfy an individual share of the joint debt will be in a form and nature as to not release any other debtor from his/her part of the indebtedness.

3. The decision of the Committee to accept the compromise offer will clearly set forth the reservation of the Government's right to collect from the other obligor(s).

4. The reporting member will consult with the Regional Counsel when preparing the decision and for preparation of any legal documents.

#### 050512 Attempted Appeal from Rejection of Compromise

When VA receives an appeal by a debtor on a Committee decision rejecting a compromise offer, notice will be furnished, pursuant to [38 C.F.R. 1.958](#), that the Committee decision is not subject to appeal.

050513 Advice from Central Office Staff

If a Committee is not sure whether to accept a compromise offer, it will obtain the advice of appropriate Central Office staff. The Committee will prepare a tentative decision. The Chairperson will transmit it, with the file, to the Office of Financial Policy. The transmittal letter will clearly indicate that it is a request for an advisory opinion.

050514 Corporate and Business Concern Debtors

A. Credit Data. If the debtor is a corporation, credit data reflecting ability to pay may be obtained from balance sheets and additional sources as needed to establish the facts.

B. Tax-Loss Factor. In negotiating a compromise with a business concern, consideration will be given to requiring a waiver of the debtor's tax-loss-carry-forward and tax-loss-carry-back rights.

050515 Compromise of VHA Debts

Any VHA debt that may be considered for waiver (see chapter 1, paragraph 010506) may also be considered for compromise. In addition, the Committee may also consider offers of compromise for: (1) debts resulting from services furnished in a medical emergency ([38 C.F.R. 17.102\(b\)](#)); (2) other claims arising in connection with VHA transactions ([38 C.F.R. 17.102\(c\)-\(h\)](#)); and (3) breached career residency contracts (chapter 1, paragraph 010509). These types of debts may only be considered for compromise; there is no authority for a Committee to waive such debts ([38 C.F.R. 17.105](#)). However, a Committee does have authority to either waive or compromise a debt that results from medical care or services furnished in error or on the basis of tentative eligibility ([38 C.F.R. 17.102\(a\)](#) and [17.105\(a\)](#)).

**0506 DEFINITIONS**

050601 Administrative Control Function. The finance and fiscal operations, as well as any other activity designated with administrative control, at the local station Committee on Waivers and Compromises.

050602 Chairperson. The individual who manages the work of the Committee.

050603 Committee. The particular decision-making body, which may be composed of a one-person panel ([38 C.F.R. 1.955\(d\)](#)) or a two- or three-person panel. The Committee may be part of a centralized system or a regional office Committee system.

050604 Compromise. Acceptance of less than the full amount of a debt in settlement and full satisfaction of the debt.

050605 Debt. A claim for money made by or owed to the Government, generated from VA activities. It includes overpayments ([38 C.F.R. 1.962](#)).

050606 Member. An individual who participates on the panel to review waiver requests and compromise offers. The individual has special competence and familiarity with one or more of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.)

050607 Reporting Member. The individual who is designated by the chairperson to be the presiding officer over a panel.

050608 Waiver. VA's decision to give up the right to collect a valid debt, including interest and other late payment charges, which falls under the applicable statutes (38 U.S.C. 5302 and 5584) and regulations.

### **0507 RESCISSIONS**

This chapter rescinds MP-4, Part I, Chapter 8, Section E, Compromise of Debts.

### **0508 QUESTIONS**

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

VBA  
All Others

VAVBAWAS/CO/FINREP (Outlook)  
OFP Accounting Policy (Outlook)