



38 CFR Part 1

RIN 2900-AR20

Threshold for Reporting VA Debts to Consumer Reporting Agencies

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations around the conditions by which VA benefits debts or medical debts are reported to consumer reporting agencies (CRA). The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 provides the Secretary authority to prescribe regulations that establish the minimum amount of a benefits or medical debt that the Secretary will report to the CRA. This proposed change will establish the methodology for determining a minimum threshold for debts reported to CRA.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted through www.regulations.gov or mailed to Debt Management Center, Office of Management, 189, 1 Federal Drive, Suite 4500, Fort Snelling, MN 55111. Comments should indicate that they are submitted in response to “RIN 2900-AR20 – Threshold for Reporting VA Debts to Consumer

Reporting Agencies. Comments received will be available at regulations.gov for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Jason Hoge, Director of Operations, Debt Management Center, Office of Management, 189, 1 Federal Drive, Suite 4500, Fort Snelling, MN 55111, (612) 725-4337. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Summary of Proposed Regulatory Changes

We propose to amend VA's regulation that governs reporting of delinquent debts to CRA. This rulemaking would update the regulation to comply with section 2007 of Public Law 116-315, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020. Section 2007 amends chapter 53 of title 38, United States Code by adding section 5320 as follows: "The Secretary shall prescribe regulations that establish the minimum amount of a claim or debt, arising from a benefit administered by the Under Secretary for Benefits or Under Secretary for Health, that the Secretary will report to a consumer reporting agency under section 3711 of title 31."

This proposed amendment will establish the methodology for determining the minimum threshold for reporting certain VA debts to CRA. It will also exclude from the minimum threshold those debts in which there is an indication of fraud, misrepresentation, or bad faith on the part of the debtor.

Background on Governing Statutes

The Debt Collection Improvement Act of 1996 (DCIA), in part, mandated agencies to report delinquent debts to CRA. 31 U.S.C. 3711(e); Sec. 31001(k), Pub. L.

104-134, 110 Stat. 1321. The purpose of the DCIA includes maximizing collection of delinquent debts by ensuring quick action to recover debts, use of appropriate collection tools, and minimizing the costs of debt collection. Sec. 31001(b), Pub. L. 104-134.

Section 5320 of title 38, United States Code, authorizes VA to “establish the minimum amount of a claim or debt, arising from a benefit administered by the Under Secretary for Benefits or Under Secretary for Health, that the Secretary will report to a consumer reporting agency under section 3711 of title 31.” The intent of section 5320 is to lessen negative impact of CRA reports on Veterans.

Introduction to Proposed Regulatory Changes

As explained in more detail below, we propose to amend 38 C.F.R. 1.916 to comply with 38 U.S.C. 5320, to establish a minimum threshold for reporting debts to CRA.

In accordance with 31 U.S.C. 3711(e), the VA Debt Management Center (DMC) is responsible for reporting delinquent debts to CRA. Prior to January 5, 2021, DMC reported an average of 5,000 delinquent Veteran accounts monthly. DMC regularly receives complaints from Veterans whose accounts have been reported to CRA. Common complaints from Veterans include: loss of security clearance, inability to obtain approval for home loans or home refinancing, and difficulty securing rental housing.

This proposed amendment recognizes that the debts described in 38 U.S.C. 5320 are fundamentally different from consumer debt. Debts arising from a benefit administered by the Under Secretary for Benefits or the Under Secretary for Health may result from a variety of scenarios, including overpayments that are not the fault of the Veteran.

Section 5320 authorizes the Secretary to establish a minimum threshold that will ultimately reduce the number of debts that will be reported to CRA. This will, in turn,

decrease the number of Veterans negatively impacted by these reports. The VA's mission is to "care for those who shall have borne the battle and for their families and survivors." Negative credit reports may cause housing insecurity or job loss, and this result is inconsistent with VA's mission.

38 CFR 1.916 Disclosure of debt information to consumer reporting agencies (CRA).

We propose to amend 38 CFR 1.916, which sets forth the requirements for reporting delinquent debts to CRA, by inserting subparagraphs (c)(1) through (3) to provide the methodology used by the Secretary to establish the minimum threshold. This section would also clarify that the minimum threshold applies only to a debt of an individual that arises from a benefit administered by the Under Secretary for Benefits or Under Secretary for Health.

We propose subparagraphs (c)(1) through (3) state:

1. The Secretary has established a minimum threshold for a debt, arising from a benefit administered by the Under Secretary for Benefits or Under Secretary for Health, that the Secretary will report to a consumer reporting agency under section 3711 of title 31.

(2) VA will only report those debts that meet the following standards:

(i) The debt is classified as currently not collectible. For purposes of this paragraph, the debt is currently not collectible if VA has exhausted available collection efforts, including, as appropriate, referrals for administrative offset and enforced collection;

(ii) The debt is not owed by an individual who is determined by VA to be catastrophically disabled or has reported to VA a gross household income

below the applicable geographically adjusted income limits that would entitle a VA beneficiary to cost-free health care, medications and/or beneficiary travel; and

(iii) The outstanding debt amount is over \$25, or such higher amount VA may from time to time prescribe, in accordance with section 1.921 of this part.

(3) The minimum threshold set forth in this paragraph will not apply if there is an indication of fraud, misrepresentation, or bad faith on the part of the individual in connection with the debt.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). The regulations established by this rulemaking do not impose burdens or otherwise regulate the activities of any small

entities outside of VA. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs approved this document on June 23, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 1 as set forth below:

PART 1 – General Provisions

1. The authority citation for part 1 is revised to read as follows:

Authority: 31 U.S.C. 3711(e); 38 U.S.C. 501, 5701(g) and (i); 38 U.S.C. 5320.

1.916 [Amended]

2. Amend § 1.916 by revising paragraph (c) to read as follows:

* * * * *

(c) Subject to the conditions set forth in this paragraph and paragraph (d) of this section, information 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.

(1) The Secretary has established a minimum threshold for a debt, arising from a benefit administered by the Under Secretary for Benefits or Under Secretary for Health, that the Secretary will report to a consumer reporting agency under section 3711 of title 31.

(2) VA will only report those debts that meet the following standards:

- (i) The debt is classified as currently not collectible. For purposes of this paragraph, the debt is currently not collectible if VA has exhausted available collection efforts, including, as appropriate, referrals for administrative offset and enforced collection;

(ii) The debt is not owed by an individual who is determined by VA to be catastrophically disabled or has reported to VA a gross household income below the applicable geographically adjusted income limits that would entitle a VA beneficiary to cost-free health care, medications and/or beneficiary travel; and

(iii) The outstanding debt amount is over \$25, or such higher amount VA may from time to time prescribe, in accordance with section 1.921 of this part.

(3) The minimum threshold set forth in this paragraph will not apply if there is an indication of fraud, misrepresentation, or bad faith on the part of the individual in connection with the debt.

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