

§ 1.931

38 CFR Ch. I (7-1-02 Edition)

shall refer the matter to the Department of Justice by using the Claims Collection Litigation Report (section 1.951). The referral should contain a written memorandum by the local Committee on Waivers and Compromises specifying the exact reason why it is believed that the compromise offer should be accepted. Both the Claims Collection Litigation Report and the Committee's memorandum should be sent to VA Central Office, Office of Financial Management, for subsequent referral to the Department of Justice.

(Authority: 31 U.S.C. 3711)

[57 FR 47263, Oct. 15, 1992]

§ 1.931 Inability to pay.

(a) A claim may be compromised by VA pursuant to §§ 1.930 through 1.938 if VA cannot collect the full amount of the debt because of:

(1) The debtor's inability to pay the full amount of the debt within a reasonable amount of time; or

(2) The refusal of the debtor to pay the claim in full and the inability of VA to collect the debt in full within a reasonable time by means of enforced collection.

(b) In determining the debtor's ability to pay, the following factors, among others, may be considered:

- (1) Age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;

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

(5) The availability of assets or income which may be realized by means of enforced collection procedures.

(c) VA will give consideration to the applicable exemptions available to the debtor under various State and Federal laws in determining the ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at a forced sale may be properly considered in determining the ability to enforce collection. A compromise effected under §§ 1.930 through 1.938 should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to

the debtor and the time in which collection will take place.

(d) The payment of a compromise in installments is to be discouraged. However, if payment of a compromise in installments is necessary, then a legally enforceable agreement shall be obtained from the debtor for the reinstatement of the original amount of the indebtedness, less any amounts paid there on by the debtor, and also an acceleration of the balance due upon default. Such an agreement, together with security as described in § 1.917, should be obtained in every case possible.

(e) If VA files do not contain recent credit information as a basis for assessing a compromise proposal, such information shall be obtained from the debtor by obtaining a statement, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses. Forms such as VA Form 4-5655 "Financial Status Report" or Department of Justice Forms OBD-500 or OBD-500B shall be used to obtain this information. Similar data may be obtained from corporate debtors by using a form, such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as may be required.

(Authority: 31 U.S.C. 3711)

[52 FR 42109, Nov. 3, 1987]

§ 1.932 Litigative possibilities.

VA will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs and attorney fees which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. (See 28 U.S.C. 2412.)

[52 FR 42110, Nov. 3, 1987]