

TRAINING MODULE 16

Study Plan

DEBT MANAGEMENT: COMMITTEE on WAIVERS and COMPROMISES

Objective:

To learn how the Department of Veterans Affairs (VA) deals with overpayments and other debts, the requirements for waivers or compromise of such debts, and the effect of a waiver or compromise on future entitlement to VA benefits.

References:

Title 38, U.S. Code, Section 1505; Chapter 53.

38 Code of Federal Regulations §§ 1.900–1.970; §§ 3.665, 3.666.

Adjudication Manual M21-1, Part IV, Chapter 24.

Adjudication Manual M21-1MR, Parts 3, 4, 5, and 10

VA Financial Policy Manual MP-4.

Instructions:

Study the assigned reference materials to learn how to assist veterans and other claimants to request waiver of an overpayment or other debt, or to offer a compromise settlement.

Summary:

1. Debt Management, Committee on Waivers and Compromises:

VA BENEFITS ARE EITHER DIRECT MONETARY PAYMENTS (COMPENSATION, PENSION, OR education assistance) or the furnishing of goods or services having a monetary value (loan guaranty or health care). In either case, it happens from time to time that a beneficiary will be paid more than he or she is entitled, or is furnished goods or services to which he or she is not entitled or beyond the limits of entitlement. In loan guaranty cases, the beneficiary may default on the loan and the property go into foreclosure, leaving VA liable for the amount of the guarantee. When any of these happen, an overpayment is established and the beneficiary is indebted to the Government.

Whenever an overpayment is established in any program under the jurisdiction of the Veterans Benefits Administration (VBA), the Debt Management Center at the St. Paul, Minnesota, VA Regional Office assumes jurisdiction under the Centralized Accounts Receivable System (CARS). If the debtor is in receipt of compensation or pension benefits, the Debt Management Center will also handle first party medical debts over 90 days old owed to the Veterans Health Administration (VHA), generally from non-payment of required co-payments.

TRAINING MODULE 16

Study Plan

The Debt Management Center will send a notice to the debtor of the existence and amount of the overpayment (or debt) and demanding repayment. If the debt is a loan guaranty default, the notice is sent by Certified Mail (Return Receipt Requested). The notice will advise the debtor that if he or she is presently receiving benefits, those benefits may be automatically withheld to recover or offset the amount of the overpayment unless the debtor responds within 30 days of the date of the notice, either agreeing to repay the debt or offering a compromise, or disputing the fact and/or amount of the debt, or requesting a waiver of the overpayment. If the debtor does not respond to this first letter, withholding of benefits is automatically initiated. If there is no response to the first notice and there are no benefits to offset, second and third notices are sent, at 30-day intervals, advising the debtor that failure to repay or settle the debt will result in the debtor's name being referred to credit reporting agencies and/or the Treasury Department for collection.

If the debtor responds within 30 days of the first letter, no withholding of benefits will be instituted pending the outcome and disposition of the debt. To be sure that it is timely received by VA, duplicate copies of the debtor's response should be sent to both the Debt Management Center and to the Regional Office (or Medical Center) of jurisdiction. Veterans owing more than \$25 at least 90 days overdue who are also receiving Social Security benefits may have their Social Security benefits offset. This will apply only to those veterans receiving Social Security benefits of more than \$750 per month. Of the amount over \$750, 15% can be withheld.

Under certain circumstances, VA will charge interest and/or administrative costs on delinquent debts, which are defined as being more than 30 days old. Loan guaranty debts are charged interest at the rate of 4% per year, but are not charged administrative costs. Education overpayments may be charged both interest and administrative costs, at variable rates. Compensation and pension overpayments do not accrue either interest charges or administrative costs.

If the debtor is willing to make repayment of the debt, a lump sum payment is preferred but installment payments of a reasonable amount for a reasonable period of time will be accepted. If the beneficiary disputes either or both the fact or the amount of the overpayment, the office of jurisdiction will verify the overpayment. If the debtor requests a waiver, a determination as to the validity of the debt must also be done before the waiver request is considered. The debtor may request a personal hearing at any point in the process.

A waiver request must be in writing, and should explain why the debtor feels he or she should not be held responsible for the debt. The request should also include a statement as to any financial hardship recovery of the debt might cause, or any other circumstance which would cause collection or recovery of the debt to be inequitable. The request must be accompanied by a completed VA Form 20-5655, *Financial Status Report*.

In all cases except for loan guaranty defaults, the time limit for requesting waiver of an overpayment is 180 days from the date the debtor is first advised of the existence of the overpayment; in loan guaranty cases, the debtor has one year from the date of receipt by Certified Mail (Return Receipt Requested) of the notice of indebtedness to request a waiver. If the waiver request is received more than 30 days after the date of the initial notice, however, any withholding of benefits begun will continue until the issue has been finally resolved. If the waiver is granted, the withheld benefits would then be refunded.

TRAINING MODULE 16

Study Plan

A waiver may be requested by the debtor or representative, or any other interested party on the debtor's behalf. If the waiver is denied, the debtor may appeal the denial to the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims.

In general, waiver of a debt will usually be granted if there is a showing that collection of the debt would be against equity and good conscience. Factors considered in this determination include whether the debtor was entirely at fault in creation of the overpayment, or was there also fault on the part of VA; would collection of the debt, including withholding of benefit payments, produce undue hardship on the debtor or defeat the purpose for which the benefit was intended; would waiver of the debt result in unjust enrichment of the debtor; or has the debtor's reliance on VA benefits resulted in the relinquishment of a valuable right or incurrence of a legal obligation which would be impaired by collection of the debt.

A waiver will be granted if the overpayment is the result of VA administrative error: that is, the beneficiary was completely without fault in the creation of the overpayment; the agency had the correct information but erroneously authorized an incorrect amount and the beneficiary either attempted to notify VA that the amounts paid were wrong, or relied in good faith on the agency's assurance that the amounts paid were correct.

Waiver of a debt is precluded if there is evidence of fraud or misrepresentation of material facts, or if there is evidence of bad faith or lack of good faith.

Certain types of debts or overpayments may not be waived, such as the cost of medical emergency or humanitarian services (may only be compromised) or where there is a statutory bar against payment, such as simultaneous payment of compensation and military retired pay. In addition, debts resulting from erroneous payment of benefits to a person who is not a payee and has no claim or entitlement to such payments may not be waived.

Waiver of an overpayment in an education assistance claim will result in a loss of future entitlement to education benefits equal to the amount waived. To regain the entitlement, the debt must be paid in full. In a loan guaranty or direct loan case, a waiver of the debt counts as entitlement used; the total debt must be paid in full to restore the previous entitlement.

The indebted person may make a compromise offer at any time in the collection process. This is an offer to pay some portion of the debt in a lump sum, in exchange for forgiveness of the balance. The compromise offer must be in writing and must be accompanied by a completed VA Form 5655, *Financial Status Report*. The offer must be sent to the Debt Management Center, which has jurisdiction of compromise offers. There is no time limit for making a compromise offer. A compromise offer may be considered even if waiver of the debt has been denied. Rejection or denial of a compromise offer may not be appealed to the Board of Veterans' Appeals; however, rejection of a compromise offer does not preclude submitting additional offers.

In agreeing to repay the indebtedness, a lump sum payment is preferred. Installment payments of a reasonable amount for a reasonable period of time will be accepted.

TRAINING MODULE 16

Study Plan

Veterans owing more than \$25 at least 90 days overdue could see an offset in their Social Security benefits. This will apply only to those veterans receiving Social Security benefits of more than \$750 per month. Of the amount over \$750, 15% can be withheld.

Factors for consideration in a compromise offer include whether the debtor would be able to repay the entire amount of the debt within a reasonable time given the debtor's age, health, present and potential income, and availability of assets; also, whether the amount of the debt would justify the costs of litigation or other means of collection. If a compromise offer is accepted in an education overpayment, entitlement will be charged for the portion of the overpayment written off by VA. If a compromise offer is accepted for a loan guaranty debt, the compromised amount must also be paid in full to restore entitlement.

2. Incarcerated Veterans, Fugitive Felons:

FEDERAL LAW PROHIBITS PAYMENT OF FEDERAL BENEFITS, INCLUDING VA BENEFITS, Social Security benefits, etc., to persons who are incarcerated because of conviction of a crime, or who are in a fugitive status to avoid arrest, prosecution, or incarceration for a felony. Listings of possibly affected persons are received periodically from the U.S. Bureau of Prisons, from Social Security matches, and from other sources. For VA beneficiaries, the rules will vary with the type of benefit being received.

- a. For persons receiving compensation or DIC who are incarcerated because of conviction of a felony, the benefit payable is reduced to a minimum amount beginning the 61st day of incarceration following the conviction:
 - For veterans receiving compensation for disability rated 20% or more overall, the compensation payable is reduced to the 10% rate.
 - For veterans receiving compensation for disability rated 10% overall, the compensation payable is reduced to $\frac{1}{2}$ the 10% rate.
 - For beneficiaries receiving DIC, the DIC payable is reduced to an amount equal to $\frac{1}{2}$ the 10% compensation rate.

The conviction must be for a *felony*. The 60-day clock does not start to run until the conviction has been officially entered by the court—neither confinement awaiting trial, nor confinement for examination or treatment, nor confinement for any other purpose may be counted. The person must be incarcerated in a federal, state, or local penal institution; incarceration outside the United States does not trigger reduction of benefits.

Full due process procedures must be observed before VA benefits can be reduced or terminated on this basis. *This will create an overpayment.* If there are any eligible dependents, they may request an apportionment of available benefits while the veteran or beneficiary is incarcerated. A showing of need is required for such apportionment. No apportionment may be made if the dependent is himself/herself convicted of a felony and incarcerated for more than 60 days.

The veteran or beneficiary will have full benefits restored and (generally) any apportionments terminated effective the date of release from incarceration, provided official notice of the release is received within one year from the date of such release.

TRAINING MODULE 16

Study Plan

- b. If a veteran or beneficiary to whom or for whom NSC pension (disability or death) is being paid under any provision of 38 USC, Chapter 15 is incarcerated because of conviction of *any* crime, whether a felony *or* a misdemeanor, pension will be discontinued beginning the 61st day following conviction. As above, the veteran, beneficiary, or dependent must have been convicted, not merely confined; also, the conviction and incarceration must be in the United States.

Also as above, full due process procedures must be observed before benefits may be reduced or terminated. *This will create an overpayment.* If the veteran is entitled to both compensation *and* pension, then on the 61st day following conviction his/her award is switched to compensation and comes under the rules set out in Part a, above. If the conviction was not for a felony, then no further action is required or taken.

If there are eligible dependents, they may request an apportionment of the pension: If the benefit being paid was disability pension, the dependent's income must be within limits for death pension. The rate(s) to be paid will be either the death pension rate or the disability pension rate, whichever is less, for that income level. If the benefit being paid was death pension, then the award and income limits will be adjusted as though the imprisoned beneficiary or dependent did not exist.

Pension payments to or for the incarcerated veteran, beneficiary, or dependent may be resumed upon release from incarceration, provided official notice of the release *and* current income information to show continued entitlement to pension are received within one year from the date of release.

- c. Neither compensation nor pension nor DIC may be paid to, or on behalf of, any veteran, dependent, or other beneficiary who is a fugitive felon, for any period during which he or she is a fugitive. A fugitive felon is defined as a person who flees to avoid arrest, prosecution, and/or imprisonment following conviction of a felony under the laws of the place from which the person flees. It includes a person who violates a condition of probation or parole imposed for commission of a felony under either State or Federal law. It also includes any person who has an outstanding warrant for a felony offense, regardless of whether that person is literally "fleeing." A "felony" for this purpose also includes certain offenses characterized as "high misdemeanors" under state laws, which would be felony offenses under Federal laws. This applies in all cases, regardless of the benefit involved.

When official notice is received that a veteran, dependent, or other beneficiary is a fugitive felon, due process procedures must be observed before benefit payments may be terminated. *This will create an overpayment.* *ALL* benefits payments based on the veteran's or beneficiary's account must be terminated, to include any running apportionment awards, also independent awards such as education assistance under 38 USC, Chapter 35.

If the benefit being paid is either DIC or death pension, and the fugitive felon is the veteran's surviving spouse, and there are children who would have independent entitlement if there was no surviving spouse (regardless of custody), then payments may be made to or for those children on that basis, for such time as the surviving spouse remains disqualified and the children remain entitled. In all other cases, benefit payments may not be resumed unless and until official notice is received that all outstanding warrants have been quashed, cancelled, or otherwise resolved.

TRAINING MODULE 16

Study Plan

Study Questions: Debt Management: Committee on Waivers and Compromises

Using the assigned references and reading materials, answer the following questions:

1. For any VA benefit other than Loan Guaranty, the beneficiary must make a written request for waiver of an overpayment within _____ days after notification by the VA of the debt.
 - a. 30 days
 - b. 60 days
 - c. 180 days
 - d. One year

2. If a veteran who is receiving compensation fails to make a required co-payment for VA Medical care, the amount of that co-payment may be withheld from the veteran's Compensation payments
 - a. True
 - b. False

3. A response to the first notification by the Debt Management Center, VAROIC St. Paul, of the existence of an overpayment must be submitted within _____ days to avoid collection of the debt by withholding of benefit payments.
 - a. 30 days
 - b. 60 days
 - c. 90 days
 - d. 120 days

4. If benefit payments are being withheld to collect a debt and the beneficiary submits a timely request for waiver of the debt, the withholding will be suspended pending a decision on the waiver request.
 - a. True
 - b. False

5. VA may charge interest and administrative costs on delinquent education debts.
 - a. True
 - b. False

6. How long does a person with a Loan Guaranty default have from the date of notice to request a waiver of the debt?
 - a. 30 days
 - b. 60 days
 - c. 180 days
 - d. One year

TRAINING MODULE 16

Study Plan

7. A debtor must be completely without fault in the creation of the overpayment in order to be granted a waiver?
 - a. True
 - b. False

8. A non-veteran is given emergency treatment at a VA medical facility on a humanitarian basis. This debt may be waived?
 - a. True
 - b. False

9. If a waiver of overpayment has been already denied, the debtor may still offer a compromise settlement of the debt?
 - a. True
 - b. False

10. What is the time limit for making a compromise offer on a debt?
 - a. 60 days
 - b. 180 days
 - c. One year
 - d. There is no time limit for making a compromise offer to settle a debt

11. Due to a clerical error, a veteran's compensation payments are erroneously directly deposited into the account of another person, who is not a veteran or any other class of VA beneficiary. This debt can be waived.
 - a. True
 - b. False

12. When a waiver of indebtedness is granted on a Loan Guaranty case, this restore the claimant's entitlement to future loan guaranty benefits?
 - a. True
 - b. False

13. A surviving spouse in receipt of death pension is convicted of shoplifting and is sentenced to 6 months in the county jail. Is her pension subject to reduction or termination because of this?
 - a. True
 - b. False

TRAINING MODULE 16

Study Plan

14. A (SC) totally disabled veteran is on parole from prison for conviction of tax evasion. He flees, which violates his parole, and a warrant is issued for his arrest. He has a dependent attending college under 38 USC, Chapter 35. What effect does the veteran's status have on the dependent's benefits?
- a. No effect—the dependent's award is separate from the veteran's, and is independent of it.
 - b. The dependent's award will be reduced to 1/2 the rate for 10% compensation.
 - c. All awards and payments based on the veteran's account, including any dependents receiving education benefits under Chapter 35, are terminated and remain stopped for so long as the veteran remains in fugitive felon status.