

VA Financial Policies and Procedures
Equity and Good Conscience - COWC

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0201 OVERVIEW

The phrase "equity and good conscience" ([38 U.S.C. 5302\(a\) and \(b\)](#)), like other equitable rules, cannot be exactly defined. It is applied when there is no indication of fraud, misrepresentation or bad faith on the part of the person or persons interested in obtaining a waiver ([38 U.S.C. 5302\(c\)](#) and paragraph 020201 below). Its application to individual cases will result in many variations and exceptions. It is an elastic term, applied in determining the rights of parties. The phrase "equity and good conscience" is descriptive of the consideration given in determining whether recovery of a debt should be waived. To demand payment when it would be unfair, unconscionable or unjust would be against equity and good conscience. The principles of equity and good conscience are applied between parties, when a legal obligation of one to the other may be overcome by consideration that such obligation should not be insisted upon. In other words, equity will not necessarily enforce a legal right, if to do so would be unfair.

0202 POLICIES

020201 VA will automatically deny a waiver when there is an indication of fraud, misrepresentation or bad faith.

020202 VA will not demand a payment when it would be unfair, unconscionable or unjust.

020203 VA will consider fault, unjust enrichment by the debtor, undue financial hardship and other factors to determine if granting the waiver would be against equity and good conscience.

0203 AUTHORITY AND REFERENCES

020301 [5 U.S.C. 5584, Claims for Overpayment of Pay and Allowances and of Travel, Transportation and Relocation Expenses and Allowances](#)

020302 [38 U.S.C. 5302\(a\), \(b\) and \(c\), Waiver of Recovery of Claims by the United States](#)

020303 [38 U.S.C. 3685, Overpayments to Eligible Persons or Veterans](#)

020304 [38 U.S.C. 3720, Powers of the Secretary](#)

020305 [38 U.S.C. 3485, Work-Study Allowance](#)

020306 [38 U.S.C. Chapter 37, Housing and Small Business Loans](#)

020307 [38 U.S.C. 5313B, Prohibition on Providing Certain Benefits with Respect to Persons Who are Fugitive Felons](#)

- 020308 [38 C.F.R. 1.912, 1.912a and 1.919, Administrative Offsets](#)
- 020309 [38 C.F.R. 1.956, Jurisdiction](#)
- 020310 [38 C.F.R. 1.962, Waiver of Overpayments](#)
- 020311 [38 C.F.R. 1.964, Waiver; Loan Guaranty](#)
- 020312 [38 C.F.R. 1.965, Application of Standard](#)
- 020313 [38 C.F.R. 1.966, Scope of Waiver Decisions](#)
- 020314 [38 C.F.R. 1.967\(b\), Refunds](#)
- 020315 [38 C.F.R. 1.969\(a\), Revision of Waiver Decisions](#)
- 020316 [38 C.F.R. 3.156\(a\), New and material evidence](#)
- 020317 [38 C.F.R. 17.102\(a\) and \(b\), Charges for Care or Services](#)
- 020318 [38 C.F.R. 20.301, Rule 301. Who can file an appeal](#)
- 020319 [38 C.F.R. 20.1302, Rule 1302. Death of appellant during pendency of appeal](#)
- 020320 [38 C.F.R. 42, Standards Implementing the Program Fraud Civil Remedies Act](#)
- 020321 [38 C.F.R. Part 61, VA Homeless Providers Grant and Per Diem Program](#)

0204 ROLES AND RESPONSIBILITIES

020401 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.

020402 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.

0205 PROCEDURES

020501 Elements Precluding Waiver

In connection with a claim or request for waiver of a VA benefit or home loan program debt, an indication of any one of the following elements will automatically preclude the granting of a waiver in accordance with 38 U.S.C. 5302(c) and [38 C.F.R. 1.965](#).

A. **Fraud and Misrepresentation.** Although these are listed as separate elements in Section 5302(c), they contain common characteristics and should be considered as a single element. If the Committee on Waivers and Compromises (Committee) feels there was a willful misrepresentation of material fact or the willful failure to disclose a material fact with the intent of obtaining, retaining or assisting an individual to obtain or retain, eligibility for VA benefits, the case must be referred to Regional Counsel for a determination. The Committee must provide Regional Counsel with evidence that the willful intent to either misrepresent or fail to disclose was done with the debtor's knowledge and that such misrepresentation or failure would result in the erroneous or improper award or erroneous retention of benefits. Once Regional Counsel returns its decision to the Committee, the waiver decision can be completed, and the decision must comply with Regional Counsel's determination.

B. **Bad Faith.** This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Thus, a debtor's conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences and results in a loss to the Government.

C. Committee members should note that fraud, misrepresentation or bad faith may exist in connection with the application for waiver, rather than in the creation of the debt. For example, the debtor may submit a financial status report that is so inaccurate the Committee may determine that an indication of fraud, misrepresentation or bad faith exists.

020502. Elements for Consideration

A. As stated in paragraph 0201, the phrase "equity and good conscience" cannot be exactly defined. In general, to demand payment when it would be unfair, unconscionable or unjust would be against equity and good conscience. Thus, after determining that a debtor who is requesting a waiver is clear of fraud, misrepresentation and bad faith, the Committee must next apply the standard of equity and good conscience to determine whether the waiver request should be granted. For the purpose of such a determination, the Committee must consider all of the elements listed in [38 C.F.R. 1.965](#): the debtor's (and also VA's) degree of fault in the creation of the debt, any unjust enrichment to the debtor as a result of the debt and the detriment that the collection of the debt will cause the debtor (undue hardship/defeat the purpose of

the benefit program) or the detriment already incurred by the debtor (changed position) in reliance on VA's erroneous payment, overpayment or erroneous advice. The first step in applying this standard of equity and good conscience is to define the elements that must be considered. Those elements and their definitions are listed below:

1. Fault. The commission or omission of an act that directly results in the creation of the debt. In reaching this determination, a Committee must consider the age, intelligence, education and physical and mental condition of the debtor. The Committee must also consider the degree of VA fault in creation of the debt. (Examples of VA fault: untimely processing of the information provided by payee, inaction on information provided by payee, failure to notify other departments of changes to entitlement, etc.)

(a) When a debt is the result of an erroneous payment or overpayment of a benefit (e.g., compensation, pension or education), fault would exist if the debtor reasonably should have known that he or she received an erroneous payment or overpayment. Fault can occur when the debtor provides an incorrect statement or information to VA, and he or she reasonably should have known that such information or statement was incorrect. Similarly, fault can exist if the debtor fails to provide VA with pertinent information that he or she should have known was essential in determining the payment of benefits. In both instances described here, fault can exist without a willful intent to deceive or defraud.

(b) In cases involving loan guaranty debts and certain work-study debts, a Committee must determine the debtor's fault in the context of a breach of a contractual obligation. Fault would exist in such cases when the debtor had some degree of control over the circumstances leading to default or the breach of the contractual obligation, and the debtor's actions were not those expected of a person exercising a reasonable degree of care, with due regard for the debtor's contractual responsibility to the Government. In loan guaranty debt cases caused by a transferee's default, an absence-of-fault finding would be appropriate when the Veteran had no reasonable choice other than to sell the property (e.g., a Veteran on active duty being ordered to change duty station), unless he or she had been notified by VA, prior to the sale, that the transferee was not qualified to assume the loan.

Determination of fault in terms of a breach of a contractual obligation is also applicable when the breach is that of a promissory note, executed as part of either a deed in lieu of foreclosure or a pre-foreclosure waiver or compromise ([38 U.S.C. 3720](#)). In this instance, the debtor's degree of fault is determined by his/her actions at the time of the breach of the promissory note. The debtor's actions during the events leading up to the deed in lieu of foreclosure are normally not considered in determining the degree of fault as to the breach of the subsequent promissory note.

(c) Certain work-study allowance debts ([38 U.S.C. 3485](#)) resemble debts that arise as the result of an education loan default. Those debts that pertain to allowances advanced to a Veteran prior to actual work performance must be considered under the loan guaranty definition of fault, in the same manner that the definition is applied to

education loan debts. A distinction must be made between Veterans who neglected or disregarded their obligations and Veterans whose debts resulted in spite of their reasonable and prudent acts. However, the other-than-loan- guaranty definition of fault will be applied to debts that relate to work-study allowances mistakenly paid to the Veteran after or during, rather than in advance of, actual work performance.

(d) Public Laws 107-103 (December 27, 2001) and [38 U.S.C. 5313B](#) prohibit the payment of benefits to VA beneficiaries while they are fugitive felons and also prohibit payment to dependents of Veterans who are fugitive felons. The Committee reviewing a request for waiver of debt of a fugitive felon or a dependent must give special attention to the degree of the debtor's fault. The Committee must determine when the debtor became aware of the prohibition against payment of benefits to fugitive felons and when the debtor became aware of his/her fugitive felon status. In many cases, the debtor is not aware of the prohibition until he/she receives notice of the violation. Also, in many cases, the debtor is not aware of his/her fugitive felon status until notified of the violation. Thus, the Committee may determine, in many of these cases that the debtor is without fault in the creation of the debt.

2. Unjust Enrichment. Failure to make restitution would result in unfair gain by the debtor. It would not be equitable for the debtor to retain money, property or services that he/she has obtained at the expense of the Government. This usually occurs in situations when the debtor is in receipt of a lump sum overpayment or erroneous payment. In such a circumstance, in order to prevent unjust enrichment, a duty is imposed upon the debtor to repay the money or to pay VA compensation for property and services received. Consideration of whether collection of such a debt will either create a financial hardship or defeat the purpose of the benefits may be relevant to a waiver decision whether or not unjust enrichment exists. When it is determined the debtor was unjustly enriched, the Committee should consider the option of a partial waiver for that portion of the erroneous payment or overpayment that the debtor has already spent.

3. Undue Financial Hardship. Collection will seriously impair the debtor's ability to provide himself/herself and his/her family the basic necessities of life. The debtor will be expected to treat a Government debt in the same regard given any other debt. In determining whether collection of the debt would prevent him/her from providing necessities or essential subsistence expenses, Committee members should consider:

(a) Income, from all sources: debtor, spouse and dependents within the debtor's household.

(b) The extent to which the assets of the debtor, spouse and dependents are available to meet both collection and essential subsistence expenses. For example, a married Veteran, with spouse and children, is receiving increased pension for aid and attendance. The Veteran is hospitalized for several months and is overpaid the increased pension for three months. It is determined that income from all sources

barely meets the family needs. Depending on the debtor's degree of fault, the Committee may grant waiver in the exercise of equity and good conscience.

(c) Whether the essential subsistence expenses of the debtor and his/her family have been minimized to the greatest extent possible; and

(d) The extent to which the debtor, spouse and dependents have other exceptional expenses and debts that should be taken into account and whether these expenses and debts have been minimized.

In applying this element of undue financial hardship, the Committee will look not only at the debtor's current financial situation, but also at his or her potential future financial situation for the next 3 to 5 years.

4. Analyzing Financial Information

(a) Committee members shall analyze the entire financial status report (VA Form 5655 or equivalent) submitted by the debtor. An analysis shall not concentrate on only one part of the report, such as monthly income and monthly payments. While a debtor's monthly payments may exceed monthly income, his/her list of assets may indicate that the overall net worth is sufficient to enable the debtor to still repay the indebtedness. In other words, a review of a limited portion of the financial status report may reveal apparent financial problems, but a complete analysis of all aspects of the report may reveal that collection of the debt would not cause financial hardship. In cases involving debts for which the regional office is responsible, before Committee members begin deliberation, a completed financial status report shall be requested from each debtor who either requests a waiver or makes a compromise offer. In Debt Management Center (DMC) cases, a financial status report would have been requested prior to referral of the cases to the local station. Even if the debtor's claims folder already contains some financial status information, such as in a case involving a pension recipient, the Committee shall still request a new financial status report. When a financial status report is requested, but not provided by the debtor, the Committee has no other alternative than to find that collection of the debt will not create a financial hardship. In all cases where a financial status report is requested, but not received, the Committee must specifically state this in the written decision.

(b) To make a determination concerning financial hardship, it will be necessary to develop a careful and complete analysis of the Veteran's present and anticipated income and expenses, assets and liabilities, shelter and necessary household expenses, overall financial picture, employment and ability to pay now and in the foreseeable future. In this regard, it should be recognized, for example, that although a Veteran's overall condition is such that the payment of \$100 a month might cause an undue hardship, the payment of a smaller amount each month might not have the same result. Likewise, a Veteran may be heavily obligated at present, but with income potential in the foreseeable future such that he/she will be able to start liquidating the indebtedness to the Government. Similarly, limited or complete lack of income, due to

unemployment, temporary layoffs or strikes, may indicate a present undue hardship. However, it does not necessarily follow that the Veteran will not again be gainfully employed. It is necessary to consider all the facts and circumstances in a particular case. This includes the Veteran's qualifications and employability, income and that of the spouse and the nature of his/her employment. If unemployed, the possibility of re-employment must also be explored to determine whether it is reasonable to assume the employment situation will improve appreciably in the foreseeable future, so that future collection would not work an undue hardship upon the Veteran or family.

(c) Recouped Indebtedness. Committee members are required to consider the entire amount of indebtedness for waiver, regardless of whether a portion of that indebtedness may have been recouped, even if recouped prior to a waiver request. In cases where part of the debt has already been recouped, an analysis of possible financial hardship must include not only the ability to repay the debt in the present and future, but also the effect of recoupment on the debtor's financial status. It cannot be assumed that financial hardship existed at the time of the recoupment simply because the Committee now determines that financial hardship exists in the present and will in the future. Rather, a Committee must perform an additional analysis of the debtor's financial status at the time of the recoupment, if such information is available, in order to establish financial hardship for that period. With this type of analysis, a partial waiver may be more appropriate than granting or denying waiver of the entire debt. If collection of the debt is waived to the debtor, any amounts previously collected either before the request for waiver or during the waiver process by VA, will be refunded to the Veteran.

(d) Debtor's Obligations. The fact the Veteran is heavily obligated would not, in itself, warrant a determination of undue hardship resulting from present and future collection. VA recognizes that a Veteran's income should first be used for shelter and necessary household expenses. After these payments are made, the least VA can expect is that the Veteran's obligations to the Government be given the same consideration given to meeting other obligations.

(e) Veteran and Spouse. In those waiver cases where the Veteran and spouse were joint obligors on a loan obtained or guaranteed under [38 U.S.C. Chapter 37](#), the income of both husband and wife will be considered, even though one of them may not be liable for the debt.

(f) Resale. Whether a property acquired by VA is later sold at a profit or a loss does not in any way affect a debtor's indebtedness to the Government and, therefore, will not be considered as a basis for granting or denying a waiver, in whole or in part, by the Committee. The fact VA may sell a property for an amount greater than the amount of the indebtedness is not an indication that VA realized a profit on the resale of the property, since the costs of necessary repairs to bring the property into re-saleable condition, in addition to local real estate taxes and assessments, sales commission and management fees, etc., increase the Government's interest in the property. In this regard, loan guaranty procedures require an analysis to be made after the sale of a property to ascertain the net loss to the Government. This procedure is designed to

ensure the indebtedness established against an obligor is equitable, and where it is appropriate to do so, an administrative adjustment will be made to reduce the indebtedness.

(g) A provider under the Homeless Providers Grant and Per Diem Program must submit evidence to support any claim that collection of a debt will create an undue financial hardship. Since VA Form 5655, "Financial Status Report," is geared to an individual debtor, the provider may submit whatever evidence is available to support its claim of financial hardship.

5. Defeat the Purpose of the Benefits. The element of "defeat the purpose" is very similar to the element of undue financial hardship. The purpose of some VA benefit payments is to provide supplemental income to a beneficiary and family. If these benefits are a principal means of support, then collection would defeat the purpose of the benefits. Normally, this situation will arise when the debtor receives compensation, pension or education benefits. However, without a detailed examination of the financial status report, the Committee should never conclude the purpose of the benefits will be defeated by collection of the debt. Likewise, a Committee member should never conclude that the receipt of a benefit payment, such as pension, is in itself sufficient evidence of financial hardship. If a financial status report is requested, but not received, the Committee may conclude, absent other available evidence, that collection of the debt will not defeat the purpose of the benefit payments.

6. Changed Position. Detriment to the debtor may exist as a result of an overpayment and justifiable reliance on the overpayment as proper.

(a) In compensation or pension cases, the debtor may have relinquished a valuable or irretrievable right or given up some opportunity, such as a new job, which he or she would not have done but for reliance on the overpayment or erroneous payment of benefits. The debtor may have relinquished additional income sources or incurred increased legal obligations, because of reliance on the erroneous payment or overpayment.

(b) A student may have relied on erroneous payments of educational benefits as being proper because the training was certified by the school and accepted by VA as proper. For example, the student reasonably believed the number of class sessions attended per week was sufficient for fulltime measurement purposes, because the course was so approved by the State Approving Agency and was certified by the school. If a subsequent survey, however, reveals there was insufficient contact time, and the class should never have been certified at the number of credit hours it was, the Veteran shall not be penalized for the unwitting change of position in reliance upon the school's certification. Thus, the student's increased indebtedness to VA, through no fault of his/her own, may be sufficient detriment to make repayment of the debt inequitable, in light of the assumption that benefit payments were proper.

020503 Decisions

A. The Committee shall thoroughly review the facts in a particular case by examining all evidence of record, including the claims folder and/or loan docket and any other material submitted by the debtor as part of the request for waiver. The Committee shall next apply the elements provided in paragraphs 020501 and 020502 above to the facts of the case, to determine which of these elements exist. Once the Committee determines which elements exist, it is in a position to determine whether to grant the waiver request. If the Committee determines there is an indication of fraud, misrepresentation or bad faith, then the waiver request must be denied, as stated in paragraph 020201. If no such indication exists, then the Committee must make a decision to grant or deny waiver, based on the principle of equity and good conscience. There is no set formula or guideline for the Committee's application of the principle of equity and good conscience other than paragraph 020202. However, under no circumstances in the consideration of that principle may the Committee deny waiver solely because the debtor was at fault, in whole or part, for the creation of the debt. The Committee must specifically state the factual basis for each decision to apply the principle of equity and good conscience or not, whether waiver is granted or denied.

B. In the loan guaranty program, the elements of "changed position" and "defeat the purpose of the benefits" are not normally applicable; "unjust enrichment" will only occasionally be applicable. Although all the elements must be considered in each waiver request, for practical purposes, only "fault" and "undue financial hardship" will be relevant to most loan guaranty cases. Moreover, a finding of no fault could outweigh a finding that collection of the debt would not impose undue financial hardship (absent other elements) and could support a waiver of the indebtedness. The compelling weight given to the debtor's lack of fault is specific to loan guaranty debts. The differences in approach to debts in other VA program areas arise from the differences in the origination of the debts, i.e., monies paid out in a benefit program differ from the indirect benefit provided by the loan guaranty in the home loan program.

C. In reaching a decision, the Committee must always remember that each case in which an individual waiver is requested is unique. Each case must be decided on its own merits, and any reasonable doubt must be resolved in the debtor's favor. Finally, the Committee shall always consider the possibility of granting a partial waiver before denying waiver of collection of the full amount of the indebtedness.

D. In reviewing a waiver requested by an indebted homeless provider, Committee members must pay particular attention to the fact the request is submitted by an agency, rather than an individual beneficiary. This is of particular importance in determining the agency's degree of fault in the creation of the debt. Committee members must consider the actions and statements of the employees or representatives of the indebted agency and shall give consideration to all of the elements involved in the application of equity and good conscience listed in

38 C.F.R. 1.965(a). Members shall give added attention to determining whether collection of the debt would defeat the purpose for which the benefit is intended.

E. Notice of Denial Letters. Since the decision maker's reasons for waiver denial are incorporated verbatim into the letter notifying the debtor of the denial, it is imperative that debtors be given clear and concise reasons why waiver is denied. In this regard, it is vital the Committee be responsive and sympathetic to the debtor's situation, so the denial letter is as informative and compassionate as possible.

F. Decision Makers. The daily work of the decision maker has a direct personal effect on many Veterans and other beneficiaries. The decision maker writes a denial or rejection decision that goes, verbatim, directly to the concerned debtor. The Committee decision bears substantially on whether the debtor feels VA is serving him or her or doing a disservice. If the Committee decision is sound and well written, regardless of the holding, Veterans and other beneficiaries are more inclined to feel served by VA and satisfied that VA afforded every possible consideration under the law. On the other hand, anything less than a sound and well-written decision, particularly one entirely unfavorable to the debtor, can result in very adverse feelings toward VA. Such beneficiary dissatisfaction can and does lead to unmerited appeals, resulting in substantial extra cost to VA that often could be avoided by giving the debtor a better prepared decision, i.e., one with all facts and applicable law conscientiously explained and written with the reader-debtor in mind.

G. Finality of Decisions. A decision rendered on a request for waiver by a Committee will stand as the final agency decision, unless reversed or modified by BVA, the U.S. Court of Appeals for Veterans Claims or the Committee under authority of [38 C.F.R. 1.969\(a\)](#). A chairperson should resubmit a case to the Committee under section 1.969(a) only when the chairperson believes there exists new and material evidence, fraud, a change in law or interpretation of law specifically stated in a VA issue or a clear and unmistakable error, shown by evidence in the file, at the time the prior decision was rendered. New and material evidence is evidence, not previously submitted to the Committee, which bears directly and substantively upon the waiver request under consideration and which is neither cumulative nor redundant, and which by itself, or in connection with evidence previously assembled, is so significant that it must be considered in order to fairly decide the merits of the waiver request (See [38 C.F.R. 3.156\(a\)](#)).

A clear and unmistakable error exists when the original decision is based on a factor or on evidence that is subsequently shown to be incorrect or when a Committee member ignores or fails to take into consideration a specific and pertinent factor or evidence that is present in the record before the Committee. Under no circumstances will a case be resubmitted under section 1.969(a) simply because the Committee's original decision is disliked or unpopular. A resubmission under section 1.969(a) must always be accompanied by a specific allegation, supported by evidence, of a clear and unmistakable error, new and material evidence, fraud or change in law or its interpretation. When the chairperson properly resubmits a case, under the authority of

section 1.969(a), the Committee shall review the original decision in terms of the evidence submitted by the chairperson and either affirm, reverse or modify the original decision. If the original decision is affirmed, the reporting member of the Committee shall prepare a memorandum for the other members' signatures that states the reasons under section 1.969(a) why the case was resubmitted and why the original decision is affirmed. If the original decision is reversed or modified, the reporting member will prepare a new VA Form 4-1837, Decision on Waiver of Indebtedness, which will contain a complete explanation of why the original decision is being changed.

020504 Who May Apply for Waiver

A. Other than Loan Guaranty. Any payee or beneficiary, including a fiduciary.

B. Loan Guaranty. A Veteran-borrower, Veteran-transferee, Veteran-purchaser on a vendee account, spouse, former spouse, widow or widower of a Veteran.

C. Representatives

1. General. Committees may consider waiver requests from representatives acting on behalf of a debtor and not themselves. The representatives requesting waiver should normally be an interested party, such as a spouse, parent or sibling, with the debtor's best interests in mind. The representation should be obvious and need not be formally reflected in the claims folder. However, in accordance with [38 C.F.R. 20.301](#), such representation should normally be reflected in a properly executed Power of Attorney or declaration of representation, in order for a Notice of Disagreement (NOD) or a Substantive Appeal to be filed. Section 20.301(b) does permit the filing of an appeal by a person acting as a next friend when the Veteran/debtor has a physical, mental or legal disability that prevents the debtor from filing an appeal on his or her own behalf, and no fiduciary has been appointed. If a debtor provides formal, written notification of representation (e.g., private attorney, service organization), VA will write directly to the debtor, with copies sent to the representative. However, in a declaration of representation, a private attorney may direct that all communications with the attorney's client be sent directly to the attorney and VA is not to communicate with the client. This request must be honored.

2. Death Cases

(a) The Committee may consider a waiver request from a spouse, parent, sibling or representative of the estate of a deceased payee charged with an overpayment. Since the diminution of a payee's estate by collection of the overpayment affects living individuals, such as heirs, assignees or creditors, the representative may request waiver, on the estate's behalf, in an attempt to preserve the assets for the disposition intended by the payee. In such cases, the elements for consideration in a waiver decision, set forth in 38 C.F.R. 1.965, will be applied, to the extent possible, in the same manner as in any other waiver decision. However, it may be that more than one individual should be examined with respect to these elements. For example, the actions

of both a deceased Veteran and a surviving spouse might be examined as to the creation of the debt (i.e., examine all actions by both that had bearing on the improper cashing of the overpayment check(s)). The surviving spouse's financial situation might also be analyzed to determine the element of undue financial hardship. However, the financial status and actions of the surviving spouse will be examined only when he or she bears some responsibility for the creation of the debt or is also responsible for its repayment. See section 020501B for payments issued to payee after the date of death.

(b) The Committee will consider a waiver request on behalf of a deceased payee's or beneficiary's estate made by the surviving spouse or the representative of the estate, regardless of whether the debt in question was charged against the payee or beneficiary prior to death, or the debt resulted from an overpayment or erroneous payment made prior to death but not charged until after death. The Committee shall also continue to consider a waiver request and reach a decision, even if the debtor dies during the decision-making process. If there is any question as to the propriety of continuing consideration after notification of the death of the debtor, the administrative control function shall immediately contact the surviving spouse or representative of the estate and request confirmation for continued consideration. Under no circumstances will the Committee cease consideration of a waiver request or NOD solely because the debtor has died, unless the debtor has left no estate. If no estate exists, VA can no longer pursue collection, thus rendering the issue of waiver moot.

(c) In an opinion dated March 7, 2002, the General Counsel determined that the Committee can continue consideration of a request for waiver of indebtedness brought by a debtor, notwithstanding the death of the debtor, while the waiver proceeding is pending. The General Counsel noted that, although the Board of Veterans Appeals (BVA) is affirmatively precluded by [38 C.F.R. 20.1302](#) from further consideration of an appeal upon the death of an appellant, there appears to be no legal principle or court precedent that precludes continued consideration of a waiver request by the Committee after the death of the debtor. Thus, it would appear that the Committee decision on such a case would be the final administrative decision by VA.

(d) Waiver Request Application. See paragraph 020505.D. below.

020505 Debts Subject to Waiver

A. Except as stated in paragraph 020506 below, debts, overpayments or erroneous payments made to designated living payees or beneficiaries ([38 C.F.R. 1.962](#)) and arising out of programs administered by the Veterans Benefits Administration (VBA) or resulting from medical care/services erroneously furnished ([38 C.F.R. 17.102\(b\)](#)) or claims for erroneous payment of pay and allowances to employees (5 U.S.C. 5584), are subject to consideration for waiver ([38 C.F.R. 1.956](#)). In addition, overpayments arising from participation in the Homeless Providers Grant and Per Diem Program ([38 U.S.C. 2011- 2012](#); [38 C.F.R. 61](#)) are also subject to waiver consideration.

B. 38 C.F.R. 1.962 states the term "overpayment" refers only to benefit payments, made to a designated living payee or beneficiary, that exceed the amount due or to which the payee or beneficiary is entitled. This regulation limits a Committee's authority to consider waiver to only those debts that arise because of an overpayment or erroneous payment of benefits to a designated payee or beneficiary who was alive at the time the overpayment or erroneous payment was made. Thus, a Committee has no specific authority to consider waiver of a debt resulting from a benefit payment to a designated payee or beneficiary who was deceased at the time the payment was made.

C. The entire amount of indebtedness (original amount of debt, interest and other late payment charges) must be considered for waiver, including any amounts that may have been recouped either before or after the waiver request. Thus, the Committee will consider the original amount of indebtedness for waiver, even if that amount has subsequently been reduced by offset or other recoupment. The only time a Committee will consider a reduced amount of indebtedness is when the reduction in the amount of indebtedness is the result of a subsequent award action that amended the original award action that created the indebtedness. The dollar amount of indebtedness actually has little bearing on a Committee's deliberations; the Committee's sole concern will be whether collection of the debt would be against equity and good conscience, as previously defined.

D. In Precedent Opinion 21-95 (August 24, 1995), the General Counsel stated a recipient of VA benefits, who has been notified of his or her right to request a waiver of indebtedness arising from an overpayment of such benefits must again be notified of waiver rights when an additional overpayment is established based on a separate and distinct transaction.

020506 Debts Excluded from Waiver

A. A waiver request on a debt that is excluded from Committee consideration must still be reviewed by the Committee (including requests not filed within the statutory and regulatory time limit). Though the Committee may not have jurisdiction to consider a particular waiver request, only the Committee has authority to decide whether a request is within its jurisdiction. The fact that a waiver request is rejected because it is not within a Committee's jurisdiction is the equivalent of a denial of waiver. Thus, the Committee must review such a request and render a decision on VA Form 4-1837. The chief of the fiscal office and the administrative control function for the Committee have no authority, without first obtaining written permission from the Committee, to inform a debtor that his/her waiver request cannot be considered because it is not within the Committee's jurisdiction. In addition, because the outcome is the same as a waiver denial, the debtor must be informed, by means of VA Form 4-326, 1) that the waiver request could not be considered because there is either no specific authority for waiver consideration or that waiver consideration is specifically precluded by statute or regulation (the debtor will be provided with a citation of such statute or regulation) and 2) that he/she has the right to file a NOD with the decision. The following are some examples of debts that are excluded from waiver consideration:

1. The indebtedness of a non-Veteran obligor (other than Veteran's spouse) under the home loan program (38 U.S.C. 5302(b), [38 C.F.R. 1.964](#)).

2. The indebtedness of an educational institution found liable under [38 U.S.C. 3685](#), [38 C.F.R. 1.967\(b\)](#).

Note: There is no need to render a formal decision on VA Form 4-1837 or provide appellate rights in such a case, because the request has been made by an institution rather than an individual.

3. An overpayment to an insured from an insurance contract that is secured by an active NSLI (National Service Life Insurance) or USGLI (United States Government Life Insurance) policy. However, if the indebtedness can be recovered from any VA benefit payments, other than insurance payments, then the indebtedness may be considered for waiver ([38 C.F.R. 1.966\(b\)\(2\)\(i\)](#) and M29-1, Part I, Chapter 9).

4. Debts resulting from services furnished in a medical emergency ([38 C.F.R. 17.102\(b\)](#)) and other claims arising in connection with VHA business transactions.

5. Erroneous benefit payments received by third parties who are neither payees, beneficiaries, nor fiduciaries ([38 C.F.R. 1.962](#)).

6. Interest, administrative costs and penalties, when the principal of the debt is not also waived ([38 C.F.R. 1.919](#)).

7. Overpayments or erroneous payments made under the Survivor Benefit Plan (SBP)([10 U.S.C. 1447-1455](#)) and the Retired Serviceman's Family Protection Plan (RSFPP). SBP and RSFPP are Department of Defense benefit programs, rather than VA benefit programs, and therefore there is no authority in 38 U.S.C. 5302 to consider any of these overpayments for waiver.

8. Refunds of payments or service obligations derived from authorizations.

020507 Time Limit to Apply

A. Other Than Loan Program. A request for waiver of indebtedness under this subparagraph shall be considered only if made within 180 days following the date of a notice of indebtedness issued by VA to the debtor. The 180-day period may be extended if the individual requesting waiver demonstrates to the chairperson of the Committee that, as a result of an error by either VA or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in that individual's receipt of the notification of indebtedness beyond the time customarily required for mailing (including forwarding). If the requester substantiates there was such a delay,

the chairperson shall direct that the 180-day period be computed from the date of the requester's actual receipt of the notice of indebtedness.

B. Loan Program. A request for waiver of indebtedness under this section shall be made within one year after the date on which the debtor receives from VA, by Certified Mail-Return Receipt Requested, written notice of indebtedness. If this is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

C. Erroneous Pay and Allowances. An application for waiver must be submitted within three years following the date on which the erroneous payment was discovered.

D. Waiver Request Application. There is no statutory or regulatory requirement that a request for waiver must be in writing. However, every effort should be made to solicit a written and signed request for waiver from the debtor. A verbal request for waiver, either in person or by telephone, may be accepted, especially when the submission of a written request is difficult for the debtor because of age or health reasons. The VA employee receiving a verbal request for waiver should immediately make a written report of the request and submit a copy to the DMC, the station administrative control function or the chairperson of the Committee.

E. Reapplication Barred

Except for those instances provided for in 38 C.F.R. 1.969, where waiver denials may be reconsidered, there is no authority under the law to reapply for waiver when a prior request for waiver was denied, except on evidence germane to the creation of the debt but not available at the time of the original request. Subsequent events, for example, worsened financial condition, increased costs of living, change in marital, health or family status, etc., while possibly affecting collection, do not relate to the cause of the debt and therefore cannot form a basis for a new request for waiver.

020508 Form of Decision

VA Form 4-1837, Decision on Waiver of Indebtedness, is to be used in all cases except those involving claims for erroneous payment of pay and allowances to employees that will utilize a narrative format for waiver decision.

020509 Indication of Fraud or Misrepresentation

A. In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the waiver or compromise of the claim, the Committee must refer the case immediately to either the Regional Counsel or the Office of Inspector General (IG) (38 C.F.R. 1.962(b)). Action on the request for waiver or compromise offer will be deferred until the Committee receives instructions on the disposition of the case from the Regional Counsel, IG or the Department of Justice (DOJ). The Committee can resume consideration of the request

or offer only when the Regional Counsel or IG determines that prosecution is not indicated, or the DOJ notifies VA either that the alleged fraud or misrepresentation does not warrant action by DOJ or VA is specifically authorized to act on the request or offer.

B. The Committee must consult with the Regional Counsel whenever a waiver request or compromise offer is received in a case that has already been referred to the Regional Counsel, IG, U.S. Attorney or DOJ for prosecution or in which a judgment has been obtained (either criminal or civil) or if bankruptcy proceedings are involved. Although a waiver request or compromise offer can be considered in cases that are being prosecuted or in which a civil judgment has been obtained by VA, the case is to be referred to the Regional Counsel for review, to avoid a Committee decision that may be in conflict with either a court order or an agreement already reached by the Regional Counsel or the U.S. Attorney for the resolution of the case. In addition, any action by the Committee shall be in compliance with the procedures set forth in [38 C.F.R. Part 42](#), if applicable.

0206 DEFINITIONS

020601 Administrative Control Function. The finance and fiscal operations, as well as any other activity designated with administrative control, at the station Committee.

020602 Chairperson. The individual who manages the work of the Committee.

020603 Committee. The particular decision-making body, which may be composed of a one-person panel (38 C.F.R. 1.955(d)) or a panel composed of two or three members. The Committee may be part of a centralized system or a regional office Committee system.

020604 Compromise. Acceptance of less than the full amount of a debt in settlement and full satisfaction of the debt.

020605 Debt. A claim for money made by or owed to the Government, arising out of activities of VA. It includes overpayments ([38 C.F.R. 1.962](#)).

020606 Member. The 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.)

020607 Reporting Member. The individual who is designated by the chairperson to be the presiding officer over a panel.

020608 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.

0207 RESCISSIONS

This chapter rescinds MP-4. Part I, Chapter 8, Section B, Equity and Good Conscience.

0208 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)