

VA Financial Policies and Procedures
Waiver of Debts

CHAPTER 1B

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0101 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures for the waiver of VA benefit debts and employee debts.

010101 AUTHORITY FOR WAIVER OF DEBTS. VA may waive benefit debts arising as a result of participation in a benefit program administered by VA in accordance with 38 U.S.C. 5302. In accordance with 5 U.S.C. 5584, VA may also waive erroneous payments of pay and allowances, as well as travel, transportation and relocation expense debts for employees. No authority exists to waive vendor debts.

010102 ACTIONS FOR WAIVER OF DEBTS. Under 38 U.S.C. 5302 and 38 C.F.R. 1.965 *Application of Standard*, VA may waive overpayments of home loan and benefit debts when collection would be against equity and good conscience and no evidence exists of fraud, misrepresentation, or bad faith.

Under 5 U.S.C. 5584 and 38 C.F.R. 1.963a, *Waiver, Erroneous Payments of Pay and Allowances*, VA may waive erroneous employee payments when collection would be against equity and good conscience and not in the best interest of the United States and there is no indication of fraud, misrepresentation, fault or a lack of good faith on the part of the person or persons having an interest in obtaining the waiver.

0102 POLICIES

010201 AUTHORITY FOR WAIVER OF DEBTS. When a debtor has been notified of a debt and has submitted a request for waiver, VA will ensure the request for waiver is reviewed by the proper official and advise the debtor of the acceptance or rejection of the request. Waiver receipt timeframes are as follows: (1) benefit debt waiver requests must be received within 180 days of the date of notification of indebtedness (NOI), (2) home loan waiver requests must be received within 1 year after the date on which the debtor receives, by certified mail – return receipt requested, written notice from VA of the indebtedness and (3) employee debt waiver requests must be received within 3 years following the date the erroneous payment was discovered. Vendor debts may not be waived.

010202 ACTIONS FOR WAIVER OF DEBTS. VA may waive a benefit debt that results from participation in a benefit program administered under any law by VA when it is determined that collection would be against equity and good conscience. VA may waive employee pay and allowance debts if collection of the debt would be against equity and good conscience and not in the best interest of the United States pursuant to 5 U.S.C. 5584. Requests for waivers of benefit and employee debt must be made within a specific timeframe.

A. VA will advise debtors in writing of the acceptance or rejection of their waiver requests. An explanation will be provided to the debtors on the possible effects of a

waiver acceptance, which may entail charging a VA entitlement for the loan guarantee and education programs, if applicable.

B. The Chief of the Finance Activity will refer benefit debts to the Committees on Waivers and Compromises (COWC) when debtors or their representatives request waivers, or when circumstances warrant such referrals in the opinion of the Chief of the Finance Activity.

C. The Chief of the Finance Activity will refer waiver requests for employee debts caused by erroneous payments of pay and allowances, including travel, transportation and relocation expenses to the COWC of jurisdiction. The finance activity will prepare a waiver referral package, to include a report of investigation, the details of the debt and copies of all correspondence with the debtor.

D. The Veterans Health Administration (VHA) Fiscal Officer, including the Consolidated Patient Account Center (CPAC) Fiscal Officer or their designees, will consider all waiver requests for medical or pharmacy co-payment debts.

0103 AUTHORITY AND REFERENCES

[010301 5 U.S.C. 5584, Claims for Overpayment of Pay and Allowances of Travel, Transportation, Relocation Expenses and Allowances](#)

[010302 38 U.S.C. 3720\(a\), Powers of Secretary](#)

[010303 38 U.S.C. 5302, Waiver of Recovery of Claims by the United States](#)

[010304 38 C.F.R. 1.955\(b\), Regional Office Committees on Waivers and Compromises](#)

[010305 38 C.F.R. 1.956, Jurisdiction](#)

[010306 38 C.F.R. 1.957, Committee Authority](#)

[010307 38 C.F.R. 1.962, Waiver of Overpayment](#)

[010308 38 C.F.R. 1.963a, Waiver, Erroneous Payments of Pay and Allowances](#)

[010309 38 C.F.R. 1.965, Equity and Good Conscience Standard](#)

[010310 38 C.F.R. 1.966, Scope of Waiver Decisions](#)

[010311 38 C.F.R. 2.6\(e\)\(4\) and \(11\), Secretary's Delegation of Authority to Certain Officials](#)

[010312 38 C.F.R. 3.103\(c\), Procedural Due Process and Appellate Rights](#)

010313 38 C.F.R. 17.102(a), Charges for Care and Services

010314 38 C.F.R. 17.105, Waivers

010315 38 C.F.R. 20.101(c), Jurisdiction of the Board

0104 ROLES AND RESPONSIBILITIES

010401 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. 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.

010402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chiefs of the Finance Activities, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

010403 The Board of Veterans' Appeals (BVA)¹ reviews benefits claim determinations made by local VA offices that are appealed and issues decisions on appeals. As part of this process, BVA reviews waiver determinations made by Committees on Waivers and Compromises (COWC), as well as waiver determinations made by any VHA Chief of Finance Activity concerning medical or pharmacy co-payment debts. BVA decisions are made by Veterans Law Judges who are experienced in Veteran laws and in reviewing benefit claims. These judges are the only ones who may issue BVA decisions.

010404 The Committee of Waivers and Compromises (COWC) is a decision-making panel composed of one or more persons (38 C.F.R. 1.955(e)). The COWC may be part of a centralized system or a regional office Committee system. Refer to Volume XI for detailed information on the COWC.

010405 The Debt Management Center (DMC) located in St Paul, Minnesota, is responsible for collecting debts resulting from an individual's participation in VA's education, pension or disability compensation programs within the DMC's jurisdiction. The DMC consults with Veterans and their families in the management and liquidation of their benefit debts.

010406 The Regional Counsel (RC)² and designated staff attorneys are authorized, in any matter within the jurisdiction of VA's General Counsel, delegated or otherwise

¹ Refer to Chapter 71 of title 38 U.S.C., "*Board of Veterans' Appeals*," for additional information on the BVA.

² Refer to 38 C.F.R. 14.501, "*Functions and Responsibilities of Regional Counsels*," for additional information related to the RC.

assigned, to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents. The RC is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to VA installations within the assigned region. In any area of regulatory, assigned or delegated responsibility, the RC may delegate to staff members or other VA attorneys authority to perform, to the extent specified, any legal function under the professional direction of the RC. The RC may modify, suspend, or rescind any delegated authority.

010407 Delegation of Authorities

A. The VHA Fiscal Officer, including the CPAC Fiscal Officer or their designee, may waive debts for VA medical services and pharmacy copayment debts.

B. All COWCs may waive debts for VA benefit and employee debts. The COWC in St. Paul, MN, has jurisdiction for all home loan program debts.

0105 PROCEDURES

010501 AUTHORITY FOR WAIVER OF DEBTS. When VA has determined a debt exists, it will promptly demand payment of the debt in writing. VA will notify the debtor of his or her rights and remedies and the consequences of failure to comply with the collection letters. Refer to Volume XII, Chapter 1, *VA Debt Collection Standards*, for the required information related to debt or demand letters. Generally one demand letter is sufficient, but subsequent demand letters may be issued, as needed.

The debtor has the right to dispute the existence or amount of the debt or to request waiver of collection of the debt, if applicable. These rights may be exercised separately, or simultaneously, as provided in 38 C.F.R. 1.911, Collection of debts owed by reason of participation in a VA benefits program, 1.911a, Collection of non-benefit debts, 1.912, Collection by offset and 1.912a, Collection by offset from VA benefit payments.

010502 ACTIONS FOR WAIVER OF DEBTS. VA may waive benefit or employee pay and allowance debt when the facts and circumstances of the particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights and if the waiver request was made within the following specified timeframes: (1) benefit debts within 180 days of the date of the NOI, (2) home loan debts within 1 year after the date on which the debtor receives, by certified mail – return receipt requested, written notice from VA of the indebtedness and (3) employee debts within 3 years following the date on which the erroneous payment was discovered. VA will use the following procedural guidelines specific to the handling of requests for waiver of debts owed to VA:

A. Notification of Waiver Decision³.

1. Benefit Debts

a. All waiver decisions made by the COWC or VHA Fiscal Officer, including the CPAC Fiscal Officer or their designee, will include an explanation of how the decisions were reached. The reasons cited will reflect the facts material to the issue which were decided upon and be conscientiously written for incorporation into the subsequent letter to the debtor. If information requested of the debtor is not received, then the decision is made on the evidence of record and the decision will specifically state this fact. Refer to Volume XI for detailed information on the COWC and their procedures relating to waiver decisions.

b. Where waiver is denied, or a partial waiver is granted, the COWC will forward the signed decision to the Chief of the Finance Activity, who will notify the debtor or representative of the denial of waiver or the granting of a partial waiver, using a Waiver Denial Letter (VA Form Letter 4-326) to communicate the information. If the COWC grants a waiver on a debt under the DMC jurisdiction, the Chief of the Finance Activity will notify the DMC of the waiver and provide a copy of the COWC decision. If the COWC grants a waiver in full on a debt maintained at a field station, the Chief of the Finance Activity will notify the debtor of the waiver using a Notice of Approval of Waiver Request (VA Form Letter 4-437).

c. If the debtor, after denial of a waiver, files a notice of disagreement indicating an intention to appeal, the notice will be referred to the COWC or VHA Fiscal Officer, including the CPAC Fiscal Officer or their designee, along with the decision denying the request for waiver. The COWC or VHA Fiscal Officer, including the CPAC Fiscal Officer or their designee, will review the case and then determine whether the original decision will be reversed, modified, or upheld. If the original decision is upheld, then a Statement of the Case will be prepared. The accounts receivable record should be annotated with the referred action and designated for follow-up by the Finance Activity within 90 to 120 days to ensure the Statement of the Case is prepared timely.

d. If a debt has been referred for litigation and a request for waiver or an appeal of a waiver denial is received timely, the Finance Activity will immediately notify the appropriate RC or U.S. Attorney of the receipt of the request. If a debt has been referred to the Department of the Treasury, a private collection contractor, or any other outside entity, the case will be handled according to the contract or other document defining the terms of the referral.

e. The COWC or VHA Director's memorandum citing appropriate circumstances regarding lack of evidence or validity of the debt will be sent to the local RC, along with other information that is available, for the RC's determination on whether the debt is

³ See Volume XI, Chapter 1, General Policy, for more information regarding notification of waiver decisions.

legally enforceable. This situation occurs most often in older loan program cases, where the loan docket has either been lost or destroyed and VA is now attempting to collect the debt by offset from the debtor's current benefit payments. If the RC determines the debt is legally enforceable, then the case will be returned to the appropriate office for a decision on the waiver request. If the RC determines the debt is not legally enforceable, then collection on the debt will be terminated by either the local Finance Officer or the DMC, depending on jurisdiction.

2. Employee Pay and Allowance Debts

- a. All waiver decisions made by the COWC will include an explanation of how the decisions were reached. The reasons cited will reflect the facts material to the issue which were decided upon and will be conscientiously written for incorporation into the subsequent letter to the employee. Refer to Volume XI for detailed information on the COWC and their procedures related to waiver decisions.
- b. If the COWC approves the waiver, the Chief of the Finance Activity responsible for collecting the debt will advise the employee.
- c. In the event the COWC denies a request for waiver, the Chief of the Finance Activity at the station responsible for collection of the debt will provide the employee with notice of the right to appeal the denial of waiver. The denial of a request for waiver of an erroneous payment of pay or allowances by the COWC may not be appealed to the BVA. However, upon receipt of an appeal, the Chief of the Finance Activity responsible for collecting the debt will forward the request for appeal, along with the COWC's waiver decision, the report of investigation and all other pertinent information to the COWC that rendered the original decision. The COWC will consider the employee's appeal.
- d. The COWC will forward its decision on the appeal to the Chief of the Finance Activity responsible for collecting the debt, who in turn will provide the employee with a copy of the decision. At that time, the employee will also be informed that the decision is the final decision of the Department of Veterans Affairs on the employee's request for waiver.

B. Waiver of Benefit Debts Referred to the COWC⁴.

1. If a request for waiver is made within the statutory time limit set forth in 38 C.F.R. 1.963 and 1.964, the entire amount of the indebtedness will be considered for waiver even though all or a portion of the indebtedness may have already been recouped prior to the request. Any amounts recouped, either before the request for waiver or during the waiver process, will be refunded if the waiver is eventually granted. Benefits are not to be withheld until the debtor is given the opportunity to request, within 30 days of the initial notice of indebtedness, both a waiver and a hearing, as well as

⁴ See Volume XI, Chapter 4, Processing a Request for Waiver, for further information on COWC procedures for waiver requests.

certain other administrative remedies and VA has made an initial decision on such requests.

2. A request for waiver will be referred to the COWC using VA Form 4-1042, Referral of Indebtedness to Committee on Waivers and Compromises (original copy only).

Supporting documents, including the debtor's request for waiver, will be attached to the form to assist the COWC in arriving at a decision. The referral should include some evidence of the debtor's financial circumstances, preferably a completed VA Form 20-5655, Financial Status Report, or a current credit report or verification of employment, when necessary. If the debtor fails to submit financial data within 20 days after VA requests this information, the case will be considered on the basis of available financial data at the station.

3. All waiver requests for the Homeless Providers Grant and Per Diem Program will be submitted to the Director, Office of Homeless Providers Grant and Per Diem Program located in VA Central Office. Once the request is received, it will be submitted to the COWC of jurisdiction.

4. When a waiver request has been rejected by the COWC, VA will collect the debt in a lump sum payment, unless extenuating circumstances exist. VA may also arrange for installment payments from the debtor on any denied waiver request. Whenever possible, these payments should be collected within three years.

a. If the debtor is in receipt of benefits and requests a waiver within 30 days of the date of the initial notice of indebtedness, a benefit offset will not be initiated. However, collection by benefit offset will be initiated upon the COWC's initial decision to deny waiver and will continue even if the debtor files a notice of disagreement with the COWC, possibly followed by a BVA review. If the COWC, or eventually BVA, overturns the initial COWC decision, a prompt refund of benefits withheld will be made.

b. If the debtor is not in receipt of benefits, the Chief of the Finance Activity or the DMC will ensure collection letters are deferred when a notice of disagreement has been filed with BVA. Collection letters will be resumed only when the Chief of the Finance Activity has been advised that BVA denied the waiver sought on appeal, or the debtor has withdrawn or has failed to complete the appeal of the waiver decision. The initial letter after the appeal is completed should continue the demands for payment.

c. When an education debt has been written off as a result of the waiver process, the dollar value of the waiver amount (e.g., \$1,000) is converted into the equivalent number of months of benefit entitlement (4 months) and the education entitlement for the Veteran or beneficiary is reduced accordingly. For example, if the Veteran is entitled to 36 months of education, the number of months will be reduced by 4 to total 32 months. Restoration of the entitlement amount charged as a result of the waiver will occur only upon full payment of the debt amount.

d. VA will reduce the basic loan guaranty entitlement by the amount of entitlement used to obtain a direct, guaranteed or insured housing loan. If the loan is defaulted and VA incurs a loss, the loss must be paid in full to restore the previously used entitlement.

C. Waiver of Erroneous Payments to Employees

1. The Chief of the Finance Activity is responsible for preparing the report of investigation, preparing or maintaining the related correspondence to or from the employee for pay and allowance debts and collecting the debt. Waiver of erroneous payments will depend upon the facts of the particular case. The facts on which the waiver is based will be recorded in detail in the COWC decision. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, an erroneous payment has occurred and fails to make inquiries or bring the matter to the attention of the appropriate officials.

2. Applications for waiver requests are processed by the Chief of the Finance Activity of the station where the employee is currently employed and an application must be received within 3 years following the date on which the debt was discovered. Requests for waiver by former VA employees are processed by the VA station where the person last served. The Chief of the Finance Activity may also initiate a waiver when the facts and circumstances warrant such consideration.

3. The Chief of the Finance Activity at the station where the person is employed will prepare a report of investigation for the signature of the Station Director on all debts considered for waiver. Similar reports prepared by the VACO Financial Operations Service will be signed by the Associate Deputy Assistant Secretary for Financial Business Operations. If all or part of the debt was paid to the employee by another VA station, the necessary information will be obtained from the other station to permit full development of the facts.

4. A full report of investigation is not required for cases involving amounts of \$100 or less where there is no indication in the record of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the debt. A statement to this effect will be sent with the waiver referral package to the COWC.

The report of investigation will include:

- a. A statement of the aggregate (gross) amount of the debt.
- b. A citation of inclusive dates of each pay period in which erroneous payment was made and the amount of the debt applicable to each pay period.
- c. The appropriation or fund from which erroneous payment was made. If any other appropriation or fund was involved, the amount applicable to each should be included.

- d. A detailed statement describing the circumstances under which the erroneous payment was made or the travel debt occurred.
 - e. The date the debt was discovered at the facility and the date the initial demand payment letter was sent to the employee.
 - f. A statement as to whether the erroneous payment is the subject of an exception made by the U.S. Government Accountability Office (GAO).
 - g. A statement as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the debt.
 - h. Any other factual information, such as personnel action forms, earnings and leave statements, indoctrination or other instructions indicating knowledge on the part of the employee concerning the possibility of having received an erroneous payment of pay and allowances. At a minimum, copies of SF 50-B, Notification of Personnel Action, applicable VA Forms 4-5632, Earnings and Leave Statement, and any other forms or documents that either establish or have a bearing on the employee's pay entitlement should be included.
 - i. A statement of the corrective action that has been or will be taken to prevent similar erroneous payments in the future.
 - j. A recommendation with respect to waiver of the debt.
 - k. A statement from the employee with respect to any knowledge of the erroneous payment he or she may have had at the time of its occurrence and any corrective action taken, if an error was suspected.
5. If the employee requests waiver within 30 days of the date of the notice of indebtedness, VA will not initiate salary offset. However, an offset will commence once an initial decision is made to deny the waiver request. After an initial denial decision, the offset will continue even if the employee subsequently appeals the denial of the waiver.
6. An application for refund of the amount waived where the debt has been repaid in whole or in part must be made by the employee to VA no later than 2 years following the date of the waiver decision. The refund will be made by the station where the employee is currently employed. Refunds to former VA employees will be made by the separating station. The refund will be charged to the appropriation from which the erroneous payment was made. The COWC of jurisdiction will be notified of the date and amount of the refund.

D. Waiver of Medical Debts⁵

1. In accordance with 38 C.F.R. 17.105(c), a debt resulting from the failure to pay a medical services or pharmacy co-payment as required by 38 U.S.C. 1722A, is subject to waiver consideration under 38 U.S.C. 5302(a). The Secretary of Veterans Affairs is also authorized by 38 C.F.R. 17.105(c) to waive a Veteran's debt resulting from failure to pay co-payments required in connection with receipt of VA hospital, nursing home or outpatient care. The same standards for debt collection for VBA benefit debts (see paragraph 010502A1 (a-e) above) will apply to medical care and pharmacy co-payment debts.

2. A request for waiver of collection of all of these healthcare co-payment debts will be considered by a VHA Fiscal Officer, including the CPAC Fiscal Officer or their designee, rather than by the COWC. The VA Medical Center (VAMC) Director is required to make the final station decision in the appeals process. VAMC Directors may designate others at their facilities to participate in reviewing appeals, but the Directors retain the responsibility of making the final decision.

The following VHA medical debts can only be considered for waiver by the COWC:

a. Debts identified in 38 C.F.R. 17.102(a) that result when VHA hospital care or medical services have been provided to a person who was thought to be, or tentatively determined to be, eligible for such care or services, but was subsequently determined to be ineligible.

b. Debts for emergency or humanitarian purposes, identified in 38 C.F.R. 17.101(b), may only be waived if the underlying treatment was provided on the basis of Veteran eligibility. Otherwise, Section 17.105(a) does not authorize such debts as eligible for waiver consideration.

c. A request for waiver of a debt resulting from medical care or services furnished in error will normally be submitted by the debtor to the VHA Finance Office where the debt arose.

0106 DEFINITIONS

010601 Committee on Waivers and Compromises (COWC). 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.

010602 Debt. Claim for money made by or owed to the Government, arising out of activities of VA.

⁵ See Volume XI, Chapter 1, *General Policy*, for more information on COWC actions for waiver of medical debts.

010603 Due Process. The constitutional right of “due process” requires an agency to provide debtors with notice of, and the opportunity to dispute, a debt or intended debt collection action.

010604 Equity and Good Conscience. A broad concept of fairness to apply to waiver requests, one that reflects the ordinary meaning of the statutory language and takes into account the facts and circumstances of each case.

010605 Financial Status Report (VA Form 5655). A VA form used by debtors to list their current income, expenses and financial condition.

010606 Notice of Disagreement. Written communication from a debtor or a debtor's representative expressing dissatisfaction with a decision to deny a waiver request or grant a partial waiver and a desire to contest the result (38 C.F.R. 20.201).

010607 Statement of the Case. Written document provided by the COWC to the debtor explaining why and how it came to its decision on the debtor's request for waiver. This document is provided after the COWC receives the debtor's “Notice of Disagreement”.

010608 Waiver. A decision that conditions exist, under the applicable statutes (38 U.S.C. 5302 and 5 U.S.C. 5584) and implementing regulations (38 CFR 1.955-1.969, 17.105) that prohibit recovery by VA of certain debts as defined in the statutes and regulations, including interest and other late payment charges assessed on such debts.

0107 RESCISSIONS

010701 VA Handbook 4800.3, Waiver of Debts

0108 QUESTIONS

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

| | |
|------------|---------------------------------|
| VHA | VHA Accounting Policy (Outlook) |
| VBA | VAVBAWAS/CO/FINREP (Outlook) |
| All Others | OFP Accounting Policy (Outlook) |