



Department of Veterans Affairs

Financial Policy

Volume XII

Debt Management

Chapter 11C

Evaluation Standards - COWC

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1101 Overview

This chapter establishes the Department of Veterans Affairs' (VA) financial policies for the evaluation of a waiver or compromise request on a debt owed to VA.

Key points of this chapter include:

- The process for conducting a review of a waiver or compromise;
- The role of the Committee on Waivers and Compromises (COWC) regarding reaching a decision on a waiver or compromise; and
- The six elements of equity and good conscience applied to most requests being considered by a COWC.

1102 Revisions

Section	Revision	Office	Reason for Change	Effective Date
Various	Reformatted to new policy format	OFP (047G)	Reorganized chapter layout	February 2021
Volume XII Chapter 11C	Moved to Volume XII. Changed chapter number to 11C.	OFP (047G)	Chapters were combined	February 2021
0105 Procedures	Moved procedures to appendices	OFP (047G)	Reorganized chapter layout	February 2021

1103 Definitions

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 the intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

Compromise – Governed by 31 U.S.C. § 3711, a compromise is an offer and acceptance of a partial payment in settlement and full satisfaction of the offeror's indebtedness as it exists at the time the offer is made. It is a final settlement, binding on the parties to the compromise, unless procured by fraud, misrepresentation of a material fact or mutual mistake of fact.

Debt – Money or property owed to VA.

Fraud – A knowing misrepresentation of the truth or concealment of it to induce another to act to his/her detriment, a criminal act of corruption, attempt to cheat the Government, and/or to corrupt the Government's agents.

Waiver – A decision that conditions exist which should result in cancellation, forgiveness, or non-recovery of a debt owed, including interest and other late payment charges assessed on such debts under the applicable statutes and implementing regulations 38 C.F.R. § 1.955, and compromise, through 38 C.F.R. § 1.969, and 38 C.F.R. § 17.105.

1104 Roles and Responsibilities

Secretary of the VA is authorized to compromise debts under 38 U.S.C. § 3720, and 31 U.S.C. § 3711. 38 U.S.C. § 3720, authorizes the compromise of debts due to the United States that result from payment of a claim under the guaranty or insurance of loans, liquidation of direct loans, and liquidation of loans acquired under 38 C.F.R. § 36.4318.

Chief of the Local Finance Activity is responsible for ensuring compliance with the policies and appropriate procedures which provide guidance for administration of VA's debt collection activities. Any reference to Chief of the Local Financial Activity can also refer to the: Executive Director of the Debt Management Center (DMC), Director of the Financial Service Center (FSC) where appropriate, as well as Chief Fiscal Officers in VA Medical Centers, Chief Finance Officers in Regional Offices, and Chief Fiscal Officers in the Consolidated Patient Account Centers (CPAC).

Committee on Waivers and Compromises (COWC) is the decision-making panel

composed of one or more members, making decisions on a request for a waiver or compromise. The Committee is under the direction of and has authority vested in the Director of the office of jurisdiction. The Committee will have independent decision-making authority.

Chairperson of the Committee is responsible for executing or certifying any documents pertaining to Committee proceedings. He/she is responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports required. The Chairperson normally represents the Committee in dealing with other divisions and top management.

Committee Member is an individual who participates on the panel to review waiver requests and compromise offers. The individual will have special competence and familiarity with one or more of the debts claim areas.

Debt Management Center (DMC) is a franchise fund (fee-for-service) organization of VA. DMC offers a wide range of debt management services including debt resolution activities, as well as waivers and compromises under their jurisdiction.

District Counsel (DC), formally known as Regional Counsel, is authorized, in matters within the jurisdiction of VA's General Counsel, delegated or otherwise assigned, to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents.

1105 Policies

110501 General Policies

- A. In accordance with 38 C.F.R. § 1.910, VA will take active collection action on a timely basis, with effective follow-up, to collect all claims for money or property arising from its activities. If facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights the "Equity and Good Conscience" standard will be applied. See Appendix A for more information on the "Equity and Good Conscience" standard.
- B. In accordance with 38 C.F.R. § 1.965 "Equity and Good Conscience", may be applied to all individuals or entities associated with a debt. 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.

- C. 31 U.S.C. § 3711, authorizes VA to compromise debts up to \$100,000, exclusive of interest and other late payment charges, arising out of VA activities.
- D. For debts that result from payment of a claim under the guaranty or insurance of loans, liquidation of direct loans, liquidation of loans acquired under 38 C.F.R. § 36.4318 a COWC is authorized by 38 U.S.C. § 3720, to compromise debts due regardless of the amount.
- E. Waiver requests for Benefit Debts must be received within 180 days from the date of the initial notice of indebtedness (NOI). Requests in conjunction with a Home Loan must be received within 1 year of the NOI. See 38 C.F.R. § 1.963 and § 1.964, for more information on time limits.

110502 Requirements and Evidence

- A. The COWC will consider the following items before reviewing a request for a waiver or compromise:
 - 1. The subject matter and the amount of debt or overpayment are within the Committee's authority and jurisdictional limits are present for proper presentation to the Committee. See Volume XII, Chapter 11 for more information on limits.
 - 2. If there is any indication of fraud or misrepresentation of a material fact the Committee may only act on it after the Inspector General has determined that prosecution is not needed, or the Department of Justice has notified VA that the alleged fraud or misrepresentation does not warrant action. See 38 C.F.R. § 1.962(b), for more information concerning indications of fraud.
 - 3. Where a debtor has been discharged in bankruptcy, a memorandum is included from the District Counsel regarding the legal effect of such discharge on the debtor's liability to VA.
 - 4. Any correspondence contesting the creation of the debt itself will be referred to the originating office of the debt and debt collection efforts will be placed on hold until the validity of the debt is established.
 - 5. The waiver request is timely and is not preceded by a prior request that has been completely adjudicated.
- B. Development of Evidence
 - 1. The Committee shall request or obtain material evidence, necessary to

determine the ability to pay the debt. (Financial statement, credit report, etc.)

2. In all cases except those involving a request for waiver of the erroneous payment of pay or allowances, the Committee will attempt to obtain a signed VA Form 5655, Financial Status Report, or similar financial information.

110503 Waiver Evaluation Considerations

- A. In accordance with 38 C.F.R. § 1.965, the standard of “Equity and Good Conscience” will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government’s rights. The decision reached should not be unduly favorable or adverse to either side. In making a determination, consideration will be given to the following six elements, which are not intended to be all-inclusive.
1. Fault of debtor. Where actions of the debtor contribute to creation of the debt.
 2. Balancing of faults. Weighing fault of debtor against Department of Veterans Affairs’ fault.
 3. Undue hardship. Whether collection would deprive debtor or family of basic necessities.
 4. Defeat the purpose. Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.
 5. Unjust enrichment. Failure to make restitution would result in unfair gain to the debtor.
 6. Changing position to one's detriment. Reliance on Department of Veterans Affairs benefits results in relinquishment of a valuable right or incurrence of a legal obligation

For more information on “Equity and Good Conscience” and waiver of recovery of claims see Appendix A for more information and examples.

- B. The following elements will be considered, any indication of which, if found, will preclude the granting of waiver:
1. Fraud or misrepresentation of a material fact (see 38 C.F.R. § 1.962(b)).
 2. Bad faith. Indication that the debtor intends to seek an unfair advantage, with knowledge of the likely consequences, and it resulted in a loss to the government.

- C. If the debtor refuses to submit a completed financial statement, the Committee must note this in their discussion and conclude that collection of the debt will not create a financial hardship.
- D. Financial hardship is not applicable for erroneous payments of pay and allowances.
- E. Waiver or compromise requests for debtors that are considered fugitive felons or debtors with felony warrants, shall have their debts reviewed with consideration given to the requirements of 38 U.S.C. § 5313B and 38 C.F.R. §§ 3.665-3.666.

110504 Waiver Decisions

- A. 38 C.F.R. § 1.956, authorizes COWCs to consider waiver requests under their jurisdiction.
- B. 5 U.S.C. § 5584, and 38 C.F.R. § 1.963a, authorize COWC to consider waiver requests on debts arising from erroneous payments of pay and allowances.
- C. COWCs may deny a waiver, regardless of the amount of the debt.
- D. A waiver is considered when the collection would be against equity and good conscience and not in the best interest of the United States or when the erroneous payment occurred through administrative error.
- E. Waiver decisions must be documented and supported by evidence contained in the record, as well as a summary of the facts and evidence evaluated. In applying the principles of equity and good conscience, the elements that formed the basis for the decision must be substantiated by evidence and must be discussed in the decision.
- F. A request for waiver will be denied where fraud, misrepresentation, fault, or lack of good faith on the part of the entity seeking a waiver exists.
- G. The debtor must be properly notified of the decision and advised of their procedural and appellate rights and the right to request a hearing.
- H. When a waiver is denied, the debtor will be informed of his/her right to disagree and request a review by the Committee that made the original decision to deny the waiver, as well as, all appeal rights. See Vol XII, Ch 11E for more information on Appeals.

110505 Compromise Decisions

- A. In accepting an offer, it must be determined that the offer is:
- Proportionate with the total amount owed;
 - Advantageous to the Government; and
 - Payable by the debtor.
- B. When two or more debtors are jointly and severally liable, care must be exercised that a compromise with one of the debtors does not, release VA's claim against the remaining debtor(s). The compromise decision must set forth the reservation of the Government's right to collect from the other debtor(s).
- C. When rejecting an offer, all pertinent facts shall be stated, and the debtor shall be advised that:
- a compromise offer will not be accepted based on current facts; or
 - that VA would consider an alternative compromise at a VA specified amount.
- D. There is no right of appeal should VA reject a compromise offer. However, there is no limit to the number of times a debtor may make a new compromise offer.

1106 Authorities and References

[5 U.S.C. § 5584, Claims for Overpayment of Pay and Allowances](#)

[31 U.S.C. § 3711 Collections and Compromise](#)

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

[38 C.F.R. § 1.910 Aggressive collection action.](#)

[38 C.F.R. § 1.955 – 1.970, Regional Office Committees on Waivers and Compromises](#)

[38 C.F.R. §17.105 Waivers](#)

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

[38 U.S.C § 36.4318 Service Tier Ranking](#)

[38 C.F.R. § 1.930-1.936 Standards for Compromise of Claims](#)

[38 C.F.R. § 19.29 Statement of the Case](#)

[Federal Claims Collection Act](#)

1107 Rescissions

This chapter rescinds MP-4, Part I, Chapter 8, Appendix A, Evaluation Standards.

1108 Questions

Questions concerning these financial policies should be directed as shown below:

VHA	CFO Accounting Policy (10A3A) (Outlook)
VBA	VAVBAWAS/CO/OPERATIONS (Outlook)
DMC	VAVBASPL/DMC/BDEV (Outlook)
All Others	OFP Accounting Policy (Outlook)

Appendix A: Elements of Equity and Good Conscience

A. The phrase "equity and good conscience" cannot be precisely defined. The term denotes the spirit of fairness and justness; the sense of right or wrong. Each waiver request is unique and must be decided on its own merits and any reasonable doubt must be resolved in the debtor's favor. There is no set formula or guideline for the Committee with respect to weighing of these elements or their applicability in any given case. The five factors are:

1. Fault

- a. Did the action or inaction of the debtor contribute to the debt's creation? Age, education, health, and level of understanding must all be considered.
- b. COWC must weigh any fault of the debtor against any fault of VA. In other words, did the claimant do everything they were supposed to do, and did VA do everything they were supposed to do?
 - Did they report a dependency change?
 - Did they report they dropped out of school/classes?
 - Did they report income and/or changes?
 - Did VA notify Compensation & Pension (C&P) when they established Chapter 35 benefits for a dependent of a Veteran?
 - Did VA take timely action to adjudicate an issue?

2. Unjust Enrichment

Will failure to pay the debt result in unfair gain to the debtor? In other words, is it right for the debtor to keep money that was erroneously provided to them at the expense of the Government?

3. Changed Position

Did the debtor relinquish a valuable right or change position for the worse? In other words, did the Veteran give up something important because they were relying on VA benefits?

- Did they give up a job to go to school because VA told them they were entitled to education benefits?
- Did they buy a car because VA told them they were entitled to receive 100% benefits, but then VA reduced the percentage and they can now no longer afford the payments on the vehicle?

4. Financial Hardship

- a. Will collection deprive debtor or beneficiary of basic necessities? Will debtor or beneficiary go without food, housing, or other basic needs? Is hardship likely to be resolved in the near future? If so, consider future earning potential.

- b. How much control did the debtor have over his financial hardship? For example, medical expenses beyond their control is different than debt caused by living beyond their means.

5. Defeats the Purpose

Will collection undo the reason for which benefits were intended? Will collection keep the debtor from attending school? Will collection keep the debtor from receiving their primary source of income (pension)?

- B. The COWC may expand or add other elements to the five listed above.
- C. The COWC should also consider what is equitable for the U.S. taxpayer. For example, where a Veteran has multiple contract/installment debts as a result of personal decisions (4 car loans, 10 credit cards, etc.), the fact that the Veteran has multiple payment plans should not have bearing on the decision made. However, if the veteran has multiple payment plans for (hospital bills or other items outside the control of the Veteran) those may be considered in making a decision on the waiver or compromise request.

Example one

Claimant won't be able to afford cable TV or payment for financed RV/motorcycle if he has to repay VA. This constitutes financial hardship. True or False?

False: Veterans are required to accord VA debts with the same consideration as any other legal financial obligation. Cable TV is not a basic necessity.

Example two

A degree of fault for a 90- year old claimant with dementia, receiving Aid and Attendance and a 35-year-old Compensation recipient are the same. True or False?

False. The 35-year-old claimant may be in reasonably good mental health and may be working with many years of earning potential.

Example three

The claimant remarried the same month that he divorced; but did not notify VA of the change in spouse. This created a debt. Was he unjustly enriched by the additional benefits for a dependent spouse? Yes or No?

No. The claimant was still legally married. Therefore, he was entitled to the additional benefit. In this case, he did not receive a benefit that he was not entitled to have.