



DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**

*Office of Audits and Evaluations*

DEPARTMENT OF VETERANS AFFAIRS

VA Did Not Provide Some  
Veterans Legally Required  
Notice and Due Process  
before Collecting Debts for  
the Compensation Program

MANAGEMENT ADVISORY  
MEMORANDUM

MEMO # 22-01279-206

SEPTEMBER 7, 2022



## MISSION

The mission of the Office of Inspector General is to serve veterans and the public by conducting meaningful independent oversight of the Department of Veterans Affairs.

*The Office of Inspector General (OIG) has released this management advisory memorandum to provide information on matters of concern that the OIG has gathered as part of its oversight mission. The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation for independence, competence, evidence collection and analysis, and quality control.*

*In addition to general privacy laws that govern release of medical information, disclosure of certain veteran health or other private information may be prohibited by various federal statutes including, but not limited to, 38 U.S.C. §§ 5701, 5705, and 7332, absent an exemption or other specified circumstances. As mandated by law, the OIG adheres to privacy and confidentiality laws and regulations protecting veteran health or other private information in this management advisory memorandum.*



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DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**  
WASHINGTON, DC 20001



July 14, 2022<sup>1</sup>

**MANAGEMENT ADVISORY MEMORANDUM**

**TO:** Thomas Murphy, Director, Northeast District,  
Performing the Delegable Duties of the Under Secretary for Benefits<sup>2</sup>  
Veterans Benefits Administration  
  
Jon Rychalski, Assistant Secretary for Management and  
Chief Financial Officer  
VA Office of Management

**FROM:** Larry Reinkemeyer, Assistant Inspector General  
VA Office of Inspector General's Office of Audits and Evaluations (52)

**SUBJECT:** VA Did Not Provide Some Veterans Legally Required Notice and  
Due Process before Collecting Debts for the Compensation Program

While conducting a review of veterans' debts inaccurately created under the Veterans Benefits Administration's (VBA) compensation program, the VA Office of Inspector General (OIG) discovered several instances in which VA collected the debts without first providing veterans with legally required notice and due process.<sup>3</sup> The review team notified VA of three scenarios in which it reduced compensation payments to veterans in order to collect debts. VA officials agreed that the debts were collected improperly and attributed the errors to business rules in VA's electronic systems (software programming that triggered debt collection). The officials agreed to review these systems to identify improvements that can be made to ensure they comply with legal requirements for notice and due process.

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<sup>1</sup> This memorandum was sent to the Veterans Benefits Administration and VA Office of Management on July 14, 2022, to provide the opportunity for review and comment.

<sup>2</sup> This management advisory memorandum was sent to Thomas Murphy, director of the Northeast District, then performing the delegable duties of the under secretary for benefits on July 14, 2022. On July 25, 2022, Joshua Jacobs was designated to serve as the senior advisor for policy performing the delegable duties of the under secretary for benefits. The comments he submitted for the Veterans Benefits Administration are included in appendix A.

<sup>3</sup> VA OIG, *VBA Improperly Created Debts When Reducing Veterans' Disability Levels*, Report No. 21-01351-151, July 28, 2022; VA OIG, *Successive VA Errors Created a \$210,000 Debt for a Veteran with a "Service-Connected Mental Illness,"* Memo No. 21-02447-05, November 4, 2021. Both the November 4, 2021, management advisory memorandum and this one stemmed from work on the July 28, 2022, review involving improperly created debts. However, after the OIG review team notified VBA of the incorrectly created \$210,000 debt (the subject of the November 4, 2021, memorandum), it was eliminated *before it was collected*. In contrast, this memorandum addresses improperly collected debts. Due process requirements are in 38 U.S.C. § 5314 and 38 C.F.R. §§ 1.911 and 1.912a.

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This memorandum is meant to formally and transparently convey information regarding the previously shared scenarios so that VA can determine if additional actions are warranted.<sup>4</sup> The OIG is taking no additional steps at this time.

## **VA Improperly Collected Some Debts by Reducing Payments Owed to Veterans without Notifying Them**

VA provides tax-free monthly compensation benefits to veterans in recognition of the effects of disabilities incurred or aggravated during active military service. VBA employees decide the amount of the monthly benefits based on factors including the severity of a veteran's disabilities and number of dependents, which may change over time. For example, a disability could improve or worsen, or the veteran's number of dependents could change, and a new decision would adjust the veteran's compensation benefits accordingly. Because these new decisions are generally made after the change has occurred, they may be effective retroactively and can increase or decrease a veteran's entitlement over periods for which payments have already been made. Processing a compensation decision is referred to as an "award" action, regardless of whether the decision grants, denies, or adjusts benefits. Debts are created when an award retroactively reduces a veteran's payment rate. In contrast, any time an award increases a veteran's prior payment rate, retroactive payments are due the veteran. If an award retroactively reduces some payment rates and increases others, it creates corresponding debts as well as payments due the veteran.

When a veteran owes a debt, VA can withhold all or part of the veteran's retroactive or ongoing monthly payments to recoup the money but first generally has to give the veteran due process.<sup>5</sup> VA must send a "notice of indebtedness" demanding payment. By law and regulation, the notification letter must include the amount and reasons for the debt. It must also state that the veteran has the right to dispute the existence or amount of the debt, request a waiver of collection of the debt, request a hearing on the waiver request, and appeal the decision that caused the debt. The notification letter must also inform the veteran that the debt may be collected by withholding benefit payments. If a veteran disputes the debt or requests a waiver within 30 days of the notification, VA generally cannot withhold benefit payments until a decision is made on the dispute or waiver request.<sup>6</sup>

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<sup>4</sup> The OIG issues management advisory memorandums when exigent circumstances or areas of concern are identified by OIG hotline allegations or in the course of oversight work, particularly when immediate action by VA can help reduce further risk of harm to veterans or significant financial losses. Memorandums are published unless otherwise prohibited from release or to safeguard protected information.

<sup>5</sup> VA Financial Policy, vol. XII, chap. 1, "Debt Collection Standards," July 2021. In the context of debt collection, VA defines due process as providing debtors with notice of intended debt collection actions and the opportunity to dispute the debt or amount, request a waiver when applicable, or negotiate a compromise of the debt.

<sup>6</sup> All these requirements are detailed in 38 U.S.C. § 5314 and 38 C.F.R. §§ 1.911 and 1.912a.

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The review team identified three scenarios in which VA improperly reduced payments to veterans to collect debts:

1. Debt collected by reducing the retroactive payments created in the same award
2. Debt collected by reducing the retroactive payments created in a later award
3. Debt collected by reducing monthly benefit payments

In some cases, the debts were collected over time from retroactive payments in multiple awards or from both retroactive and monthly payments. The following examples illustrate cases in which veterans' benefit payments were improperly reduced to recoup debts.

### ***Example 1: Debt Collected by Reducing Retroactive Payment Created in the Same Award***

*In a May 2020 compensation award, VBA employees retroactively reduced some payment rates (when fixing prior administrative errors) and increased others (based on increased ratings for two disabilities). The retroactive reduction created a debt of about \$1,853 that was then collected by withholding that amount from the total payment due the veteran (which reflected the accrued difference between the previously paid benefit compensation and the higher payment rates). VBA employees told the veteran the overpayment from fixing the administrative errors would not be collected since the errors were committed by VA. However, they failed to eliminate the overpayment in VA's electronic system in line with policy and created the debt anyway.<sup>7</sup> The veteran was also not provided a notice of indebtedness or given an opportunity to dispute the debt or request a waiver before it was collected.*

### ***Example 2: Debt Collected by Reducing Retroactive Payments Created in the Same Award and a Later Award***

*In an August 2020 compensation award, VBA employees retroactively reduced some payment rates (for incorrectly removing a 10 percent disability) and increased others (for unemployability). This created a debt of about \$12,257. About \$4,345 of that debt was collected by withholding it from the payment due the veteran (from retroactively establishing unemployability). When a January 2021 compensation award retroactively increased payment rates again (for special monthly compensation), about \$774 was withheld and applied toward*

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<sup>7</sup> VA Manual 21-1, part 3, sub. 6, chap. 2, sec. B, topic 3, block e, "Eliminating an Overpayment Resulting From Correction of an Administrative Error," October 11, 2017.

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*the remaining debt.<sup>8</sup> The veteran was not provided a notice of indebtedness or given an opportunity to dispute the debt or request a waiver before these amounts were collected. However, in February 2021, VA sent a notice of indebtedness for the remaining balance of approximately \$7,139.<sup>9</sup>*

### **Example 3: Debt Collected by Reducing Retroactive Payment Created in the Same Award and Monthly Payments**

*In a September 2020 compensation award, VBA employees retroactively reduced some payment rates and increased others. This created a debt of about \$38,769, and about \$27,921 was collected by withholding it from the amount due the veteran (which reflected the increased rates). The remaining balance of about \$10,848 was collected from the veteran's monthly benefit payments at a rate of \$2,217 per month. The veteran was not provided a notice of indebtedness or given an opportunity to dispute the debt or request a waiver before these amounts were collected.*

VA officials agreed that the veterans in examples 1 through 3 were entitled to notices of indebtedness and due process before their benefit payments were reduced to recoup the debts. Additionally, VBA officials agreed that creating the debts in these cases was actually incorrect, making collection actions particularly problematic. However, even if the debts were appropriate, collecting them without notice and due process would deprive veterans of an opportunity to request a waiver.

## **Long-Standing Business Rules in VA's Electronic Systems Led to Improperly Collected Debts**

The VA Debt Management Center provides debt collection services to VBA.<sup>10</sup> However, officials with VBA and the center told the review team these debts were not collected as a result of actions taken by the center, but were based on automated business rules in VA's electronic systems that triggered debt collection. For example, when a debt and a retroactive payment displayed the same reason for each action in the electronic system, the business rules collected the debt from the retroactive payment—even if the veteran had not been provided notice and due process. All three scenarios identified by the OIG review team involved the Financial and Accounting System, for which VBA is responsible. The third scenario also involved the Centralized Accounts Receivable System, for which the Debt Management Center is responsible.

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<sup>8</sup> 38 C.F.R. § 3.350. VBA awards additional payments called special monthly compensation for certain serious disabilities or combinations of disabilities, such as the loss of an eye or limb or the need to rely on others for daily life activities like bathing and eating.

<sup>9</sup> Debt amounts do not sum precisely due to rounding.

<sup>10</sup> The Debt Management Center is in VA's Office of Finance, in the Office of Management.

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In all three scenarios, the officials stated the rules had been in place since VBA began processing compensation claims in the Financial and Accounting System in 2004, if not earlier. The officials said that some debts would continue to be improperly collected until the systems are fixed. The officials agreed to collaborate and review VA's electronic systems to identify improvements that can be made to ensure they comply with legal requirements for notice and due process before collecting debts.

## **Requested Action**

The OIG requests that VA inform the OIG what actions it takes to ensure veterans receive notice and due process before debts are collected.

## **VBA Response**

Included in appendix A is VBA's response that it "concur[s] with the findings" in the OIG's management advisory memorandum. According to the senior advisor for policy, performing the delegable duties of the under secretary for benefits, "VBA determined FAS [the Financial and Accounting System] was recouping overpayments with the same award reason, regardless of the award period. This resulted in a violation of due process." The senior advisor said that to remedy this, FAS and its replacement system would be corrected to address the types of scenarios the OIG identified. He said, "VBA expects this software update to be implemented in October 2022." The senior advisor also commented that to address the issues and due process concerns raised by example 3, "VA's Debt Management Center took action to stop any current benefit payment offsets on a compensation and pension debt receiving an increase in their Centralized Accounts Receivable System."

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## Appendix A: VA Management Comments

### Department of Veterans Affairs Memorandum

Date: August 5, 2022

From: Under Secretary for Benefits (20)

Subj: OIG Management Advisory Memorandum - VA Did Not Provide Some Veterans Legally Required Notice and Due Process Before Collecting Debts for the Compensation Program (Project No. 2022-01279-AE-0055)

To: Assistant Inspector General for Auditing and Evaluations (52)

The attached comments are provided in response to OIG's Management Advisory Memorandum - VA Did Not Provide Some Veterans Legally Required Notice and Due Process before Collecting Debts for the Compensation Program.

*The OIG removed point of contact information prior to publication.*

(Original signed by)

Joshua Jacobs

Senior Advisor for Policy,

Performing the Delegable Duties of the

Under Secretary for Benefits

Attachment

**Veterans Benefits Administrations (VBA) Comments on OIG Management Advisory Memorandum - VA Did Not Provide Some Veterans Legally Required Notice and Due Process before Collecting Debts for the Compensation Program (Project No. 2022-01279-AE-0055)**

VBA concurs with the findings in OIG's management advisory memorandum and provides the following information regarding the actions taken to ensure Veterans receive notice and due process before debts are collected.

During OIG's review of compensation and pension overpayments, it was determined VBA's Finance and Accounting System (FAS) rules for recouping debts from retroactive benefits were not functioning per VA policy. To prevent duplication of benefits, policy requires retroactive award payments be withheld to recoup overpayments that have the same award reason and same award period. Upon further investigation, VBA determined FAS was recouping overpayments with the same award reason, regardless of the award period. This resulted in a violation of due process.

To correct this, the FAS (and the FAS replacement system, Enterprise Management of Payments, Workload, and Reporting for VA (eMPWR-VA)) business logic will be corrected to match on both award reason and award period prior to offsetting retroactive benefits. This will ensure beneficiaries are granted due process rights according to VA policy and will also ensure scenarios following similar fact patterns in all three examples OIG cited are handled correctly. VBA expects this software update to be implemented in October 2022.

In addition, and specific to OIG's example three (*Debt Collected by Reducing Retroactive Payment Created in the Same Award and Monthly Payments*), VA's Debt Management Center took action to stop any current benefit payment offsets on a compensation and pension debt receiving an increase in their Centralized Accounts Receivable System. This allows for due process on the increased debt amount.

*For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

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## OIG Contact and Staff Acknowledgments

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