

**RECOUPMENT OF AWARDS OR BONUSES, OR RELOCATION EXPENSES
(38 U.S.C. §§ 721 AND 723)**

1. **PURPOSE.** This notice provides procedures regarding the implementation of the [Department of Veterans Affairs \(VA\) Accountability and Whistleblower Protection Act of 2017 \(Public Law 115-41\)](#), title 1, Section 204, Recoupment of bonuses or awards paid to employees of Department, as promulgated in 38 U.S.C. § 721 and Section 205, Recoupment of relocation expenses paid on behalf of employees of Department, as promulgated in 38 U.S.C. § 723.
2. **POLICY.** The Secretary, or designee, may issue an order directing an employee of the Department to repay, in whole or in part, any award or bonus paid on or after June 23, 2017, to an employee under title 5, including chapters 45 or 53, or title 38 if it is determined the employee engaged in misconduct or poor performance prior to payment of the award or bonus, and the award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment. Additionally, the Secretary may issue an order to an employee to repay the amount, or a portion of the amount, paid to or on behalf of, an employee under title 5 for relocation expenses, including 5 U.S.C. §§ 5724 and 5724a, or title 38, if it is determined the relocation expenses were paid on or after June 23, 2017, following an act of fraud or malfeasance that influenced the authorization of the relocation expenses. Awards, bonuses and relocation expenses must have been paid on or after June 23, 2017, to be eligible for recoupment. Due process as described herein must be provided prior to repayment.
3. **DEFINITIONS.** For this notice, the following terms apply:
 - a. **Award or bonus.** Payment given to reward an individual for contributing to an organizational goal or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest, or a recruitment, relocation, or retention incentive. These include but are not limited to employee incentives based on predetermined criteria such as productivity standards, performance goals, measurement systems, award formulas, or payout schedules. (Physician performance pay is not included as it is not considered an award or bonus.) Awards may be performance-rating based or non-rating based. Examples of awards include superior performance awards, individual and group special contribution awards, organizational awards, suggestions awards, etc. Step increases, which are those other than periodic step increases, are also considered an award.
 - b. **Business days.** Weekdays, which are Monday through Friday, except when such a day is designated as a Federal holiday by the Office of Personnel Management (OPM), or the employee's assigned facility is closed for regular business, e.g., inclement weather. For calculation purposes, a business day begins on the first business day after the notice of the proposed order is received by the employee.

- c. **Employee.** A current or former employee of the VA.
- d. **Malfeasance.** An act that is unjustified, harmful, or contrary to law, rule, or regulation. It includes, but is not limited to:
 - (1) Conduct, actions, or inactions that are unbecoming a civil service employee;
 - (2) Conduct, actions, or inactions that negatively impact VA or detract from VA's mission;
 - (3) Intentionally or negligently violating law, regulation, or VA policy; or
 - (4) Insubordination.
- e. **Notice of proposed order for recoupment of an award or bonus.** The written document signed by the Secretary, or designee, notifying the employee of the intent to recoup an award or bonus payment, including retention, relocation and recruitment incentives, in whole or in part due to an employee's performance or conduct deficiency(ies) prior to the payment of the award or bonus.
- f. **Notice of proposed order for recoupment of relocation expenses.** The written document signed by the Secretary, or designee, notifying the employee of the intent to recoup relocation expenses following an act of fraud or malfeasance that influenced the authorization of relocation expenses.
- g. **Office of General Counsel (OGC).** The Office of General Counsel and its divisions, including District Counsel offices.
- h. **Order of Recoupment of Award or Bonus.** A written decision by the Secretary, or designee, to recoup all or part of an award or bonus.
- i. **Order of Recoupment of Relocation Expenses.** A written decision by the Secretary, or designee, to recoup all or part of relocation expenses.
- j. **Preponderance of evidence.** Evidence that a reasonable mind, considering the record as a whole, might accept as sufficient evidence to support a conclusion that the reasons for taking action are more likely to be true than not true.
- k. **Relocation expenses.** Monies paid to an employee for relocating in the interest of the Government from one agency or duty station to another for permanent duty in accordance with 5 U.S.C. §§ 5724 and 5724a or under title 38 of U.S.C.
- l. **Secretary.** Secretary of Veterans Affairs, or their designee.
- m. **Standard of proof.** The degree of evidence necessary to sustain an action taken under 38 U.S.C. §§ 721 and 723. For actions taken under this authority, a preponderance of evidence is the burden of proof.

n. VA. U.S. Department of Veterans Affairs.

4. PROCEDURES FOR RECOUPMENT OF AN AWARD OR BONUS.

a. Initial Determination.

- (1) Upon the issuance of a disciplinary or adverse action, and following the upholding of the action upon appeal, if applicable, the appropriate management official will decide, in consultation with the servicing Human Resources (HR) office and the servicing OGC, whether the recoupment of an award, bonus or relocation expense will be initiated if it is determined by preponderance of the evidence the employee engaged in misconduct or poor performance prior to payment of the award or bonus, and the award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment.
- (2) If an employee resigns or retires after being issued a proposed disciplinary or adverse action or upon a finding following the conclusion of an investigation that the employee would likely have been disciplined if they were still employed by the agency, the Secretary, or designee will decide, in consultation with HR and OGC, whether to initiate the recoupment of an award, bonus or relocation expense if determined by a preponderance of the evidence the employee engaged in misconduct or poor performance prior to payment of the award or bonus, and the award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment.

b. Conclusion.

- (1) The Secretary, or designee, will determine an employee must repay an award or bonus if it is determined by a preponderance of the evidence that:
 - (a) The employee engaged in misconduct or poor performance prior to payment of an award or bonus; and
 - (b) The award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment.
- (2) If the Secretary, or designee, concludes this burden has been met then a notice of proposed order will be issued.
- (3) If the Secretary, or designee, concludes that the recoupment of an award or bonus is not appropriate, they will document this finding in writing and submit it to HR for inclusion with the investigation file, disciplinary/adverse action file, if applicable, or other appropriate file.

c. Notice of Proposed Order.

- (1) After the Secretary, or designee, has determined by a preponderance of the evidence an award or bonus recoupment is warranted, a notice of proposed order will be issued after review by the OGC. It will contain the following information:
 - (a) State the amount of the award or bonus received by the employee;
 - (b) State the approximate date upon which the award or bonus was paid;
 - (c) State the specific performance or conduct deficiency(ies);
 - (d) State the date range of the performance or conduct deficiency(ies);
 - (e) State the impact of the performance or conduct deficiency(ies) on the award or bonus paid to the employee had the deficiency(ies) been known prior to payment;
 - (f) State the award amount to be recouped; and
 - (g) State the employee has an opportunity to provide a written reply to the Secretary or designee within 10 business days.

NOTE: If disciplinary or adverse action is contemplated or taken against the employee for misconduct or poor performance, the notice of proposed order should not be issued until the employee has exhausted their appeal rights.

- (2) A copy of the evidence related to the misconduct or poor performance will be provided to the employee when the notice of proposed order is issued.
- (3) The employee will be granted 10 business days after receipt of the notice of proposed order to submit a written reply to the Secretary, or designee. For purposes of computing the 10-business-day period, the date of service of the proposed order on the employee will be determined by the date of reception by the employee of the personal delivery, electronic mail, or confirmed delivery of the proposed order, or it will be presumed to be delivered five calendar days after depositing the decision in the U.S. mail if confirmation of delivery is unavailable.

d. Order.

- (1) A written memorandum will be issued to the employee as follows: If the employee submits a written response to the notice of proposed order, the Secretary or designee will issue an order not later than five business days after receiving the employee's response.

- (2) If the employee does not respond to the notice of proposed order, the Secretary, or designee, will issue an order not later than 15 business days after the date of receipt of the notice of proposed order by the employee. For purposes of computing the 15-business-day period, the date of service of the order on the employee will be determined by the date of reception by the employee of the personal delivery, electronic mail, or confirmed delivery of the order, or it will be presumed to be delivered five calendar days after depositing the decision in the U.S. mail if confirmation of delivery is unavailable.
- (3) The order will state the:
 - (a) Decision of the Secretary, or designee;
 - (b) Basis for the decision;
 - (c) Amount of award or bonus monies to be recouped; and
 - (d) Right to file an appeal with the Director, OPM, within seven business days after receipt of the order by the employee.

e. Appeal.

- (1) The employee may file an appeal to the Director, OPM, 1900 E St., NW, Washington, DC 20415, within seven business days after the date of receipt of the order.
- (2) The appeal should include a copy of the notice of proposed order, the order and a statement explaining why the employee believes the order is unjustified.
- (3) Upon request from OPM, the VA will provide a copy of the evidence file.
- (4) The OPM Director will make a final decision with respect to the appeal within 30 business days after receiving such appeal and remit notice of the decision to the employee and agency.
- (5) If the VA's decision is upheld by OPM, in whole or in part, VA will seek repayment of the award or bonus.
- (6) If the VA's decision is not upheld by OPM, no repayment of the award or bonus is authorized.
- (7) If the employee does not file an appeal with OPM, the Secretary, or designee, will initiate repayment of the award or bonus by the employee after confirmation with OPM that no appeal was filed.

5. PROCEDURES FOR RECOUPMENT OF RELOCATION EXPENSES.

a. Initial Determination.

- (1) Upon the issuance of a disciplinary or adverse action, and following the upholding of the action upon appeal, if applicable, the Secretary, or designee, will decide, in consultation with the servicing HR office and the servicing OGC whether to initiate recoupment of relocation expenses if determined by a preponderance of the evidence that relocation expenses were paid following an act of fraud or malfeasance that influenced the authorization of relocation expenses.
- (2) If an employee resigns or retires after being issued a proposed disciplinary or adverse action or upon a finding following the conclusion of an investigation that the employee would likely have been disciplined if they were still employed by the agency, the Secretary, or designee, will decide, in consultation with HR and OGC, whether to initiate recoupment of relocation expenses if determined by a preponderance of the evidence that relocation expenses were paid following an act of fraud or malfeasance that influenced the authorization of relocation expenses.

b. Conclusion.

- (1) The Secretary, or designee, will conclude an employee must repay relocation expense if it is determined by a preponderance of the evidence that:
 - (a) relocation expenses were paid following an act of fraud or malfeasance and
 - (b) the act of fraud or malfeasance influenced the authorization of relocation expenses.
- (2) If the Secretary, or designee, concludes this burden has been met then a notice of proposed order will be issued.
- (3) If the Secretary, or designee, concludes that the recoupment of relocation expenses is not appropriate, they will document this finding in writing and submit it to HR for inclusion with the investigation file, disciplinary/adverse action file, if applicable, or other appropriate file.

c. Notice of Proposed Order.

- (1) After the Secretary or designee, has determined by a preponderance of the evidence the recoupment of relocation expenses is warranted, a notice of proposed order will be issued after review by the OGC. It will contain the following information:

- (a) State a determination was made that the relocation expenses would not have been paid had the act of fraud or malfeasance been known at the time of the payment.
- (b) State the amount of the relocation expenses received by the employee;
- (c) State the approximate date upon which the relocation expense was paid;
- (d) State the specific act of fraud or malfeasance that influenced the authorization of relocation expenses;
- (e) State how the fraud or malfeasance influenced the authorization of the relocation expenses;
- (f) State the award amount to be recouped; and
- (g) State the employee has an opportunity to provide a written reply to the Secretary or designee within 10 business days.

NOTE: If disciplinary or adverse action is contemplated or taken against the employee for an act of fraud or malfeasance that influenced the authorization of relocation expenses, the notice of proposed order should not be issued until the employee has exhausted their appeal rights.

- (2) A copy of the evidence related to the fraud or malfeasance will be provided to the employee when the notice of proposed order is issued.
- (3) The employee will be granted 10 business days after receipt of the notice of proposed order to submit a written reply to the Secretary or designee. For purposes of computing the 10-business-day period, the date of service of the proposed order on the employee will be determined by the date of reception by the employee of the personal delivery, electronic mail, or confirmed delivery of the proposed order, or it will be presumed to be delivered five calendar days after depositing the decision in the U.S. mail if confirmation of delivery is unavailable.

d. Order.

- (1) A written memorandum will be issued to the employee as follows: If the employee submits a written response to the notice of proposed order, the Secretary or designee will issue an order not later than five business days after receiving the employee's response.
- (2) If the employee does not respond to the notice of proposed order, the Secretary or designee will issue an order not later than 15 business days after the date of receipt by the employee of the notice of proposed order.

For purposes of computing the 15-business-day period, the date of service of the order on the employee will be determined by the date of reception by the employee of the personal delivery, electronic mail, or confirmed delivery of the order, or it will be presumed to be delivered five calendar days after depositing the decision in the U.S. mail if confirmation of delivery is unavailable.

- (3) The order will state the:
 - (a) Decision of the Secretary, or designee;
 - (b) Basis for the decision;
 - (c) Amount of relocation expense monies to be recouped; and
 - (d) Right to file an appeal with the Director, OPM, within seven business days after receipt of the order by the employee.

e. Appeal.

- (1) The employee may file an appeal to the Director, OPM, 1900 E St., NW, Washington, DC 20415, within seven business days after the date of receipt of the order.
- (2) The appeal should include a copy of the notice of proposed order, the order and a statement explaining why the employee believes the order is unjustified.
- (3) Upon request from OPM, the VA will provide a copy of the evidence file.
- (4) The OPM Director will make a final decision with respect to the appeal within 30 calendar days after receiving such appeal and remit notice of the decision to the employee and agency.
- (5) If the VA's decision is upheld by OPM, in whole or in part, VA will seek recoupment of the relocation expenses.
- (6) If the VA's decision is not upheld by OPM, no recoupment of the relocation expenses is authorized.
- (7) If the employee does not file an appeal with OPM, VA will initiate recoupment of the relocation expenses paid to the employee after confirmation with OPM that no appeal was filed.

6. RECORD RETENTION. Records related to the recoupment of an award, bonus or relocation expenses will be retained in the servicing HR office for seven years after a decision is made by the VA deciding official or OPM, if an appeal is filed.

7. **COORDINATION.** Management officials will coordinate with the local finance service, or Financial Services Center if applicable, to initiate debt collection in accordance with the applicable laws and VA financial policy.
8. **RESPONSIBLE OFFICE.** Questions regarding the recoupment of awards and bonuses may be directed to the Office of the Chief Human Capital Officer (005), Employee Relations & Performance Management Service (051), at vaco051cacgohrm@mail.va.gov. Questions regarding the recoupment of relocation expenses may be directed to the Office of the Chief Human Capital Officer (005), Compensation and Classification Service (055), at vacocomp@va.gov.
9. **RESCISSION.** This notice will be rescinded and guidance incorporated into VA Handbook 5017, Employee Recognition and Awards, no later than one year after the date of publication.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Guy T. Kiyokawa
Assistant Secretary for
Enterprise Integration

/s/
Gina M. Grosso
Assistant Secretary for Human
Resources and Administration/
Operations, Security and Preparedness

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