

STATUTE OF LIMITATIONS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 6, Statute of Limitations.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook provides guidelines for determining the applicable statute of limitations and the effect of the statute on collection activity.
- 3. RESPONSIBLE OFFICE:** Cash and Debt Management Division (047GC1), Office of the Deputy Assistant Secretary for Finance.
- 4. RELATED DIRECTIVE:** VA Directive 4800, Debt Management.
- 5. RESCISSIONS:** VA Manual MP-4, Part VIII, Chapter 6, dated September 22, 1992.

CERTIFIED BY:

/s/

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**BY DIRECTION OF THE SECRETARY
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1. PURPOSE AND SCOPE. This handbook provides the guidelines for determining the applicable statute of limitations and the effect of the statute on collection activity. This handbook does not apply to medical care receivables established under 38 U.S.C. 1729, as these do not represent debts of a sum-certain amount. However, this handbook does apply to co-payments incurred by individuals for medical treatment and prescriptions, as well as other debts incurred by individuals for medical care and services.

2. RESPONSIBILITY. For any debts referred to the Regional Counsel (RC) or the Department of Justice (DOJ) for litigation, the Chief of the Fiscal Activity must determine that the United States' right to sue for money damages has not been forfeited due to time limitations imposed by statute. Any reference in this handbook to the Fiscal Activity also includes the Debt Management Center (DMC) where appropriate.

3. GENERAL

a. The Statute of Limitations (SOL) states that every action for money damages by the United States, which is founded upon any contract expressed or implied in law or fact, shall be barred unless the complaint is filed within 6 years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or law, whichever is later (28 U.S.C. 2415).

b. All debts originating from the operation of various VA programs are covered by a SOL for litigation purposes. Where there is no specific contract, as in the case of erroneous payment of benefits, 28 U.S.C. 2415 applies on the theory of implied contract.

c. For purposes of determining the SOL when there is no express contract, the 6-year period begins from the date the debt was discovered or reasonably should have been discovered, whichever is earlier.

d. The SOLs for litigation purposes do not apply to administrative collection actions. VA has the right of collection, regardless of the SOL, by deduction from VA benefits to which the person overpaid may be entitled if the debt arose as a result of that person's participation in a benefits program (38 U.S.C. 5314). Other types of administrative offset (e.g., IRS and federal salary offset) are usually limited to 10 years by the Federal Claims Collection Standards (31 CFR §901.3(a)(4)).

e. Where there is a voluntary payment or written acknowledgment of a debt, the SOL is extended to 6 years from the date of payment or acknowledgment. (Where more than one party is indebted and not all parties are making payment or acknowledgment of the debt, timely action should be taken against such party or parties who are not making payment or have not acknowledged the debt.) Excluded from the basic 6-year period are all periods that the debtor is out of the country; a minor, or mentally incompetent; under diplomatic immunity; and any other period excluded in 28 U.S.C. 2416. The advice of the RC should be sought in doubtful cases.

f. Debts which are referred to the DOJ and RC for litigation should be referred at least 6 months prior to expiration of the 6-year period within which suit must be filed. In submitting cases for litigation, the expiration date of each period for filing suit will be shown to assure prompt and orderly processing of the claim. Similarly, in those cases in which partial

payment or written acknowledgment of the debt has been received, the referral will include the date of the last payment or written acknowledgment in each case.

4. APPLICATION FOR SPECIFIC TYPES OF DEBTS. In determining when the right of action begins for computing limitations imposed by 28 U.S.C. §2415 and §2416, these guidelines should be followed to ensure that timely referral is made to the DOJ or RC:

a. **Overpayment Debts.** On overpayments resulting from benefit (except home loan guaranty debts) and nonbenefit debts, the right of action will be considered to have arisen on the date the debt was discovered or reasonably should have been discovered, whichever is earlier.

b. **Home Loan Default Debts.** On debts resulting from loan defaults under the loan guaranty program, the right of action will be considered to have arisen on the date the claim was paid to the loan holder in cases based upon the veteran's indemnity obligation under VA regulations. The date of default will be considered the date on which the cause of action arose for cases based upon subrogation or in direct loan cases. Any deficiency in payment of a required monthly payment will be considered as a default. If the loan is not thereafter brought current, each payment received after default will create a new right of action with respect to the remitter only. The SOL will continue to run from the date of the uncured default for other liable parties. A payment received from either a husband or wife on a loan where both are liable will be considered as a payment from both in determining the remitter.

c. **Education Loan Default Debts.** On debts resulting from loan defaults under the education loan program, the right of action will be considered to have arisen on the date the loan was placed in default.

d. **Medical Care Debts.** On debts resulting from charges for medical care or services furnished in error or on a humanitarian basis, the right of action will accrue from the last date on which the services were furnished. In accordance with 38 U.S.C. 1729(b)(2)(C), the statute of limitations for claims against third party insurers is 6 years from the last day on which the care or services—for which recovery is sought—are furnished.

e. **Other Debts.** In all other types of debts, the right of action will accrue based on the date of erroneous payment, if made, or the date specified by the contract, if available.