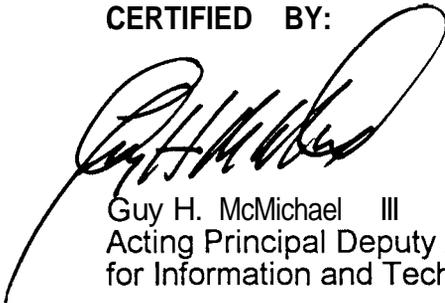


May 21, 2001

## WAIVER OF DEBTS

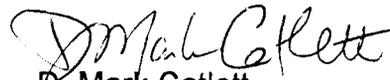
- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) debt management procedures formerly contained in VA Manual MP-4, Part VIII, Chapter 21.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes the procedural guidelines specific to the handling of requests for waiver of debts owed to VA.
- 3. RESPONSIBLE OFFICE:** Cash and Debt Management Division (047GCI), 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 21, dated September 22, 1992.

CERTIFIED BY:



Guy H. McMichael III  
Acting Principal Deputy Assistant Secretary  
for Information and Technology

BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS



Mark Catlett  
Acting Principal Deputy Assistant  
Secretary for Management

Distribution:

WAIVER OF DEBTS

CONTENTS

PARAGRAPH	PAGE
I, PURPOSE AND SCOPE	5
2. RESPONSIBILITY	5
3. WAIVER OF BENEFIT DEBTS	5
4. WAIVER OF ERRONEOUS PAYMENTS TO EMPLOYEES	7
5. WAIVER OF MEDICAL CARE AND PHARMACY COPAYMENT DEBTS	9

## WAIVER OF DEBTS

**1. PURPOSE AND SCOPE.** This handbook establishes standardized Department-wide procedures for administering the waiver of debts.

**2. RESPONSIBILITY.** The Chief of the fiscal activity must ensure that appropriate procedures in accordance with this Handbook are followed for administering the debt waiver process.

### 3. WAIVER OF BENEFIT DEBTS

a. **General.** Title 38 U.S.C. 5302, authorizes the waiver of debts arising as a result of participation in a benefit or home loan program administered by VA. The standards for waiver are defined in 38 CFR 1.965. Debts that can be waived are compensation, pension, and education benefit debts, education loan default debts, work-study overpayments, home loan debts, and debts created as the result of VA hospitalization, domiciliary care, or treatment of a veteran either furnished in error or on a tentative eligibility basis. *NOTE: Debts arising from medical services furnished solely on an emergency or humanitarian basis, or per diem charges for hospital care or nursing home care cannot be considered for waiver; however, they can be considered for compromise. Medical copayment debts are subject to waiver (see paragraph 5).* Waiver authority for all but medical copayment debt is delegated by the Secretary to VBA field station Committees on Waivers and Compromises (COWCs).

b. **Collection Letters.** Form letters in the FL 4-400 series, certain computer-generated letters, and medical billing statements advise debtors of their right to waiver and of the opportunity to request an oral hearing on the issue of waiver before the COWC makes a decision.

c. **Amount To Be Considered for Waiver.** If a request for waiver is made within the statutory time limit set forth in 38 CFR 1.963 and 1.964, the entire amount of the indebtedness must be considered for waiver even though all or a portion of that 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 certain other administrative remedies, and VA has made an initial decision on such requests. The amount considered for waiver can be reduced through a retroactive award action, but only if such an adjustment, had it been made at the time of the creation of the indebtedness, would have resulted in a reduced original amount of indebtedness. Such a reduced amount would be the amount considered for waiver.

d. **When to Refer Debt for Waiver to COWC.** A request for waiver of an indebtedness should be referred to the COWC when the debtor or his/her representative requests waiver, or when, in the opinion of the Chief of the fiscal activity, the circumstances warrant such referral. If a waiver request is received by a regional office for a debt that is under the jurisdiction of the Debt Management Center (DMC), the regional office's Chief of the fiscal activity shall refer the request directly to the COWC and must immediately notify the DMC of

the waiver request so that the DMC may suspend collection activity if appropriate.

**e. Referral Documentation.** Referral will be made on the 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, which will assist the COWC in arriving at a decision, will be attached to the VA Form 4-1042. 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.

**f. Waiver Decision.** Where waiver is denied or a partial waiver is granted, the COWC will forward the signed decision to the Chief of the fiscal activity who will notify the debtor or representative, by use of VA FL 4-326, Waiver Denial Letter, of the denial of waiver or granting of a partial waiver. If the COWC grants a waiver on a debt maintained in the Centralized Accounts Receivable System (CARS) or another DMC system, the Chief of the fiscal 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 the field station, the Chief of the fiscal activity will notify the debtor of the waiver by use of VA FL 4-437, Notice of Approval of Waiver Request.

**g. Notice of Disagreement.** If the debtor files a notice of disagreement after waiver denial and indicates an intention to appeal, the notice will be referred to the COWC along with the decision denying the request for waiver. The COWC will then prepare a Statement of the Case. 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.

**h. Offset of Benefits.**

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

(2) If the debtor is not in receipt of benefits, the Chief of the fiscal activity or the DMC will ensure collection letters are deferred when a notice of disagreement is received. Collection letters will be resumed only when the fiscal activity is advised that BVA has denied the waiver sought under appeal, or that 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.

i. **Debts Previously Referred for Enforced Collection.** If a debt has been referred for litigation and a request for waiver or an appeal of a waiver denial is received timely, the fiscal activity will immediately notify the appropriate Regional Counsel's (RC) office of the receipt of the request. If a debt has been referred to a private collection contractor, the Treasury Department, or any other outside entity, the case will be handled according to the contract or other document that defines the terms of the referral.

j. **Entitlement Charging.**

(1) When an education debt is written off because of waiver, entitlement is charged equivalent to the amount written off. To restore the entitlement charged as a result of the waiver, the debt must be paid in full.

(2) Basic loan guaranty entitlement is reduced 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 previously used entitlement.

#### 4. WAIVER OF ERRONEOUS PAYMENTS TO EMPLOYEES

a. **General.** Title 5 U.S.C. Section 5584 authorizes the waiver of erroneous payments of pay or allowances as well as travel, transportation, and relocation expense debts. Such waiver requests will be considered by a COWC in accordance with 4 CFR Parts 91 and 92, and VA Handbook 4060.1, VA Collection Standards, paragraph 16.

b. **Responsibility of the Chief of the Fiscal Activity.**

(1) Application for waiver is processed by the Chief of the fiscal activity of the station where the employee is currently employed and must be received within 3 years immediately 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 was last employed. The Chief of the fiscal activity may also initiate waiver when the facts and circumstances warrant waiver consideration.

(2) A report of investigation on all debts (see exception in paragraph 4b(3)) considered for waiver is to be prepared for the signature of the station director by the Chief of the fiscal activity where the person is employed and sent to the COWC of jurisdiction as part of the waiver referral package. Reports prepared by the VACO Financial Operations' Program Liaison Office will be signed by the Associate Deputy Assistant Secretary for Financial Operations (047F). If all or part of the debt was paid to the employee by another VA station, the necessary information will be obtained from that station to permit full development of the facts. The report 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, and, if more than one appropriation or fund is involved, the amount applicable to each.

(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 of the initial demand letter to the employee.

(f) A statement as to whether or not the erroneous payment is the subject of an exception made by the Comptroller General of the United States.

(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. As a minimum, include copies of SF 50-B, Notification of Personnel Action, appropriate VA Forms 4-5632, Earnings and Leave Statement, and any other forms or documents which establish or have a bearing on the employee's pay entitlement.

(i) A statement regarding what corrective action 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/she may have had at the time of its occurrence and any corrective action taken if an error was suspected.

(3) A full report of investigation will not be prepared 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.

(4) The field station COWC of jurisdiction has complete authority to either grant or deny waiver for debts of any amount.

(5) Notifications relating to decisions rendered by the COWC will be sent by the Chief of the fiscal activity responsible for collecting the debt. If the COWC approves the waiver, the Chief will advise the employee-debtor. If the COWC denies the request for waiver, the Chief of the fiscal activity must advise the employee of the right to appeal the denial. The employee must be advised that such an appeal should be submitted to the Chief of the fiscal activity responsible for collecting the debt. Upon receipt of an appeal, the Chief will incorporate it with the COWC decision, report of investigation, and other pertinent information, and submit the package to the Chairman of the COWC if it is located at the same station. If the COWC is not located at the station responsible for collecting the debt, the Chief will submit the package to the Chief of the fiscal activity at the station of the Committee that rendered to original decision to deny waiver.

(6) The Chairman of the Committee must assign appeals to a different committee member than the member who made the initial decision that is the subject of the appeal. Once the COWC has ruled on the appeal, the Chairman will forward the decision to the Chief of the fiscal activity at that station. If this is the fiscal activity responsible for collecting the debt, the Chief will provide the debtor-employee with a copy of the decision. Otherwise, the Chief will forward the decision to the Chief of the fiscal activity at the station responsible for collecting the debt who will in turn notify the debtor. If the denial is upheld, the Chief of the fiscal activity must advise the employee-debtor the decision on the appeal is the final decision of the Department of Veterans Affairs on the employee's request for waiver.

(7) An application for refund of amount waived where the debt has been repaid in whole or in part must be made 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 shall be charged to the appropriation from which the erroneous payment was made. The COWC of jurisdiction shall be notified of the date and amount of refund.

(8) Erroneous payment of travel, relocation expenses, or pay or allowances debts will not be referred for litigation until a debtor has exhausted his/her appeal rights, unless the time remaining for suit within the applicable statute of limitations does not permit such waiver consideration prior to referral.

(9) See VA Handbook 4800.5, Suspension of Collection Action, paragraph 4c, for offset of current salary during the waiver consideration process.

(10) If the employee requests waiver within 30 days of the date of the notice of indebtedness, then salary offset will not be initiated. However, offset shall commence once an initial decision is made to deny the waiver request. After an initial denial decision, offset will continue even if the employee subsequently appeals the denial of the waiver.

#### **5. WAIVER OF MEDICAL CARE AND PHARMACY COPAYMENT DEBTS.**

General Counsel opinions state that certain medical care and pharmacy copayment debts (all debts for services rendered under sections 1710, 1712, and 1722A of 38 U.S.C.) are actually benefit debts for the purpose of determining the eligibility of a debtor to request waiver (See VAOPGCADV 31-92, VET. AFF. OP. GEN. COUNS. ADV. 31-92, 1992; VAOPGCADV 59-94, VET. AFF. OP. GEN. COUNS. ADV. 59-94, 1994). The same standards and procedures cited in paragraph 3 for benefit debts will apply to medical care and pharmacy copayment debts except that waiver authority for these debts is delegated to the VHA Fiscal Officers and Medical Center Directors (wherever the COWC is referenced in paragraph 3, substitute the appropriate VHA official).