

Chapter Six

VA Attempts to Recover “Overpayments”

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Introduction

Veterans and other people who receive payments from the VA can end up owing the VA money. This most commonly happens when you are overpaid for a disability or education benefit or when you fail to make payments on a VA-insured home loan. If you find yourself subject to a debt collection action from the VA, it is best to take prompt action.

Overpayments

The VA makes millions of payments by check or direct deposit to veterans and other beneficiaries each year. It is inevitable that the VA will occasionally pay someone more than it should. An overpayment usually happens when the VA miscalculates the amount due an individual. A miscalculation sometimes occurs because either the VA failed to adjust payment rates after a person's circumstances changed or a beneficiary failed to tell the VA of his or her changed

circumstances. For example, a married veteran frequently receives higher benefits than a single veteran. If a veteran divorces, but the VA continues to pay the veteran as if he or she is married, the veteran will receive more than the veteran is entitled to and an overpayment will be created. Another example is the overpayment created when a former servicemember receiving disability compensation is recalled to active duty. The servicemember is not allowed to receive both active duty pay and compensation at the same time, but the VA sometimes continues to pay compensation by mistake.

On rare occasions, the VA may allow a beneficiary to keep overpayments. If the VA realizes that it has been over-paying a VA beneficiary, the VA may allow the beneficiary to keep the excess payments where the award of excess benefits was totally the fault of the VA. Total fault of the VA could occur when the overpayment was caused solely by a VA administrative error or a VA error in judgment. For example, the VA may be totally at fault if a beneficiary tells the VA that he or she married on a certain date and the VA fails to adjust the rate of benefits. In such a case, even if the VA decides not to collect previous excessive payments, the VA is still obligated to reduce or discontinue future payments.

In most cases, the overpayment is not totally the fault of the VA. The veteran or beneficiary may be at fault for failing to notify the VA of a change in circumstances or by being aware of the mistake and not taking steps to correct it. If the veteran or beneficiary is at all at fault, the VA will usually require that the excess funds be repaid to the VA. The VA should give the veteran the benefit of the doubt if it is unclear as to whether he or she was aware of the error. It is best to notify the VA immediately if you believe you are being overpaid. When the VA learns that a veteran or beneficiary has been overpaid and determines that the overpayment was not solely the fault of the VA, it will try to recover the extra money that was paid in error. If you are notified that the VA believes that you received an overpayment and now wants to collect the overpayment, you have several options for how to respond.

At this point you need help and you should consult your service organization representative, also known as a veterans service officer. If you do not already have a representative, you should contact a veterans service organization that will provide a representative at no cost. Service organizations include AMVETS, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America. You cannot pay an attorney to represent you in an overpayment case until later in the VA process, after you have filed a notice of disagreement (NOD).

You can challenge whether the debt actually exists or you may dispute the amount of the debt. You and your representative should always check that the VA correctly calculated the debt. If you agree that the debt is valid and the amount is correct, you can attempt to compromise by asking the VA to accept partial payment of the debt to satisfy the entire debt. If you are experiencing financial hardship, you may consider requesting a waiver or forgiveness of the debt. The remainder of this chapter will focus on the debt collection process and the options available to veterans from whom the VA is attempting to collect debts.

Collection Process

After the VA determines that it has overpaid a veteran, the VA will send the veteran a demand and notification letter, requesting that the veteran pay back the excess amount within thirty days. Responding to this letter within thirty days is important. If you do not respond within thirty days, the VA can act to reduce or terminate your VA benefits even if you are contesting the existence of the debt or the amount of the debt. In some instances the VA may propose to collect the debt by reducing your benefits. This is called an “offset.” Debt collection by offset is handled by the VA Regional Office (VARO) and insurance center in St. Paul, Minnesota. Any time that you write to or communicate with the VARO about an offset, it is wise to also send copies of the correspondence or information to the St. Paul, Minnesota VARO; 1 Federal Drive; Fort Snelling; St. Paul, MN 55111-4050.

The VA letter must explain how the overpayment occurred and inform you of your right to challenge the existence and the amount of the overpayment. The VA will send a second letter and a third letter requesting payment if you do not respond. After the third letter, if you have not paid the debt, the VA will notify consumer debt reporting agencies (credit bureaus) that you are in default and may ask a private debt collector to collect the money from you. The VA can also ask the Internal Revenue Service (IRS) to withhold your tax refund and apply it to the VA debt. The VA may even file a lawsuit against you for collection of the debt.

Disputing the Existence or Amount of the Debt

You should not represent yourself when dealing with the VA and you will need an advocate when disputing a debt. As soon as possible, obtain free representation from a service associated with a veterans service organization. You should also keep a record and copies of all letters and communications sent by you to the VA. In fact, it is advisable to send all letters to the VA by certified mail, return-receipt-requested. Your post office can explain how to do this.

While it is important to retain a representative, you must also be prepared to act quickly. If the VA proposes to reduce your current benefits as a method of collecting the debt, this offset will begin once the thirty-day deadline has passed. This means that your monthly disability or pension award could be significantly reduced or terminated if you fail to respond within thirty days. If you miss the thirty-day deadline, you may still challenge the VA's decision to collect by filing a notice of disagreement (NOD) within a year from the date of the notification letter, but your monthly award during this time could be reduced or discontinued.

Waivers

You can request that the VA waive repayment of the debt. Waiver requests must be made in writing to the VARO. In the request, you should explain why the collection of the debt would create an unreasonable financial hardship on you or your family. You should discuss any other factors having to do with fairness. You should support your claim of financial hardship by providing the VA with current, accurate financial information. The VA will send you and your representative a financial status report form which should be completed and returned to the VARO.

You must request a waiver within 180 days of the date of the notice letter. If you miss this deadline, you will lose your chance to request a waiver of the debt. It is recommended that you request a waiver within thirty days of the VA notice letter; otherwise the VA may begin to withhold portions or all of the VA benefits that you receive to pay for the debt. If you apply for a waiver within thirty days of the VA notice letter, the VA will not begin to withhold your benefits until the claim for waiver is decided. If your request for waiver is received after thirty days and the VA begins to withhold your benefits, you will be refunded the withheld amount if the VA eventually grants the waiver request.

You may also request a personal hearing at the local VARO in front of what the VA calls the Committee on Waivers and Compromises. This is the committee that decides if a waiver should be granted. A personal hearing is almost always a good idea because it allows you and your representative to meet face-to-face with the VA employees who are handling your case. This gives you the opportunity to explain the circumstances surrounding the creation of the debt, present evidence, and answer the VA's questions about the case directly.

The VA will not hear waiver requests if it finds that you acted in bad faith, lied, or acted dishonestly with the intent to deceive the VA. If you do not fall into any of these categories, the VA must consider your request for a waiver.

Most waiver cases are decided based on whether collection of the debt would be “against equity and good conscience.” Basically the VA tries to determine if there are any factors that would make debt collection fundamentally unfair. This decision is based on several factors. The VA will consider:

- who was at fault in creating the debt,
- whether collecting the debt would result in unreasonable hardship to the veteran,
- whether collecting the debt would defeat the purpose of the VA benefits involved,
- whether failing to collect the debt would result in unfair enrichment of the veteran, and
- whether the veteran has changed his or her position for better or worse by relying on VA benefits. For example, a veteran may have purchased a home or relocated based on the mistaken belief that he or she was entitled to a benefit or a higher level of benefits.

If you are granted a debt waiver, you should discuss the tax implications with whoever is representing you before the VA or a tax professional. Depending on the circumstances of your case, you may have to pay taxes on the amount waived. If you are not granted your request for a waiver, you may appeal the decision to deny the waiver.

Compromise Offers to Settle the Debt

In order to settle the matter, you may want to offer a “compromise” payment to the VA of an amount less than the total debt owed. If the debt is less than

\$100,000, the VA has the authority to enter into compromise agreements. If the debt is greater than \$100,000, the VA does not have the authority to accept; it only has the authority to reject the offer. The U.S. Department of Justice has the authority to accept compromise offers for debts that are greater than \$100,000.

The VA may consider a number of factors in deciding whether to accept the compromise offer. Usually, the decision turns on whether or not the VA thinks that the veteran will be able to pay the full amount in a timely manner, whether the VA's case is strong enough that a court would order collection of the debt, and the likely cost that the VA will incur in seeking to collect the full amount. When you are seeking to enter into a compromise agreement, you may request a personal hearing at the local VARO in front of the Committee on Waivers and Compromises.

Home Loan Debts

Home loan debts can create complicated legal issues, as they may involve the intersection of both state and federal law. Veterans faced with a VA home loan debt should consider hiring an attorney at the earliest possible time.

When the VA guarantees a veteran's home loan and the veteran fails to make payments on the loan, the VA may seek to recover money from the veteran. Usually when the veteran defaults on a home loan, the mortgage lender obtains a foreclosure on the property, the property is sold at a foreclosure sale, and the lender keeps the money from the sale. If there is still a balance owed on the loan, the VA will pay the mortgage lender the balance up to the limit of the VA guaranty on the loan. (If a vet has made payments on the loan and there is a foreclosure sale, the lender gets only the amount of the loan minus the portion of the principal that the vet has paid.) If you default on a VA-guaranteed home loan by failing to make monthly mortgage payments, the VA may attempt to recover from you any money it paid as the guarantor of the loan. Even if you sold the home to someone else, who assumed the mortgage but failed to make the payments, you may still be indebted to the VA, because the buyer defaulted on the loan. Your first mode of protection from this type of debt is to obtain a release of liability from the VA when you sell the home. If you have already sold your home and do not have a release, you may seek a retroactive release from liability from the VA.

State law, not federal law, applies in foreclosure proceedings. This means that the steps that the VA must take in notifying the veteran about the foreclosure of property and in collecting the debt will vary from state to state. However, there are a few important federal rules in the area of home loan debts that the VA and the veteran must comply with in addition to the state laws.

The process for notifying the veteran or debtor of the debt must be sent by certified mail, return-receipt-requested.

The deadline for requesting a waiver of a home loan guaranty debt is one year from the date that the certified mail, return-receipt-requested notice is received by the veteran.

If the notice was not sent by certified mail, return-receipt-requested, the notice is insufficient and there is no deadline for requesting a waiver of this type of debt.

A home loan guaranty debt can be challenged or defended based on possible violations of state law as well as on possible violations of federal law.

You do not need to wait to hire an attorney when you are faced with a VA home loan debt. The VA does not bar attorney involvement at any stage of this process. Therefore you should seek qualified representation to research the applicable state notice requirements and otherwise to determine whether the VA complied with state law. If the VA did not follow the federal and state laws and due-process procedures, then you can challenge the legality of the debt. If the debt is not legal, it is not enforceable.

Release of Liability

If you have a VA-guaranteed home loan made after March 1, 1998, you will not need to request retroactive release from liability, because all loans made after this date require the veteran to notify the VA of the potential sale. Once notified of the potential sale, the VA is required to determine whether or not it will release the veteran from liability on the loan. The buyer who assumes a VA-guaranteed loan from a veteran must also pay the VA one-half of one percent of the balance of the loan.

Veterans with VA-guaranteed loans made before March 1, 1998, could have their loans assumed by subsequent buyers of the home without prior approval by the VA. If the buyer later defaults on the loan, the VA will hold the original veteran owner liable for the unpaid loan balance. If you find yourself

in this situation, you may request a retroactive release from liability on the loan. If the VA determines that the VA would have issued the release from liability on the loan when you sold the property, the VA may but is not required to retroactively release you from liability. In deciding whether to release a veteran from liability, either at the time of the sale or retroactively, the VA considers whether the buyer has good credit, whether he or she has agreed in a contract to assume all of the veteran's liability, and whether the loan is current.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of service-members and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.