



Lesson 20

Veterans and VA Debt

The American Legion DSO School

March 2022

Lesson 20 Learning Objectives

Learn about Veterans, VA debt, and how debt can affect a Veteran's disability compensation.

- Learn about VA's right to collect debts.
- Learn about COVID-19 and VA debt collection.
- Learn about how VA debts are created.
- Learn methods to dispute debts and request waivers.

VA's Right to Collect Debts

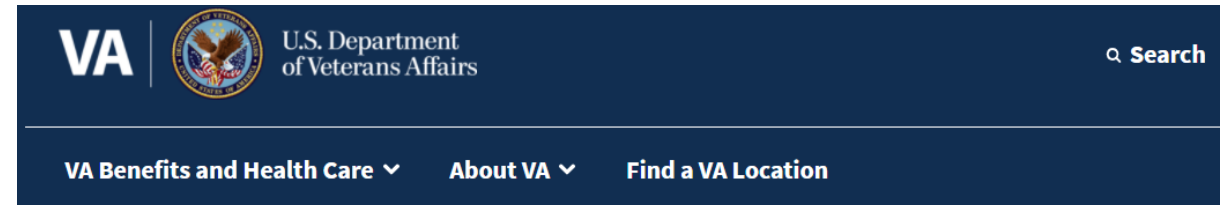


Current law allows VA to:

- **Pay** compensation and other benefits to disabled Veterans and their survivors.
- **Recover** (collect) overpayments to which the Veteran is not entitled.

VA's Right to Collect Debts

- **VA's Debt Management Office** is located in St. Paul, Minnesota.
- For more information:
<https://www.va.gov/manage-va-debt/>



[Home](#) > [Manage your VA debt](#)

Manage your VA debt

Check the status of debt related to VA disability compensation, non-service-connected pension, or education benefits. And make payments or request help now if you'd like.

i **Need help with VA debt after a natural disaster?**
[Find out how to get help](#)

COVID-19 and VA Debts

- In early 2020, when the COVID pandemic began, VA offered to pause collection of any VA debts created before April 2020.
- Between April 2020 and September 2021, VA paused collection of newly created VA debts.
- As of October 1, 2021, VA resumed collecting debts from Veterans.
- Click [here](#) for details from VA on debt collection.

How Are Debts Created?

- Most VA debts are created because the Veteran did not inform VA of a change in status that would affect their compensation benefits.
- Dependency Benefits: The Veteran did not inform VA of a change in marital status or children.
- Nonservice-connected pension: The Veteran did not inform VA of a change in income or expenses.
- Duty status: The Veteran did not inform VA of a period of active duty. Veterans cannot receive active duty pay and VA disability benefits at the same time.
- Education: The Veteran failed to inform VA of changes in education status. Veterans cannot receive educational benefits if they are not attending classes.



Quiz

Click the **Quiz** button to edit this object

Veteran Alfonso receives disability compensation, including additional dependency benefits due to his marriage to Monica. He informs you that two years ago he divorced Monica, but a few months later he remarried another woman.

Alfonso doesn't think that he needs to inform VA of the change in marital status. "Do I really have to bother with the paperwork?" he asks. "VA doesn't care about little things like that."

Should Alfonso inform VA of his recent divorce and remarriage? (This question doesn't count toward your final grade.)

- Yes
- No

Answer

Yes.

- Alfonso must inform VA of any change in marital status because the law requires that VA have “proof of dependents.”
- The effective dates for dependency benefits are based on when VA receives notice of the information.
- “VA doesn’t care about little things like that” is incorrect. VA will identify and then collect the overpayment as a debt.
 - VA most often withholds other VA benefits until the debt is repaid.
 - Veterans can work out a repayment plan with VA.
 - The existence of a VA debt does **not** affect eligibility to other VA benefits.

Administrative Error

- VA might create an overpayment to a Veteran because a VA employee makes a mistake in judgment or misapplies the law.
- VA cannot collect debts created due to administrative error unless the Veteran:
 - Took or failed to take an action,
 - Committed fraud with the intent of achieving financial or personal gain, or,
 - Knew or should have known that they were not entitled to erroneous benefits.

Administrative Error Example

- A Veteran received a temporary 100 percent evaluation in 2011, and VA failed to remove the rating until 2018. VA stated that this created a debt owed by the Veteran to VA.
- Even though the debt was created due to VA administrative error, VA determined that the debt was valid because the Veteran “should have known” that he wasn’t entitled to the additional VA payments.
- VA’s Office of Inspector General (OIG) investigated the debt and reported that **VA had told the Veteran that he would not owe a debt to VA.**
- As a result of OIG’s investigation, VA cancelled the Veteran’s debt. For details, see handout: “Lesson 20, Veteran Debt OIG.”

VA Delay in Acting on Information

- Another type of administrative error is where VA fails to act promptly on information received from a Veteran.
- An example is where a Veteran informs VA of a change in family status, affecting their dependency benefits, but VA doesn't remove the additional compensation until a year or two later, which creates a debt to VA.
- Veterans have tried to argue that VA's administrative error should void the debt.
- VA rejects this argument by stating that the Veteran should have known that they were not entitled to continue receiving the additional benefits. The Veterans Court has repeatedly agreed with VA on this argument.

When a Debt is Created



- When a Veteran incurs a debt to VA, VA must send the Veteran a notice letter.
- The letter must include:
 - The exact amount of the debt.
 - The specific reasons for the debt, in simple and concise language.
 - The Veteran's rights, including a right to request a waiver.
 - Information that the debt may be collected by offset from current or future VA benefits.
 - Other items.

Veteran Actions After VA Notice

- After receiving a VA debt notice letter, the Veteran can respond.
- The Veteran can dispute the validity of the debt with the VA regional office that made the decision.
- No specific form is needed, so we suggest using VA Form 21-4138.
- VA must respond to this dispute and demonstrate that the debt was validly created.
- Veterans can appeal a negative decision to the Board of Veterans' Appeals.

Request of Waiver of Overpayment

- After receiving notice of a VA debt, a Veteran can request a waiver of overpayment.
- The request must be made to VA within **180 days** of the notice letter.
- This is a separate issue from validity of debt.
- VA can grant, partially grant, or deny the request.
- The decision is made by VA's Committee on Waivers and Compromises.



Forms to Request Waiver

- Veterans must submit a written statement requesting the waiver – no specific form is needed, so use VA Form 21-4138.
- VA also requests that Veterans submit a Financial Status Report, **VA Form 5655**.
 - Complete the form as fully as possible.
 - Will collection of the debt impair the Veteran's ability to meet their basic monthly necessities?
- VA must then address a list of six factors to determine if the debt should be totally or partially waived.

VA's Waiver Factors

- 1) *Fault of debtor.*** Where actions of the debtor contribute to creation of the debt.
- 2) *Balancing of faults.*** Weighing fault of debtor against VA's fault.
- 3) *Undue hardship.*** Whether collection would deprive debtor or family of basic necessities.
- 4) *Defeat the purpose.*** Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.
- 5) *Unjust enrichment.*** Failure to make restitution would result in unfair gain to the debtor.
- 6) *Changing position to one's detriment.*** Reliance on VA benefits results in relinquishment of a valuable right or incurrance of a legal obligation.

Negative Waiver Factors



- VA will ***not*** grant a waiver where there is:
- Fraud or misrepresentation.
- Bad faith, which is acting in an unfair or deceptive manner to gain at another's expense.

Tips to Avoid VA Debts

Advocacy Tip: Brief the Veteran to be aware of key events:

- Tell VA about any **change in family status**. Use VA Form 21-686c (Application Request to Add and/or Remove Dependents).
- Keep orders to **report to active duty** if dates of service become an issue. Remind the Veteran to inform VA in writing when they **leave active duty** to reinstate VA compensation.
- Contact VA as soon as possible if the Veteran **believes they are being overcompensated** by VA.
 - Advise the Veteran to **not** spend the excess benefit until VA confirms the payment amount is correct.

Waiver Request Tips

- What actions did the Veteran take to avoid or minimize the debt? Did the Veteran call or write VA?
- What actions did VA take that created the debt? Was there unreasonable delay on the part of VA?
- Will the Veteran be unable to meet basic monthly expenses?
 - Submit VA Form 5655 (Financial Status Report).
- Is there any way that the Veteran should actually be entitled to the benefit?
 - Example: The Veteran divorced and then remarried.
- Ask for at least a ***partial*** waiver.
- Decisions can be appealed to the Board of Veterans' Appeals.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.