

§ 1.960

38 CFR Ch. I (7-1-08 Edition)

the Committee and preparation of any administrative or other reports which may be required.

(Authority: 38 U.S.C. 501)

[44 FR 59906, Oct. 17, 1979]

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the Regional Counsel for action in accordance with delegations of the General Counsel, unless there is an existence a General Counsel's opinion or an approved Regional Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the Regional Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff.

(Authority: 38 U.S.C. 501)

[44 FR 59906, Oct. 17, 1979]

§ 1.961 Releases.

On matters within its jurisdiction, the Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Department of Veterans Affairs under the provisions of 38 U.S.C. ch. 37, or on an acquired loan, or on a vendee account.

[39 FR 26400, July 19, 1974]

§ 1.962 Waiver of overpayments.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term *overpayment* refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is

entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable in an indebtedness resulting from work study and education loan default, as well as indebtedness of a veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similarly, the misrepresentation must be more than non-willful or mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the Inspector General or the Regional Counsel has determined that prosecution is not indicated, or the Department of Justice has notified VA that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney, specifically authorized action on the request for waiver.

(Authority: 38 U.S.C. 501)

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979; 50 FR 38803, Sept. 25, 1985; 52 FR 42112, Nov. 3, 1987]

§ 1.963 Waiver; other than loan guaranty.

(a) *General.* Recovery of overpayments of any benefits made under laws

Department of Veterans Affairs

§ 1.963a

administered by the VA shall be waived if there is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver and recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(b) *Application.* A request for waiver of an indebtedness under this section shall only be considered:

(1) If made within 2 years following the date of a notice of indebtedness issued on or before March 31, 1983, by the Department of Veterans Affairs to the debtor, or

(2) Except as otherwise provided herein, if made within 180 days following the date of a notice of indebtedness issued on or after April 1, 1983, by the Department of Veterans Affairs to the debtor. The 180 day period may be extended if the individual requesting waiver demonstrated to the Chairperson of the Committee on Waivers and Compromises that, as a result of an error by either the Department of Veterans Affairs or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in such individual's receipt of the notification of indebtedness beyond the time customarily required for mailing (including forwarding). If the requester does substantiate that there was such a delay in the receipt of the notice of indebtedness, the Chairperson shall direct that the 180 day period be computed from the date of the requester's actual receipt of the notice of indebtedness.

(Authority: 38 U.S.C. 5302 (a) & (c))

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979; 48 FR 27400, June 15, 1983; 50 FR 38803, Sept. 25, 1985; 58 FR 3840, Jan. 12, 1993]

§ 1.963a Waiver; erroneous payments of pay and allowances.

(a) The provisions applicable to VA (including refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances, and travel, transportation, and relocation expenses and allowances, are set forth in 5 U.S.C. 5584. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are dele-

gated all authority granted the Secretary under 5 U.S.C. 5584 to deny waiver or to grant waiver in whole or in part of any debt regardless of the amount of the indebtedness. Committee members also have exclusive authority to consider and render a decision on the appeal of a waiver denial or the granting of a partial waiver. However, the Chairperson of the Committee must assign the appeal to a different Committee member or members than the member or members who made the original decision that is now the subject of the appeal. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances, and travel, transportation, and relocation expenses and allowances, under 5 U.S.C. 5584: §§ 1.955(a) through (e)(2), 1.956(a)(introductory text) and (a)(3), 1.959, 1.960, 1.963a, and 1.967(c).

(b) Waiver may be granted under this section and 5 U.S.C. 5584 when collection would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver of the claim, and waiver would not otherwise be inequitable. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard will depend upon the facts existing in each case.

(c) An application for waiver must be received within 3 years immediately following the date on which the erroneous payment was discovered.

(Authority: 5 U.S.C. 5584; 38 U.S.C. 501)

[69 FR 62202, Oct. 25, 2004]