

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
HOUSE COMMITTEE ON VETERANS' AFFAIRS
ON
"EXAMINING HOW VBA CAN EFFECTIVELY PREVENT AND MANAGE
OVERPAYMENTS"**

OCTOBER 25, 2017

Chairman Bost, Ranking Member Esty, and distinguished members of the Subcommittee on Disability and Memorial Affairs, on behalf of Denise H. Rohan, National Commander of The American Legion, the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify on the topic of "examining how VBA can effectively prevent and manage overpayments".

A benefit debt through the Department of Veteran Affairs (VA) can be generated through a number of actions, such as a change in income or net worth, a change in dependency status, receipt of retired pay, a drop in course load or withdrawal from school while in receipt of benefits under the GI Bill, failure to obtain the release of home loan liability, hospitalization, treatment co-payments, and double payments of drill pay and VA benefits pay to members of the Reserves and National Guard.

Once an overpayment has been identified, the VA will initiate the debt collection process. The American Legion has worked extensively on matters concerning VA debt management and, recognizing the importance of these issues, has had a dedicated representative at the Debt Management Center (DMC) in Saint Paul, MN since 1978 for the specific purpose of assisting veterans and other VA claimants who fall into debt with VA. With nearly 40 years of collective service, the American Legion representatives working at the DMC have been instrumental in assisting thousands of veterans and surviving spouses avoid financial hardship by filing waiver requests, negotiating the terms of offsets of ongoing VA benefits, establishing reasonable monthly payment plans to mitigate financial burdens, and assisting in ending erroneous collection actions.

Benefit debt is the most common type of debt affecting veterans, which is why The American Legion's primary focus in our debt collection management office is assisting veterans affected by overpayments of benefits and addressing how to best mitigate and/or repay the debt. Of the millions of dollars in benefits awarded to veterans by the VA every year, thousands of veterans are paid incorrect amounts. When these incorrect payments are more than the amount due to a veteran, debt is incurred and collection actions will ultimately be triggered.

Many of the complications associated with a veteran incurring a VA-based debt are caused by the lack of an integrated records system within VA. The American Legion recommends that VA implement a system that all VA administrations can access for the most up-to-date information regarding contact information for a veteran or other VA claimant. Through American Legion Resolution No. 44, we support VA in creating and implementing an updated and modernized integrated system.¹ The following section will address different types of overpayments and how these overpayments are dealt with inside the VA.

OVERPAYMENTS DUE TO DELAYED PROCESSING OF DEPENDENCY CLAIMS

Delays in VA processing EP130 dependency claims result in overpayments where a divorced veteran submits an updated 21-686c form to remove the ex-spouse or step-children, and the Regional Office (RO) doesn't take action for months or even years. This can largely be attributed to claims being assigned by the National Work Queue (NWQ) to be worked in order based on date of claim. In order to prevent and minimize overpayments from accruing, VA should give EP130 claims that involve the removal of a dependent a higher priority in the NWQ.

Our service officers have frequently seen cases where a surviving veteran notifies the VA in a timely manner of the loss of a spouse, and it has taken the RO as long as a year or more to stop the veteran's dependent pay for the deceased spouse. The RO later comes back and generates the overpayment and the veteran starts receiving demand letters from the Debt Management Center (DMC). These types of cases are typically resolved via a waiver request due to administrative error and financial hardship, but are all preventable had the RO responded more quickly to remove these deceased dependents.

Previously, when veterans were seeking to remove a dependent as a result of a divorce or death, the EP130 had to be submitted on a paper 21-686c and processed manually at the RO, which lead to large overpayments when the manual processing was significantly delayed due the large backlog of EP130 claims. In situations where a veteran is removing a dependent (for any reason), current policy does not allow the veteran to remove a dependent in eBenefits--the veteran may initiate the request to remove the dependent via eBenefits, but the task of removing the dependent still must be done manually by a VA employee via the NWQ. We recommend processing of dependency claims in eBenefits be expanded to allow automated processing where the veteran is seeking to remove a dependent as a result of a divorce, or death. This would significantly reduce the overpayments attributed to delays in manually processing of removal of dependency awards for divorced or deceased dependents.

The American Legion commends VA in addressing this problem by expanding the automation of dependency claims by providing veterans the ability to remove a dependent via the assistance of an accredited representative via the Stakeholders Enterprise Portal (SEP), which results in their award being processed more quickly, but this is not the same as enabling veterans to remove the dependent themselves in eBenefits. Ultimately, veterans should be able to remove a dependent in eBenefits without the assistance of a third party, whether it be a VSO or a VA employee.

¹ The American Legion Resolution No. 44 (2016): [Department of Veterans Affairs Rural Healthcare Program](#)

The American Legion also recommends that VA audit DoD's Defense Enrollment Eligibility Reporting System (DEERS) as retirees who receive disability as well as military pension will commonly update DEERS believing that both databases are connected. Currently, veterans who update their change of dependents in DEERS, such as a divorce, but do not notify VA, and later marry a second spouse, and they notify DEERS of the second marriage, but not VA, may unknowingly create an overpayment with their VA benefits for the first spouse, and won't get paid VA benefits for the second. Once this mistake is discovered by VA, the RO will create the retroactive overpayment, deny the veteran the retroactive amount for the second spouse, and DOD will not retroactively refund the reduced retirement pay offset. A VA audit or match with DOD would prevent this problem from occurring.

OVERPAYMENTS DUE TO RECEIPT OF NATIONAL GUARD AND RESERVE PAY

Another frequent cause of the creation of overpayments are delays in adjustments in VA compensation awards due to a veteran's receipt of National Guard or Reserve pay. The American Legion believes that overpayments to veterans who receive benefit pay and drill pay during their Reserve, National Guard drill, or Active Duty period can be remedied if VA and the Department of Defense (DOD) compares drill records once a month (or at a minimum, quarterly). When a soldier is activated for Reserve or National Guard training, or even Active Duty, he or she is not eligible to receive VA disability payments. The soldier has the option of receiving either drill or VA disability and the individual typically chooses the higher of the two. If VA does not stop the payment on a timely basis, then an overpayment is created. It has been our experience that DOD and VA only compare this information on an annual basis, sending service members into debt that accumulates over several years. Errors like this are preventable and put unnecessary stress on our nation's heroes. We support any legislation that aims to address this issue using Resolution No. 228: Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay, which states that The American Legion supports "plac[ing] greater emphasis on processing of these overpayments for the performance of Reserve Component and/or Active Duty pay so not to have multiple years processed at the same time."²

The American Legion commends DOD and VA for reducing the backlog by moving towards automated processing of National Guard and Reserve Pay adjustments. However, further work remains to integrate these systems seamlessly so that the responsibility does not fall to the veteran to make notifications to either VA or DoD that should be the responsibility of the departments and the administration as highlighted in GAO report 16-42.³

EDUCATION OVERPAYMENTS

The creation of overpayments of VA education benefits is another area The American Legion sees an opportunity for improvement. When a veteran is attending an institution of higher learning, VA pays the institution the amount owed for the veteran to attend the school. Sometimes, because of improper reporting, the school is overpaid, and other times the veteran

² American Legion Resolution No. 228 (2016): [Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay](#)

³ <https://www.gao.gov/products/GAO-16-42>

may reduce his or her course load which often results in an overpayment of benefits to the school. Many veterans are unaware their course load adjustments trigger an overpayment because there is little or no guidance provided to enrolled veterans on VA's policy.

In a study conducted by the GAO report 16-42 noted that educational institutions make frequent errors when reporting enrollment information to VA and that not all schools send their certifying officials to attend the various training opportunities offered by VA, contributing to additional improper education claims being filed on behalf of the veteran.⁴

The American Legion recommends that educational institutions authorized to accept GI Bill payments be required to review GAO's report in order to ensure that they comply with all findings in an effort to avoid future preventable overpayments. We also recommend mandatory training of certifying offices.

OVERPAYMENTS FROM DELAYED INCOME MATCHING BETWEEN VA AND THE INTERNAL REVENUE SERVICE (IRS)

VA has a Computer Matching Agreement (CMA) with IRS where IRS will disclose to the VA, certain return information. The purpose of this CMA is to make available to VA certain return information needed to determine eligibility for and amount of benefits for VA applicants and beneficiaries of needs-based benefits and to adjust income-dependent benefit payments as prescribed by law. Per the CMA Section III. (C), VA will provide IRS the lists of 800,000 names annually for matching. The CMA estimates this matching program costs \$10M, but saves VA \$58M, for a net savings of \$48M.⁵

When a name appears in the list provided from IRS, VA RO staff must adjudicate an EP150 action, thereby they must follow the Income Verification Match (IVM) process in M21-1MR, Section X, Chapter 9(C) to determine if the income was fully reported by the veteran or the dependent, look for under and over reporting, and make necessary benefits adjustments, including retroactive adjustments. Large overpayments can occur depending on the time between when the income is received by the veteran, and the date VA adjudicates the action. The follow-up time by VA can vary depending on the date the IRS runs the report and sends it to the VA, the volume of names sent to VA, and the available RO staffing resources to conduct these EP150 investigations on the matched names.

VA should aggressively pursue potential changes in the matching agreement with IRS which would enable VA to making more timely adjustments based on the reported tax return information provided by IRS.

OVERPAYMENTS FROM MATCHING BETWEEN VA AND SOCIAL SECURITY

VA also has a matching agreement with the Social Security Administration to help VA determine eligibility for needs-based pensions under 38 U.S.C. Chapter 15, Dependency and Indemnity Compensation to parents under 38 U.S.C. § 1315, and programs under 38 U.S.C.

⁴ <http://www.gao.gov/assets/680/673230.pdf>

⁵ https://www.oprm.va.gov/docs/dib/14_IRS_VA_DIFSLA_signed_9_17_2015.pdf

Chapter 11 for veterans receiving Total Disability Due to Individual Unemployability (TDIU) benefits.

Previously, overpayments were created when a veteran, surviving spouse, or surviving parent was erroneously granted VA needs-based benefits due to receipt of SSA benefits, and there was a significant delay—in many cases one to two years—in matching with SSA.

The American Legion commends VA in addressing this problem by obtaining an on-demand match with SSA, thereby, allowing the Pension Management Centers (PMCs) to be pro-active in identifying upfront SSA income that may impact the claimant's eligibility for needs-based benefits, and preventing erroneous grants from being awarded.

FUGITIVE FELON PROGRAM OVERPAYMENTS

Overpayments also occur from delays and adjudication errors for veterans on the Fugitive Felon Program list (FFP-3). Under the Fugitive Felon program, VA is required to terminate benefits for veterans identified as a "Fugitive Felon," which is defined by 38 C.F.R. § 3.665 (n)(2) as:

"A person who is a fugitive by reason of: (i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or (ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law."

The FFP-3 report issued by the VA Office of Inspector General uses codes assigned by the National Crime Information Center (NCIC), and per M21-1, Part X, Chapter 16, "...they are an *indicator* that the individual with the felony arrest warrant..."(emphasis added).

Offense Code	What the Code Denotes
4901	Escape
4902	flight to avoid prosecution
4999	flight-escape
5011	parole violation
5012	probation violation
8101	juvenile offender abscond (escape/flee) while on parole
8102	juvenile offender abscond while on probation

Warrants can be issued for the alleged commission of a misdemeanor or a felony, and RO staff members have the responsibility to exercise due diligence in determining correct characterization of the alleged offense and proper name match that led to the issuance of the warrant. The process in M21-1MR, Part X, Chapter 16 is lengthy and very detailed. If the steps are not carefully followed or if there is inadequate development by not obtaining the full Court records that lead to the issuance of the warrant, then veterans facing misdemeanor warrants for a misdemeanor charges can find their VA benefits improperly terminated with an overpayment generated against them.

Placing a veteran's name in the FFP-3 leads to serious consequences. Regional Offices will assign an EP 290 code which leads to the generation of a retroactive termination of the veteran's compensation award, and an overpayment from the date of the issuance of the warrant. Once the warrant is cleared, the veteran may be entitled to a reinstatement of benefits, but only back to the date the warrant was cleared (if the warrant was issued for a felony charge), or back to the date the warrant was issued (if the warrant was issued for a misdemeanor charge). If the warrant was issued in error, then the veteran must submit to VA a copy of the Court order that vacated it in order to get the retroactive overpayment canceled back to the warrant issue date.

Improper development is a violation of due process which can lead to the mischaracterization or assumptions of misdemeanor warrants as felony warrants. This results in improper termination of benefits and the creation of overpayments, which often creates a financial hardship for the veteran. This situation happened to a veteran who was arrested on a misdemeanor warrant for being in contempt of court (a misdemeanor charge) for a parole violation for failure to pay child support. The veteran is unemployable and his VA compensation, which was his sole source of income, was retroactively terminated. His local RO didn't obtain the full Court record, and then stopped his monthly VA compensation check completely for 3 months and generated a large overpayment against him. This action put the veteran in severe financial hardship as he became temporarily homeless until his benefits were restored retroactively by an RO in a different state, but only to the date his misdemeanor warrant was cleared.

Unfortunately, he missed the 30-day deadline to request a waiver of the debt collection action by the DMC—which is an important deadline frequently missed by veterans—but he did submit a timely debt waiver request due to administrative error and financial hardship. His American Legion Service Representative was able to negotiate a repayment plan with the DMC for the remaining disputed overpayment amount, thereby, preventing a second total garnishment of his entire monthly VA benefits payments. The overpayment amount, which is for the time period from the date the misdemeanor warrant was issued to the date it was cleared, is currently on appeal. His case awaits further development.

In 33 of the 50 states the failure to pay child support is a misdemeanor, while in most of the remaining states it is a felony.⁶ In some states it varies depending on if the commission of the crime is the first, or a subsequent offense. In some state leaving the state can raise the misdemeanor charge to a felony. In a minority of states it is not clear as the failure to pay child support is not categorized either as a misdemeanor or a felony. This wide inconsistency and variation in state law can lead to inaccurate RO decisions where the veteran's benefits are wrongfully terminated and an overpayment is generated, especially when the EP290 is routed to any of the 57 VA regional offices via the National Work Queue (NWQ).

It is highly unlikely all VA adjudicators at all 57 ROs are familiar with the child support laws in all 50 states. Therefore, depending on the state and the facts of the case, it can be fairly complicated to determine if a veteran who failed to pay child support, meets the definition of a fugitive felon under 38 C.F.R. § 3.665 (n), especially if the veterans' electronic VBMS file does not contain the pertaining court documents needed to make such a decision. ROs have an obligation to obtain such court documents, and not rely solely on the FFP-3 report. Lack of

⁶ <http://www.ncsl.org/research/human-services/criminal-nonsupport-and-child-support.aspx>

proper development in these types of cases can lead to inaccurate adjudications, and financial hardship for the wrongly affected veterans.

Going forward, whether the determination correctly or erroneously classifies a veteran as a fugitive felon, the veteran's future claims are forever tainted with the "FFP-3 Fugitive Felon" label in the electronic VBMS claims file, which can create an unjust negative impression on future VA decision makers.

The American Legion recommends that VA improve its training for FFP-3 reduction cases to avoid these types of adjudication errors and update the M21-1MR Manual by emphasizing that the appearance of a veteran's name on the FFP-3 list by itself doesn't *automatically* mean the warrant was issued for a felony. The RO staff still need to do their research and proper development to ensure they are not misclassifying a veteran as a fugitive felon under 38 C.F.R. § 3.665 (n) and erroneously creating an overpayment. Having one RO to adjudicate all EP290s for FFP-3 match related reductions would help improve the accuracy of these types of adjudications.

REDUCING MISSED 30-DAY WAIVER REQUESTS FOR WAIVER OF DEBT COLLECTION ACTION

In the first notice letter sent from the DMC, the veteran is notified he or she has 30 days to request a waiver of the debt collection action, along with 180 days to request a debt waiver. These two deadlines are confusing to veterans, their advocates, and even VA staff. The American Legion frequently receives calls from veterans who have missed the 30-day deadline, but still are within the 180-day deadline—at this point, all our service officers can do is assist the veteran with negotiating a payment plan with the DMC, and help the veteran file the debt waiver request. It would be less confusing for veterans if the two deadlines are standardized. Therefore, we recommend changing the deadline to request a waiver of the collection of the debt from 30 days to 180 days.

VA DEBT COLLECTION PROCESS WITHIN VBA

According to VA, in 2014, 88% of all debts owed were related to the Veteran Health Administration (VHA), whereas only 8% of all debts owed originated at the Veteran Benefits Administration (VBA).⁷ Once a debt has been created at the regional office of jurisdiction, VA is required to send notice in writing to the subject of the alleged debt. This notice must include the exact amount of the debt, the reason for the debt, and the individual's rights and remedies in connection with the debt. Additionally, it must inform the debtor collection may be made through offset of current or future benefits and interest and administrative costs may be assessed. Once the debt is generated, it is referred to the Debt Management Center (DMC) for collection actions.

Within 30 days the DMC sends a collection due process letter advising the debtor of the debt amount and provides a notice of their rights and obligations. If the debtor is actively drawing benefits, the letter will indicate that failure to respond will result in a full benefit offset beginning

⁷ https://drive.google.com/file/d/0B70_mGYT1tJETzZGWUZKYzdGXzg/view

with the first pay period 60 days after the date of the notification letter. If the debtor is not actively drawing benefits, a second letter is mailed 30 days later as a reminder to take action. The letter advises that if the debt is not satisfied, or an agreeable repayment plan is not established within 60 days, the account will be reported to credit collection agencies as delinquent. The letter will further state that the Treasury Department may refer the account to private collecting agencies and the account may be subject to garnishment of non-federal wages under the Treasury's Administrative Wage Garnishment Program. If no action is taken, third and fourth letters are mailed 30 days apart. If no action is taken 60 days after the third letter, the account is referred to the Treasury Department for active collection.

In our experience, the VA makes every attempt to keep these debts "in-house" and tries to notify the veteran in numerous ways. According to the Code of Federal Regulations (C.F.R.) 1.911 (d), VA is required to send a notice of debt that must include the exact amount of the debt, the reason for the debt, the individual's rights and remedies in connection with the debt, and inform the debtor that collection may be made through offset of current or future benefits and that interest and administrative costs may be added.

Sometimes, notification letters are sent to wrong addresses due to updated information not being provided to the VA debt collection team. Failure to update the system with the correct and current contact information can lead to a veteran who owes a debt not being properly informed of their rights. The American Legion calls upon VA to continually update their contact database to ensure the most up-to-date information for a veteran is available so the VA may contact the veteran for a multitude of reasons, including debt collection.

Additionally, a veteran may request copies of the debt and coinciding information from the original office of jurisdiction where the overpayment was created. If the veterans feels it is necessary, they may file an appeal with VA. If the veteran chooses to file an appeal, then they will need to notify the VA in writing before the 30-day deadline if they are requesting a hearing to contest the debt. The debtor's right to inspect the record is also included in the original debt notification letter.

VA PARTNERSHIP WITH THE TREASURY DEPARTMENT

In most cases, delinquent accounts over 120 days are referred to the Treasury Department for collection. Once a debt is referred to the Treasury Department, the debtor is subjected to the Treasury's collection tools, interest, and any administrative fees. The American Legion strongly recommends veterans who receive debt notification letters from DMC immediately contact an advocate like The American Legion for assistance to prevent the debt from spiraling out of control. It has been the experience of The American Legion the VA DMC office is more sensitive to the veteran's particular circumstances and needs than the Treasury Department, which is why veterans need to act quickly to avoid garnishment actions and negative credit reporting.

Finally, the DMC does not charge interest or fees when collecting on compensation and pension debt, a policy that The American Legion strongly supports. While the DMC does not charge interest on compensation and pension debt, they do assess interest on Home Loan Guaranty,

Chapter 34 and Chapter 35 education debts where the rate of interest is 4% for these types of debt.

CONCLUSION

Debt collection within the VA and Treasury Departments is complicated and multi-faceted. The American Legion still sees room for improvement, and we have again highlighted some of those suggestions in this testimony. Overall, The American Legion believes that DMC does a good job of protecting veterans from added exposure when they are identified as having been overpaid and want to ensure that veterans are aware of their rights, resources, and consequences should they neglect to address these issues right away. However, there would be fewer and smaller overpayments generated if the 57 ROs were adequately staffed and the VA work credit system for EP130 and 150 were adequately adjusted to allow for full and proper development of these types of claims. EP 130 claims involving removal of a dependent should be given higher priority in the NWQ. VA should continue to improve its overpayments-related training, including FFP-3 matching, centralize the adjudication of the Fugitive Felon Program, and expand dependency claim automation to allow veterans to remove dependents via eBenefits without the need for manual processing.

Finally, The American Legion again calls on DoD and VA to integrate their systems seamlessly so that the responsibility does not fall to the veteran to make notifications to either VA or DoD that should be the responsibility of the departments and the Administration as highlighted in GAO report 16-42.

The American Legion thanks this committee for the opportunity to elucidate the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Derek Fronabarger, Deputy Director of The American Legion Legislative Division at dfronabarger@legion.org or (202) 861-2700.