

CITATION: VAOPGCPREC 55-90  
Vet. Aff. Op. Gen. Couns. Prec. 55-90

**TEXT:**

**Subject:** Proper Interpretation of 38 U.S.C. §§ 1784, 1785, and VA Regulations 14009 and 14203

(This opinion, previously issued as General Counsel Opinion 2- 77, dated September 17, 1976, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

**QUESTIONS PRESENTED:**

(1) Can an educational institution be allowed 30 days from the date of a veteran's reduction or termination of training or 30 days from the end of an official registration period or short drop/add period (not to exceed 30 days) at the beginning of a term to report the reduction or termination to the Veterans Administration?

(2) Can an educational institution, which does not timely report a veteran's reduction or termination, be held liable for the entire resulting overpayment?

**COMMENTS:**

The two statutory provisions cited above read, in pertinent part, as follows:

"§ 1784. Reports by institutions; reporting fees

"(a) Educational institutions shall, without delay, report to the Administrator in the form prescribed by him, the enrollment, interruption, and termination of the education of each eligible person or veteran enrolled therein under chapter 34, 35, or 36." (Emphasis supplied.)

"§ 1785. Overpayments to eligible persons or veterans

"Whenever the Administrator finds that an overpayment has been made to an eligible person or veteran as the result of (1) the willful or negligent failure of an educational institution to report, as required by this chapter or chapter 34 or 35 of this title and applicable regulations, to the Veterans' Administration excessive absences from a course, or discontinuance or interruption of a course by the eligible person or veteran, or (2) false certification by an educational institution, the amount of such overpayment shall constitute a liability of such institution, and may be recovered in the same manner as any other debt due the United States. Any amount so collected shall be reimbursed if the overpayment is recovered

from the eligible person or veteran. This section shall not preclude the imposition of any civil or criminal liability under this or any other law."

The pertinent portions of VA Regulation 14203, cited above, read as follows:

"14203 (s 21.4203). REPORTS BY SCHOOLS--REQUIREMENTS

"(A) GENERAL. Educational institutions are required to report promptly the entrance, reentrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled. Educational institutions are also required to verify enrollment and delivery of check for each veteran and eligible person receiving an advance payment.

"(B) Entrance or Reentrance. The certification must clearly specify the course. Upon receipt of a certification of enrollment, an official authorization will be issued showing the beginning and ending dates of each period for which, an allowance may be paid. The authorization will be for the period of enrollment or the extent of the eligible person's entitlement whichever is the lesser.

"(C) Course Changes. Any changes in the number of credit hours or the clock hours of attendance or instruction or any other modification in the course as certified at enrollment must be reported promptly to the VA. In institutions this reporting requirement will be satisfied if the official date of the change of status is reported in accordance with VA Regulation 14253(D) or 14254(C)(7).

"(D) Interruptions and Terminations. When a veteran or eligible person interrupts or terminates his or her training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the VA.

"(1) If the course does not lead to a standard college degree, the school shall submit the report required by this subparagraph and subparagraph (C) as follows:

"(a) If the quarterly certification of attendance that is normally required for the student is due to be filed during or immediately after the end of the month in which the change in status occurs the report will be included on the quarterly certification.

"(b) If no quarterly certification is due during the month in which the change of status occurs, the school shall report the change in status to the VA, during or immediately after the end of the month in which the change occurred, including a certification of the absences of the student since the last quarterly certification was filed or the course began.

"(2) If the course leads to a standard college degree the school will initiate a report of the change in the status of the student during or immediately after the

end of the month in which the change occurs. The official date of change of status or interruption or termination shall be in accordance with VA Regulation 14253(D) or 14254(C)(7)." (Emphasis supplied.)

The pertinent portions of VA Regulation 14009, also cited above, read as follows:

"14009 (§ 21.4009). OVERPAYMENTS--WAIVER OR RECOVERY

"(A) General. The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it is determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report, as required by VA Regulations 14203 and 14204, excessive absences from a course, a discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. If it appears that the falsity or misrepresentation was deliberate, no administrative collection may be pursued pending a determination whether the matter should be referred to the Department of Justice for possible criminal or civil action. However, the amount of the overpayment may be recovered from the school by administrative collection procedure when the false certification or misrepresentation is the consequence of an administrative error or a mistake of fact, or where it is determined that no criminal or civil action is warranted. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law.

"(B) Reporting. If a school is required to make periodic or other certifications, failure to report facts which resulted in an overpayment will be considered prima facie evidence of willfulness or negligence. Similarly, the submission of an incorrect certification as to fact will be considered prima facie evidence of a false certification. In either instance the prima facie showing is subject to rebuttal." (Emphasis supplied.)

Before turning to the specific questions raised, we believe it is necessary to look at the legislative history of the two provisions of law in question. We would first say, however, that the problem of education overpayments is not new to the Veterans Administration. They first arose in the administration of the World War II GI Bill program. The requirement that schools report promptly to the Veterans Administration on discontinuance of veterans' training resulted from a recommendation transmitted to the Congress by then President Harry S. Truman (House Document 466, 81st Congress, 2d Session), on February 13, 1950. In this report to the Congress, it was pointed out that:

"The Veterans' Administration has been confronted with the problem of failure by the veteran or by the institution to notify the Veterans' Administration when the

veteran has completed or interrupted his training. Such failures are one of the primary reasons for overpayments to veterans for subsistence allowance which have totaled, over the life of the Servicemen's Readjustment Act, \$199,638,013. Of this amount, recoveries and other dispositions have totaled \$159,433,867. Further very substantial recoveries are anticipated during the current year. This still remains an important problem, however, since overpayments are continuing at a current rate of approximately \$1,300,000 per month. In view of the continuing importance of this problem, the Veterans' Administration should be provided with a reasonable but effective method for insuring that educational institutions report to it interruptions and discontinuances of training on the part of veteran students. Such authority would contribute materially toward reducing the volume of overpayments. It should be emphasized that this need applies to all types of schools."

Based upon this, the following recommendation was made to the Congress:

"5. As a means of reducing the volume of overpayments, we recommend the enactment of legislation to assure that schools will make prompt reports to the Veterans' Administration when enrolled veterans discontinue, interrupt, or fail to attend their courses, with suitable penalties for failure to comply." (Emphasis supplied.)

As a result of this recommendation, legislation was enacted on July 13, 1950 (Public Law 610, 81st Congress), giving the Veterans Administration authority to collect overpayments from schools. The original authority read as follows:

"... In any case where it is found that an overpayment to a veteran of subsistence allowance (which overpayment has not been recovered or waived) is proved in a hearing before the Committee on Waivers of the appropriate Veterans' Administration regional office to be the result of willful or negligent failure of the school to report, as required by applicable regulation or contract, to the Veterans' Administration unauthorized or excessive absences from a course, or discontinuance or interruption of a course by the veteran, the amount of such overpayment shall, at the discretion of the Administrator, constitute a liability of the school for such failure to report, and may be recovered by an off-set from amounts otherwise due the school or in other appropriate action: Provided, That any amount so collected shall be reimbursed if the overpayment is received from the veteran ..."

VA Regulation 10066(A), promulgated at that time, required that:

"All schools and training establishments are responsible for immediately notifying the VA when a veteran drops out of training. When a veteran's conduct or progress is reported as unsatisfactory, the Registration and Research Section will ascertain the school's or establishment's recommendation as to disposition to

be made of the case where the veteran has not been dropped from the rolls of the school or establishment." (Emphasis supplied.)

The question concerning the obligation of educational institutions to report interruptions, etc., concerning veterans was again raised in the Congress when the Korean conflict GI Bill program was being formulated. The Congress had for consideration the GAO Report entitled "General Accounting Office Report of Survey--Veterans' Education and Training Program." This was a survey of the World War II program. Included (page 84) was the following comment:

"One primary defect in the administration of the entire program was the school's failure to carry out the regulation which reads, in part, as follows: 'All schools and training establishments are responsible for immediately notifying the VA when a veteran drops out of training.' Many schools have overlooked the importance of promptness in this matter, with the result that a multitude of overpayments has been made."

Further (page 97), in the same report, the following observation was made:

"Overpayments have been due principally to the failure of the training establishments, and of the veterans, to notify the VA regional office promptly of interruptions in training and of unauthorized absences. Unscrupulous schools frequently failed to report absences for which subsistence allowances should have been adjusted. In such cases it would appear that adjustments also should have been made in the tuition payments to the schools ..."

At the time the drafts of the Korean conflict bill were being initiated, the language contained in Public Law 610 (cited above) was inserted in the legislation then under consideration. Language substantially the same as that which is presently incorporated in section 1784(a) of title 38 was first found in section 804 of H.R. 6425, 82d Congress, a bill introduced by Congressman Olin E. Teague on February 5, 1952. This language was eventually enacted as section 265(a) of Public Law 550, 82d Congress, known as the Korean conflict GI Bill program. The House Committee on Veterans' Affairs, in reporting the Teague bill to the House Floor (House Report No. 1943, 82d Congress, p. 38), made the following comments on section 265:

"Prompt reports to the Administrator by educational institutions and training establishments of enrollment, interruption, and termination of education and training of each veteran is required under section 265." (Emphasis supplied.)

In reports on legislation containing this section 265 language, the VA suggests that the Congress might wish to specify a period of time in lieu of the words "without delay." It is important to note that the Congress, throughout the history of the education program has not chosen to do so. We are of the view that this left it to the Veterans Administration to determine by regulation what period of

time was appropriate to meet the law's requirement of reporting "without delay."

The proposed section 804 read as follows:

"SEC. 804. Educational institutions and training establishments shall, without delay, report to the Administrator in the form prescribed by him, the enrollment, interruption, and termination of education or training of all eligible veterans enrolled under this Act." (Emphasis supplied.)

The VA Regulations promulgated pursuant to the Korean conflict GI Bill law required educational institutions and training institutions to promptly certify to the VA the enrollment or reenrollment of an eligible veteran in a course of education and training as well as to promptly notify the VA of any interruptions or terminations of the training of veterans (VAR 12303). Provisions for the recovery of overpayments to veterans were regulated by VA Regulation 12304.

In enacting the War Orphans' Educational Assistance Act of 1956 (Public Law 634, 84th Congress), the Congress, in sections 505(a) and 506 of that Act, imposed on that program the identical requirements on reporting enrollments, interruptions, and terminations of eligible persons and imposition of liability for overpayments, as were contained in the Korean conflict law. Nothing is found in the legislative history of that Act which would shed further light on the questions involved. These same provisions were continued in effect for dependents at the time the Korean program was terminated in 1965.

In enacting the "Veterans' Readjustment Benefits Act of 1966," Public Law 89-358 (the current program), the Congress established a new chapter 36 in title 38 designed to include the administrative provisions of law which were applicable to both the veterans' and dependents' programs. The language contained in section 265(a) of the Korean law was enacted as section 1784 of the new program, and the language contained in section 266 of the Korean law was enacted as section 1785. Both provisions were, however, made applicable to both the veterans' and dependents' programs, as noted above. An examination of the legislative history of this law does not shed further light. It is important to note, however, that the House Committee on Veterans' Affairs, in its report (House Report No. 1258, 89th Congress), stated (p. 7), as follows:

"The educational assistance and home loan guarantee provisions of the reported bill are patterned closely after Public Law 550, 82d Congress (the Veterans' Readjustment Assistance Act of 1952) which gave these benefits to veterans of the Korean conflict. Insofar as the provisions of the reported bill are the same as Public Law 550, it is expected that they will be administered in the same manner. In addition to patterning the bill after Public Law 550, particular care has been taken to achieve consistency between the program of educational assistance provided in the reported bill and the War Orphans Educational Assistance program (Public Law 634, 84th Cong.) in effect under chapter 35 of title

38, United States Code."

Since the enactment of the basic law in 1966, no substantive changes pertinent to this consideration have been made in sections 1784(a) and 1785.

From the foregoing, the following points appear clear:

- a. The Congress has, for many years, imposed on educational institutions the requirement that they report to the VA "without delay" terminations, interruptions, etc. Thus, this is not a new requirement on the schools.
- b. Since the Congress has not imposed any specific period, it is incumbent upon this agency to interpret the law through its administrative regulations.
- c. The VA, through its regulations, has imposed requirements on the schools over the years that they report "immediately," "promptly," or, more recently, "during or immediately after the end of the month in which the event occurred."
- d. The Congress has been aware of the VA's interpretation of the "without delay" provision of the law and, since it has not taken action to change the interpretation, it can be said to have accepted it.

Through the issuance of DVB IB 22-76-5, dated March 5, 1976, the VA has, through further administrative interpretation, determined that a school should be permitted 30 days from the date of the enrollment or status change or termination, to furnish its report to the VA. It would appear to us that this 30-day determination would, in the majority of cases, represent a liberalization of the regulation which requires school reports "during or immediately after the end of the month in which the event occurred."

There are two further points which we believe should be emphasized at this point since they represent present day expressions of view on overpayments. The first is the report entitled "Educational Assistance Overpayments, a Billion Dollar Problem--A Look At The Causes, Solutions, and Collection Efforts, Veterans Administration" made to the Congress by the Comptroller General of the United States. This report makes the following significant points:

- a. "The amount of an individual's monthly VA educational assistance payment is partly determined by his or her current course load. Therefore, once enrolled in school, an individual making any change in training status, such as adding or dropping courses or terminating enrollment, must report this promptly to VA. The enrolled individuals themselves and the school officials serving as certifying officers are responsible for reporting these changes ... The veteran (or enrolled dependent) is the first link in the reporting chain ... However, if the veteran neglects to report changes to school officials, the school is still responsible for

promptly identifying and reporting these changes to VA ..." (Page 2)

b. "The primary cause of the growing overpayment problem ... has been the untimely reporting to VA of enrolled individuals' training status changes that reduce or terminate their monthly educational assistance payments...." (Page 4)

c. "According to our analysis of the total overpayments outstanding nationwide as of December 31, 1974, about 73 percent were for veterans who attended colleges and universities. The remaining 27 percent were attributable to veterans who attended vocational, trade, and other below-college-level training institutions...." (Page 6)

d. "Veterans and the schools they attend share responsibility for reporting training status changes to VA in a timely manner. About 41 percent of the overpayment amounts in the cases sampled resulted because veterans and schools had not promptly reported changes in status...." (Page 9)

e. "The long delays by schools in reporting training status changes ... may indicate general negligence on the part of those schools...." (Page 14)

These findings represent a recognition by the GAO, a wing of the legislative branch, of the concern by the Congress in the area of overpayments and point out the failure of the schools to timely report changes in status as required by law.

The second point of importance is that the Special Investigating Subcommittee of the House Committee on Veterans' Affairs, in the Spring of 1976, conducted a series of hearings looking into the problem of overpayments and the causes. As Chairman Ronald M. Mottle pointed out in his opening statement:

"From 1966 to 1972, the cumulative overpayments recognized by the Veterans' Administration totaled \$128 million. In the next 3 1/2 years, there has been about \$1.3 billion in cumulative overpayments. These overpayments alone are a cause for great alarm by the Congress and a principal reason why these hearings are being held.

"The Veterans' Administration has collected many of the overpayments, usually by offsetting them against subsequent benefit entitlement, but there is still a balance of almost \$375 million which remains outstanding and uncollected. The overpayment problem continues unabated. Overpayments of this magnitude would have been thought to be absurd in the World War II or the Korean conflict veterans' educational programs.

"While the overpayment problem is of utmost concern to the Congress, there is another abuse which has received little publicity but may be a bigger problem. I am referring to the attendance and standards of progress policies as they have



been administered, which have permitted large numbers of veterans to enroll in school and continue receiving GI Bill payments, even though they rarely attend a class or have failed to maintain a passing grade, but continue receiving GI checks.

"This Committee in its oversight capacity has been looking into a number of these schools and has learned with much consternation that some schools have permitted veterans to receive GI Bill checks when from all advance evidence many may have never attended a class, or passed a course. Such a practice is reprehensible and a flagrant waste of taxpayers' money."

It seems abundantly clear from these two recent developments that the Congress is aware of the problem of overpayments which has arisen in recent months.

**HELD:**

(1) Allowing an educational institution 30 days from the date of a veteran's reduction or termination of training is a reasonable period of time and would meet the 38 U.S.C. § 1784 requirement of "without delay"; and allowing an educational institution a period not to exceed 30 days from the beginning of a new term to report a veteran's reduction in course load or termination of training or, where applicable, from the end of the school's drop/add period (not to exceed 30 days) to report a veteran's reduction in course load, represents a reasonable period of time.

(2) There is no legal basis to hold an educational institution liable for any benefit, including advance payment or prepayment, paid to a veteran prior to the end of the 30-day period allowed schools to report a reduction or termination.

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