

Date: September 9, 1996

VAOPGCPREC 7-96

From: General Counsel (022)

Subj: Separate and Distinct Transactions Requiring Notification of Waiver Rights

To: Deputy Assistant Secretary for Financial Management (047)

QUESTION PRESENTED:

Under what circumstances does an increase in an individual's indebtedness result from "a separate and distinct transaction" for purposes of notification of the right to request a waiver of indebtedness?

COMMENTS:

1. In VAOPGCPREC 21-95, we held that a recipient of Department of Veterans Affairs (VA) benefits who has been notified of his or her right to request a waiver of indebtedness arising from an overpayment of such benefits must again be notified of waiver rights when an additional overpayment is established based on a separate and distinct transaction. Clarification has been requested as to the meaning of the phrase "separate and distinct transaction."
2. When VA learns that a debtor (*i.e.*, an individual who owes VA money due to a prior overpayment of benefits) has received additional benefits to which he or she is not entitled, the circumstances giving rise to the additional indebtedness may be separate and distinct from those that created the original debt so that the additional indebtedness should be considered to be based on a separate and distinct transaction. An overpayment resulting, for example, from a pension recipient's failure to report income for a particular period would be based on a separate and distinct transaction from an existing debt which arose from failure to report income for an earlier period. Before recovering such an overpayment, VA must notify the debtor of his or her waiver rights.
3. Even if additional benefits have not been paid, an increase in indebtedness may be considered to have arisen

from a separate and distinct transaction where VA was not aware of all the facts when it made its original decision as to the amount of the debt. For example, an overpayment established due to a pensioner's failure to report income from a part-time job would be based on a separate and distinct transaction from an additional overpayment created when VA subsequently learns that the pensioner's spouse also had income during the period in question. Since the increased debt resulted from new circumstances which were not considered in determining the amount of the original indebtedness, the increase in indebtedness should be considered to have arisen from a separate and distinct transaction.

4. Where an increase in indebtedness derives from the same circumstances that gave rise to the original overpayment, the increase would generally not be based on a separate and distinct transaction. In such a case, no new events would have transpired giving rise to additional indebtedness. Rather, the increase would be based on the passage of time or a clerical recomputation of the amount of the debt. For example, if a pensioner failed to report income and VA established an overpayment for certain months, an adjustment of the amount owed due to the discovery that the failure to report that income also resulted in an overpayment for another month would not necessitate notice of waiver rights. A technical correction concerning the amount of the original indebtedness or the mere addition of interest would not be based on a transaction separate and distinct from that which created the original overpayment.

HELD:

Notification of waiver rights is necessary when an increase in indebtedness is based on circumstances not considered in computation of the original indebtedness. Notification is

not required when an increase is based on the addition of interest to a debt or on a technical correction concerning the amount of the original indebtedness.

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