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Education and Training Benefit – Overpayments: Recovery, Remission and Write Off

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Purpose

This policy provides direction to be followed when there is an overpayment to a person with respect to the Education and Training Benefit under the *Veterans Well-being Act*

Background

For the purposes of the Education and Training Benefit, the provision of funding is with the agreement that the funding is provided to support the pursuit of post-secondary education. Continued enrollment in the education program is required for the period of study that a payment was made as per the Terms and Conditions for the Education and Training Benefit.

Policy

General

1. *Any compensation amount, or part of it that is paid to a person, including their estate or succession, to which there is no entitlement, or which exceeds entitlement, is considered an overpayment under section 88 of the Veterans Well-being Act.*
2. All overpayment cases which involve suspected fraud or willful misrepresentation should immediately be referred to Veterans Affairs Canada's (VAC's) Director General, Finance, for appropriate action.
3. Any overpayment, regardless of the cause, is a Crown debt and must be addressed by:
    a. Recovery;

b. Remission; or
c. Write-off.

4. Regardless of whether the overpayment will be recovered, remitted or written-off, the total amount of the overpayment must be recorded on the person's account as soon after discovery as possible.
5. An overpayment and the decisions relating to recovery, remission and write off are recorded in the system of record for the individual.
6. The person must be advised, in writing, of the existence of the overpayment and associated redress rights, if applicable.

Recovery

7. Recovery is normally the first course of action in the overpayment process. Every effort must be made to recover the overpayment debt from the recipient.
8. An overpayment may be recovered by way of: payment-in-full by accepting a payment or payments representing the present value of the overpayment, by deduction from any future payments made under the *Veterans Well-being Act*, or by set-off from any payment due to the recipient from the Crown, in accordance with Section 155 of the *Financial Administration Act*.
9. Exceptions for Recovery and Set-off:
    a. The Department will not recover or set-off Education and Training Benefit overpayments from any *ex-gratia* payments made to Veterans.
    b. Funeral and burial grants awarded under the *Veterans Burial Regulations 2005* do not form part of the estate of the deceased. Therefore, they cannot be set-off against an overpayment within the meaning of Section 155 of the *Financial Administration Act*.
10. In the event of the person's death, the remaining balance of the overpayment becomes recoverable from his/her estate or succession.

Remission

11. Remission means to forgive an otherwise legally enforceable debt. In this context, it is an act of clemency on the part of the Minister and not a right. Once remission has been approved, the Department gives up its right to recover the overpayment at a later date.
12. Although recovery is normally the first consideration in the overpayment process, there may be instances where such action is not desirable. According to section 88 of the *Veterans Well-being Act*, if a person, including their estate or succession, has received or obtained an overpayment, all, or a portion of the overpayment may be remitted in the following circumstances:
    a. the overpayment cannot be recovered within the reasonably foreseeable future;
    b. the administrative costs of recovering the overpayment are likely to equal or exceed the amount to be recovered - only applicable in those situations where the amount of the overpayment does not exceed $150;
    c. the repayment of the overpayment would cause undue hardship to the person - applicable in those situations where the person does not have financial capacity to repay and/or if emotional distress caused by the overpayment appears to pose a threat to the person's state of health;
    d. the overpayment is the result of an administrative error, a delay or an oversight on the part of an officer or employee of the federal public administration -applicable in those situations where the overpayment is the result of:
        i. a payment system error;
        ii. a misinterpretation of legislation;

iii. a misunderstanding of a decision;
iv. a mistake concerning an effective date; or
v. a procedural error.

13. No part of an overpayment may be remitted if the person, or the executor of the estate, or the liquidator of the succession, has been convicted of an offence under the Criminal Code in connection with receiving or obtaining the overpayment.
14. There is a graduated scheme for authorizing remission where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the Delegated Authorities Manual.

Write Off

15. There are no debt write off provisions in the *Veterans' Well-being Act*. The authority for debt write-off is found in the *Financial Administration Act* and the *Debt Write-off Regulations, 1994*.
16. An overpayment may only be written-off in accordance with the *Debt Write-off Regulations, 1994*, which list the criteria under which an overpayment is considered uncollectible. Write-off is an accounting action which removes the debt, in whole or in part, from the active accounts receivable records in the Public Accounts. Write-off does not mean that the debt is forgiven. Collection of the debt, presumably, could resume in future if information is received that would appear to make the prospect of recovery likely. Authority for write-off is contained under section 25 of the *Financial Administration Act*. There is a graduated scheme for authorizing write-off where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the Delegated Authorities Manual.

Erroneous Award

17. The Minister may continue the payment of an Education and Training benefit, in whole or in part, to a person who is not entitled to it, or not entitled to a portion of it, if:
    a. the amount paid to the person to which the person was not entitled is the result of an administrative error, or a delay or an oversight on the part of an officer or employee of the federal public administration and has been remitted under the *Veterans Well-being Act*;
    b. no part of the amount paid to the person to which the person was not entitled was the result of a misrepresentation or of concealment of a material fact on the part of the person;
    c. the cancellation or reduction of the benefit or allowance would cause undue hardship to the person; and
    d. the benefit had been paid to the person for three years or more.

References

Veterans Well-being Act

Financial Administration Act

Criminal Code

Veterans' Well-being Regulations

Veterans Burial Regulations, 2005

Debt Write-off Regulations, 1994