



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

June 23, 2014

VBA Letter 20-14-09

Director (00)

All VBA Regional Offices and Centers

SUBJ: New Fugitive Felon Policy and Procedures

Purpose

This letter establishes Veterans Benefits Administration (VBA) policy on fugitive felons and updates the procedures for identifying fugitive felons and adjusting their Department of Veterans Affairs (VA) benefits.

New Fugitive Felon Policy

Section 5313B of title 38, United States Code ([38 U.S.C. 5313B](#)), precludes VBA from providing compensation, pension, dependency and indemnity compensation (DIC), insurance, education, vocational rehabilitation, and home loan guaranty benefits to beneficiaries, their dependents, or survivors who are fugitive felons. Section 5313B defines a fugitive felon as a person who is:

- Fleeting 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
- Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

Previously, VBA presumed that a beneficiary was a fugitive felon if he or she was the subject of any felony arrest warrant. See [M21-1Manual Rewrite \(MR\) Part X, Chapter 16, Topic 1, Block c.](#)

Effective immediately, VBA no longer presumes that any valid outstanding felony arrest warrant establishes a beneficiary's fugitive felon status under 38 U.S.C. § 5313B. As outlined below, VA Office of Inspector General (OIG) will send the Form FFP-3 (VA Investigative Summary Form) to VA Central Office (VACO) for all business lines. As required by section 5313B, VBA

will request the information only for beneficiaries who have a felony arrest warrant with a National Crime Information Center (NCIC) offense code indicating flight or a probation or parole violation. These codes are:

- 4901 – Escape
- 4902 – Flight to avoid prosecution
- 4999 – Flight-escape
- 5011 – Parole violation
- 5012 – Probation violation
- 8101 – Juvenile offender abscond while on parole
- 8102 – Juvenile offender abscond while on probation

When OIG notifies VBA that a beneficiary has a felony warrant with an offense code indicating flight or a probation or parole violation, VBA will notify the beneficiary of the warrant and VBA's proposed termination of benefits. VBA will afford the beneficiary 60 days to respond with evidence indicating that the warrant was entered in error, pertains to a different person, or was vacated by the issuing court. VBA will determine whether the beneficiary is or was a fugitive felon based on all of the evidence and facts found. If VBA determines that the beneficiary is or was a fugitive felon, it will create an overpayment based upon facts found.

As discussed above, VBA will discontinue benefits based on fugitive felon status only if:

- A judge issued a felony arrest warrant with a NCIC offense code indicating flight or a probation or parole violation,
- VA provided the beneficiary notice regarding the reason for the warrant and an opportunity to present evidence, such as an acknowledgement of the validity of the warrant or failure to respond to the due process notification, or that he or she did not flee from justice or did not violate any condition of probation or parole, and
- VA determines, based upon the warrant and evidence submitted by the beneficiary (if any), that the beneficiary was fleeing from justice or violated a condition of probation or parole. Benefits will be terminated for Veterans while they are fugitive felons and dependents of Veterans while the Veteran is a fugitive felon.

Responsibilities

In order to comply with section 5313B, VBA, through its Compensation Service, will continue to work with OIG as described above and according to the following responsibilities.

OIG Responsibilities:

- Match lists of individuals who are the subject of felony warrants with NCIC offense codes 4901, 4902, 4999, 5011, 5012, 8101, and 8102,

- Investigate matched records to determine whether the individual who is the subject of the warrant is the same as the VA beneficiary,
- Send electronic records regarding confirmed matches for beneficiaries in the benefit programs administered by VBA on Form FFP-3 (VA Investigative Summary Form) to VBA (Compensation Service), and
- Provide VBA (Compensation Service) with the advice, assistance, and investigative resources necessary to determine the legal status of any alleged fugitive felon.

VBA Responsibilities:

- Provide due process regarding proposed benefit adjustments to beneficiaries who are the subject of an OIG referral (FFP-3),
- Make a determination regarding whether it is more likely than not that the beneficiary fled from justice or violated a condition of probation or parole based upon the warrant, evidence submitted by the beneficiary, and development of any other evidence,
- Send the beneficiary a post-determination notice clearly stating the decision, outlining the evidence received and reviewed, and providing all reasons and bases for the decision rendered,
- Terminate payment of benefits based on the facts found,
- Resume benefits based upon a VBA determination that the beneficiary is no longer a fugitive felon. Establish an effective date for restoring benefits retroactively and resuming benefits based upon facts found, and
- Draft a formal notice of the decision and forward it to the beneficiary.

Procedures

The procedures prescribed below for the compensation, pension, and DIC programs are generally applicable to all VBA benefit programs. To the extent that any business line requires separate procedures to properly implement VBA's fugitive felon policy, such as those applicable to controlling or processing fugitive felon matters in program-specific information technology systems, those procedures are prescribed below under separate headings.

Compensation, Pension, and DIC

Use the procedures outlined below to determine whether VA must discontinue payment to a beneficiary who is the subject of a felony warrant.

Step	Action	
1	Compensation Service receives the fugitive felon match from OIG and distributes non-compensation matches to the Office of Economic Opportunity (20E) and the Office of Field Operations (20F) for further distribution to business lines and field stations.	
2	Upon receipt of the FFP-3 forms from VACO, the field station establishes an EP 290 to control the process with the flash labeled "Fugitive Felon" located in SHARE. The date of claim for EP 290 is the date of receipt of the FFP-3.	
3	Due Process: Upon receipt of the FFP-3, the field station validates the information received before sending a notice of proposed adverse action.	
	If...	Then...
	<ul style="list-style-type: none"> The information matches the beneficiary's VA record (name, birth date, and Social Security number) 	<ul style="list-style-type: none"> No additional information is needed. Proceed to step 4,
	<ul style="list-style-type: none"> The information on the FFP-3 is inconsistent with the VA record 	<ul style="list-style-type: none"> Field station will email the pertinent information and details to VAVBAWAS/CO/212A mailbox (212A.VBACO@va.gov). Inquirers should receive a response from the mailbox within 5 business days. Do not take action until Compensation Service responds with instructions on the required action.
	<ul style="list-style-type: none"> A source other than OIG submits documents that purportedly establish that a fugitive felon warrant exists 	<ul style="list-style-type: none"> Forward the information to the RO/PMC fugitive felon coordinator and cc the VAVBAWAS/CO/212A mailbox (212A.VBACO@va.gov).

		<ul style="list-style-type: none"> • Document the receipt of any information and/or referral received in person or by telephone on VA Form 27-0820, Report of General Information. • Do not take action until Compensation Service responds with instructions on the required action. 				
4	<p>Due Process: If the evidence indicates that the beneficiary may be a fugitive felon, afford due process as required by 38 C.F.R. § 3.103:</p> <ul style="list-style-type: none"> • Send a pre-determination letter to the beneficiary notifying him/her of the warrant and the proposed adverse action (See Enclosure 1). • PCLR the EP 290 when releasing the pre-determination letter. Establish an EP 600 to control the response period. The date of claim for EP 600 is the date of the notice. <p>Companion EP for potential overpayments</p> <ul style="list-style-type: none"> • EP 690 is used to help monitor timeliness in completing action on pending issues with potential overpayments. The date of claim (DOC) for EP 690 is the date of the source document that generates the proposed adverse action. EP 690 must remain pending with the controlling EP until all actions are completed. • The EP 690 is cleared when the final action for the EP 600 has been taken. 					
5	<p>Final Determination: After receiving a response from the beneficiary, or waiting 60 days, whichever is earlier, determine whether the beneficiary is a fugitive felon by reviewing the evidence submitted in response to our notice.</p> <table border="1" data-bbox="285 1499 1349 1866"> <thead> <tr> <th data-bbox="285 1499 818 1535">If...</th> <th data-bbox="818 1499 1349 1535">Then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="285 1535 818 1866"> <ul style="list-style-type: none"> • The beneficiary or the court that issued the warrant submits documentation that is inconsistent or contradictory with the FFP-3 </td> <td data-bbox="818 1535 1349 1866"> <ul style="list-style-type: none"> • Review all evidence available and determine whether or not the beneficiary should be designated as a fugitive felon. • Follow the guidance in the below two blocks for further procedures depending on whether the beneficiary is found to be a </td> </tr> </tbody> </table>		If...	Then...	<ul style="list-style-type: none"> • The beneficiary or the court that issued the warrant submits documentation that is inconsistent or contradictory with the FFP-3 	<ul style="list-style-type: none"> • Review all evidence available and determine whether or not the beneficiary should be designated as a fugitive felon. • Follow the guidance in the below two blocks for further procedures depending on whether the beneficiary is found to be a
If...	Then...					
<ul style="list-style-type: none"> • The beneficiary or the court that issued the warrant submits documentation that is inconsistent or contradictory with the FFP-3 	<ul style="list-style-type: none"> • Review all evidence available and determine whether or not the beneficiary should be designated as a fugitive felon. • Follow the guidance in the below two blocks for further procedures depending on whether the beneficiary is found to be a 					

	<ul style="list-style-type: none"> • The beneficiary acknowledges the validity of the warrant, or • Does not respond to the due process notice 	<p>fugitive felon.</p> <ul style="list-style-type: none"> • Conclude that the beneficiary has fled from justice or violated a condition of probation or parole and, thus, is a fugitive felon. • Terminate the beneficiary’s award based on the facts found under the EP 600. • Follow the procedures in M21-1MR, X, 16.2.i to discontinue payments. Send a notice of adverse action (Enclosure 2) to the beneficiary.
	<p>The beneficiary submits one of the following:</p> <ul style="list-style-type: none"> • A copy of a court order that clears or vacates the warrant within 30 days of issuance; • Evidence that a court specifically determined the warrant void from its inception because of mistaken identity or a defect in the warrant; • A certified copy of a court order that finds the recall is effective from a specific date that is on or before the date of the warrant; • A certified copy of a court order that states or uses the terminology “nunc pro tunc,” which means that the court order applies retroactively to correct an earlier court order; or • a police report, statement from the Social Security Administration, other government agencies, a bank, or other reporting agency that supports a claim of identity theft 	<ul style="list-style-type: none"> • Conclude that the beneficiary is not a fugitive felon. • Clear the EP 600. • Annotate the original documentation. • Send the beneficiary a letter confirming and continuing payments (Enclosure 3).
<p>6</p>	<p>Follow the guidelines in M21-1MR, Part X, 16.2.e, f, and g if a beneficiary later claims to not be a fugitive felon.</p>	

Please note:

1) VBA will update all applicable manual provisions to reflect this updated guidance.

For Enclosures 1, 2, and 3, until these documents are available in VBMS, field stations will use legacy systems (e.g., MAP-D) to develop these documents.

VBA will also update Modern Awards Processing-Development (MAP-D), Personal Computer Generated Letter (PCGL), and the Veterans Benefits Management System (VBMS) with the enclosed letters. For Enclosures 1, 2 and 3, claims processors should insert the text of the enclosed letter templates in MAP-D or PCGL as appropriate. Once these letters are completed, the enclosures will be uploaded into VBMS.

2) If the fugitive felon referral form included an FFP-4, VA Feedback Form, complete the FFP-4 and send it to the VAVBAWAS/CO/212A mailbox (212A.VBACO@va.gov). The FFP-3 form should remain in the claims file.

Insurance

When Insurance Service receives the fugitive felon matches as defined earlier in this document, Insurance Service will notify the insured of the warrant and Insurance Service's proposed termination of benefits. Insurance Service will afford insureds 60 days to respond with evidence indicating that the warrant was entered in error.

Following an insured's response, or expiration of the 60-day period for response, Insurance Service's Program Administration and Oversight Staff will determine whether the insured is or was a fugitive felon based on all the evidence and facts found.

If Insurance Service determines that the insured is a fugitive felon, Insurance Service will terminate all current and future insurance actions and send a final notification letter of fact. The Insurance Information Technology systems will be updated to limit access to insured's records. Access to these records is limited to select employees of Insurance Service's Program Administration and Oversight Staff and Business System Support Staff.

If Insurance Service determines that the insured is not a fugitive felon, Insurance will retroactively adjust any payments due as of the specified period and notify the insured when the warrant is cleared based upon facts found.

Education

Regional Processing Offices (RPOs) should continue to follow current policies and procedures as outlined in Circular 22-03-01 "*Fugitive Felon*" Provisions of PL 107-103, August 27, 2003, and all subsequent advisories except to the extent that previous guidance conflicts with VBA's new

VBA Letter 20-14-09

policy, which no longer presumes that any valid outstanding felony arrest warrant establishes a Veteran's or beneficiary's fugitive felon status under 38 U.S.C. § 5313B. As such, the RPOs must provide the Veteran or beneficiary an opportunity to present evidence that he or she did not flee from justice, and the RPO must determine -- based upon the warrant, evidence submitted by the Veteran or beneficiary, or any other evidence gathered through development -- that it is more likely than not that the Veteran or beneficiary was fleeing from justice or violated a condition of probation or parole.

If there are additional questions, please contact the Policy and Regulations Development Team at VAVBAWAS/CO/225C.

Vocational Rehabilitation and Employment

When Vocational Rehabilitation and Employment (VR&E) Service receives notification from 20E that a Veteran has a felony warrant with an offense code indicating flight or a probation or parole violation, VR&E Service notifies the VR&E Officer (VR&EO) that the Veteran may be an assigned case on his or her workload. The VR&EO must review the Veteran's record to determine if he/she received benefits during the time period in question, determine whether the Veteran is a fugitive felon, and adjust benefits accordingly. A Veteran who is eligible for VR&E benefits may not receive benefits for any period during which he/she is a fugitive felon. A Veteran's benefits must be adjusted if he or she was receiving payments as authorized under a plan of services during the time in which he or she was a fugitive felon. Beneficiaries (e.g., children, spouses) of Veterans who are fugitive felons may not receive any benefits while the Veteran is in a fugitive felon status.

Due process must be provided for 60 days prior to taking action in accordance with this letter and Public Law (PL) 107-103, Veterans Education and Benefits Expansion Act of 2001, if benefits are adjusted resulting in the termination or suspension of payments. Subsequent to the 60-day due process period, the Vocational Rehabilitation Counselor (VRC) must adjust the Veteran's award if he/she received chapter 31 subsistence allowance during the period that the Veteran was a fugitive felon. However, a Veteran's request for a hearing causes the VRC to defer adjustment action. The VRC must terminate a Veteran's subsistence allowance while the Veteran is in fugitive felon status, and send him/her a letter notifying the Veteran that benefits have been terminated, if the Veteran has not requested a hearing. December 27, 2001, the effective date of PL 107-103, is the earliest date that subsistence allowance can be terminated.

Once the VRC confirms the Veteran is no longer considered a fugitive felon, the VRC will restore VR&E benefits and/or adjust retroactively any payments due as of the specified period and notify the VR&E participant when the warrant is cleared based upon facts found. Refer to VR&E Procedures Manual, M28R.V.D.3, *Incarcerated and Fugitive Felon Veterans*, for additional information.

Claims for Restoration of Benefits

Prior to release of this VBA letter, VBA presumed that a beneficiary was a fugitive felon if he or she was the subject of any felony arrest warrant. In any claim for restoration of benefits discontinued under the presumption, any new and material evidence of non-flight, including lay testimony, provided by a beneficiary whose award was terminated under previous procedures, will be accepted as sufficient to support reopening a claim for restoration of benefits. In such reopened claims, do not apply the presumption of flight, but maintain payments in discontinued status only if evidence establishes that the beneficiary is fleeing to avoid prosecution, custody, or confinement or is violating a condition of parole for a felony. Otherwise, payments may be resumed based on the policy set forth in this letter.

Effective Date for Restoration Claims

The effective date of restoration of benefits under this policy shall be set in accordance with 38 CFR § 3.400(q), *New and material evidence (§3.156) other than service department records*.

Restoration based on new and material evidence received within the appeal period or prior to appellate decision affirming previous termination of benefits (if appealed): as though the former decision had not been rendered. This typically means the benefits are restored effective the date they were previously terminated.

Restoration based on new and material evidence received after final termination: date of receipt of new claim or date entitlement arose, whichever is later.

QUESTIONS

General questions concerning this policy should be directed to VAVBAWAS/CO/212A. Questions regarding Service-specific procedures should be addressed directly to the affected Service.

/s/

Allison A. Hickey
Under Secretary for Benefits

Enclosures

Enclosure 1 – Pre-determination Letter

Enclosure 2 – Post-determination Letter – Notice of Adverse Action

Enclosure 3 – Post-Determination Letter: Confirming and Continuing Payments