

DATE: 07-17-90

CITATION: VAOPGCPREC 29-90
Vet. Aff. Op. Gen. Couns. Prec. 29-90

TEXT:

Subject: Request for Waiver--Education Loan

(This opinion, previously issued as General Counsel Opinion 12-79, dated October 5, 1977, 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.)

QUESTION PRESENTED:

Does the Administrator's waiver authority include an indebtedness to the VA as a result of default in repayment of an education loan?

COMMENTS:

Loan default under the Veterans and Dependents Education Loan Program is governed by section 1798(e) of title 38, United States Code, which reads, in part, as follows:

"(e)(1) Except as provided in paragraph (2) of this subsection, whenever the Administrator determines that a default has occurred on any loan made under this subchapter, the Administrator shall declare an overpayment, and such overpayment shall be recovered from the veteran or person concerned in the same manner as any other debt due the United States.

"(2) If a veteran or person who has received a loan under this section dies or becomes permanently and totally disabled, then the Administrator shall discharge the veteran's or person's liability on such loan by repaying the amount owed on such loan." (Emphasis added.)

Section 3102 of title 38, United States Code, provides in part that:

"(a) There shall be no recovery of payments or overpayments of any benefits under any of the laws administered by the Veterans Administration whenever the Administrator determines that recovery would be against equity and good conscience, if an application for relief is made within two years from the date of notification of the indebtedness by the Administrator to the payee." (Emphasis added.)

Since the education loan program provisions were added to and became a part of the general statutory VA benefits law, it must be presumed, absent explicit language to the contrary, that the Congress intended that such provisions be consistent and harmonious with title 38, United States Code. Therefore, if section 3102(a) is found to embrace recovery of education loan defaults, the Administrator clearly has authority to waive such indebtedness, unless expressly precluded by other law.

We find no statutory expression of congressional intent to exclude education loan default from the Administrator's general waiver authority. Nor, in our opinion, does the discharge of loan liability upon the death or permanent and total disability of the eligible person under 38 U.S.C. § 1798(e)(2), impliedly exclude waiver consideration under 38 U.S.C. § 3102(a) as to default indebtedness in other circumstances.

Moreover, construing section 3102(a), we find that the general terminology "payments or overpayments of any benefits under any laws administered by the Veterans' Administration" (emphasis added), contained in that provision, is so comprehensive as to reasonably encompass education loans. The legislative history of section 3102 does not suggest that the Congress intended a more limited construction.

Historically, there is indication of both VA and congressional policy toward granting the Administrator uniform authority to waive recovery of payments or overpayments of all VA benefits. For instance, in its official report on H.R. 3805, 84th Congress (a precursor of Public Law 85-56, the "Veterans' Benefit Act of 1957") the VA commented with respect to section 703, a waiver provision of that bill, that "for the sake of uniformity, it is believed that the authority to waive overpayments in meritorious cases should apply to all benefits under the act." Nevertheless, when Public Law 85-56 was enacted, consolidating certain laws, including the waiver authority, servicemen's indemnity was expressly excepted from the general waiver provision (section 1002, later codified as 38 U.S.C. § 3102. No explanation was given for this sole exclusion. The exception, however, was later eliminated by Public Law 92-328 since no justification was found for its retention. (See H. Rept. 1125, 92d Cong., 2d Sess., pp. 5, 16-19.)

Thus, if the Congress intended to depart from this policy as to recovery of any particular benefit, we believe it would have expressed its intent in clear and unmistakable language. We do not find that it did so with respect to education loan recovery.

We have considered that such loans, in certain respects, are distinguishable from other forms of assistance provided under title 38, United States Code, most notably in that the loans must be repaid, with interest, under the terms of statutorily required promissory notes. We have also noted that your concern that

the manual provisions and VA regulations pertaining to waiver do not embrace education loans, and, in particular, that the definition of the term "overpayment" under VA Regulation 962 (38 C.F.R. § 1.962) does not appear to include education loan default indebtedness. We note, however, that the Congress, presumably with full knowledge of existing regulations, expressly provided in 38 U.S.C. § 1798(e)(1) that upon education loan default, the Administrator "shall declare an overpayment, and such overpayment shall be recovered" (emphasis added) in the same manner as any other debt due the United States.

Thus, the primacy of this statutory expression is dispositive as to what constitutes an overpayment. Additionally, it is our opinion that the term "benefits" as used in the statutory waiver provision must be read in its broad sense and, so read, fairly includes the "...supplementary assistance to veterans and eligible dependents ..."

afforded by the education loan program. (S. Rept. 1240, 93d Cong., 2d Sess., p. 33.) See Waters v. U.S., 316 F.2d 301 (5th Cir. 1963), wherein the term "benefits" as used in similar phraseology under 38 U.S.C. § 3202 was construed in its "broad sense."

HELD:

The Administrator's waiver authority under 38 U.S.C. § 3102 applies uniformly to overpayments of any VA benefits, and this includes education loan default indebtedness.

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