Fugitive Felon Program

Trainee Handout

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Objectives

* Identify characteristics of the fugitive felon program
* Identify Office of Inspector General (OIG) responsibilities related to fugitive felons
* Identify VA responsibilities when processing fugitive felon referrals
* Differentiate effective dates for fugitive felon status
* Differentiate the requirements to maintain or terminate fugitive felon status and payments

References

All M21-1 references are found in the [Compensation and Pension Knowledge Management (CPKM) Portal](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034).

* [VAOPCGPREC 7-2002 VA Termination of Benefits of Fugitive Felons Under Section 505 of Public Law No. 107-103](http://www.bing.com/search?q=vaopcgprec+7-2002&src=ie9tr)
* [Public Law 107-103](http://www.bing.com/search?q=public+law+107-103+fugitive+felon&qs=AS&pq=public+law+107-103&sk=AS1&sc=4-18&sp=2&cvid=15816A1C6D5C44D9A0D6F86175E2AFA3&FORM=QBRE)
* [38 U.S.C. 5313B, Prohibition on providing certain benefits with respect to persons who are fugitive felons](https://www.law.cornell.edu/uscode/text/38/5313B)
* [38 CFR 3.665 Incarcerated Beneficiaries and Fugitive Felons – Compensation](https://www.law.cornell.edu/cfr/text/38/3.665)
* [38 CFR 3.666 Incarcerated Beneficiaries and Fugitive Felons – Pension](https://www.law.cornell.edu/cfr/text/38/3.666)
* [38 CFR 3.31(c)](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38#se38.1.3_131) Exclusion – Commencement of the Period of Payment
* [M21-1, Part X, Chapter 8 Fugitive Felon Match](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015144/M21-1-Part-X-Chapter-16-Fugitive-Fel)
* [VBA Letter 20-14-09](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015144/M21-1-Part-X-Chapter-16-Fugitive-Fel)

Topic 1: Overview of the Fugitive Felon Program

Fugitive Felon

A fugitive felon is a person who is a fugitive by reason of:

* Fleeing 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
* Violating a condition of probation or parole imposed for commission of a felony under federal or state law

**Felony**

A person convicted in a court of law of a felony crime is known as a felon. The federal government defines a felony as a crime punishable by death or imprisonment in excess of one year. If punishable by exactly one year or less, the offense is classified as a misdemeanor. A felony includes a high misdemeanor under the laws of a state that would be a felony offense under federal law.

**38 U.S.C. 5313B**

38 U.S.C. 5313B states that a Veteran who is otherwise eligible for a VA benefit may not receive such benefit for any period during which the Veteran is a fugitive felon.

In addition, a dependentof a Veteran who is otherwise eligible for a benefit may not be paid or otherwise provided such benefit for any period during which the Veteran or dependent is a fugitive felon.

Terms

In order to gain a better understanding of the fugitive felon program, it is important to understand the following terms:

* Dependent
* Arrest warrant
* Office of Inspector General (OIG)

**Dependent**

For VA purposes, a dependent is a spouse, child, or dependent parent (compensation or DIC cases only) of a Veteran.

**Arrest Warrant**

An arrest warrant is a warrant issued by and on behalf of the state, which authorizes the arrest and detention of an individual. An arrest warrant is an order from a magistrate or other official authorized to issue warrants directing that a named individual be arrested and brought before the issuing official.

**Department of Veteran Affairs Office of Inspector General (OIG)**

“OIG”is an abbreviation for the Department of Veteran Affairs Office of Inspector General. **OIG’s m**ission **is to help VA ensure that Veterans and their families receive the care, support, and recognition they have earned through service to their country. OIG strives to help VA achieve its vision of becoming the best-managed service delivery organization in government. OIG continues to be responsive to the needs of its customers by working with the VA management team to identify and address issues that are important to them and the Veterans served.**

Prohibition of the Payment of Benefits

The provisions of 38 U.S.C. 5313B apply to the following VA benefits/programs:

* Disability compensation and death compensation
* Dependency and Indemnity Compensation
* Veterans and Survivors Pension
* Hospital, nursing home, domiciliary and medical care
* Montgomery GI Bill (active duty) (38 U.S.C. Chapter 30)
* Vocational Rehabilitation (38 U.S.C. Chapter 31)
* Veterans Educational Assistance Program (VEAP) (38 U.S.C. Chapter 32)
* GI Bill under 38 U.S.C. Chapter 34
* Survivors and Dependents’ Educational Assistance (38 U.S.C. Chapter 35)
* Home Loan Program

Notes:

* The prohibition of the payment of benefits does not apply to awards of Old Law Pension or Section 306 Pension.
* Dependent children of a fugitive surviving spouse may receive benefits in their own right. However, a primary beneficiary may not receive additional compensation or DIC or a higher maximum annual pension rate for a fugitive felon dependent.

Address Requests

Upon written request of federal, state, or local law enforcement, VBA will furnish the most recent address maintained by VA of a person eligible for any of the benefits specified above.

If a request is received from federal, state, or local law enforcement, the request must:

* Provide information that VA requires to fully identify the person
* Identify the person as being a fugitive felon
* Certify that apprehending the person is within the realm of duties of this official

Topic 2: OIG and VA Responsibilities

OIG Responsibilities

OIG is responsible for:

* Entering into computer matching agreements with law enforcement agencies
* Matching lists of individuals with a felony arrest warrant, to which one of the offense codes shown in M21-1, Part X, 8.1.e has been assigned, against VA records to identify beneficiaries and dependents of beneficiaries that might be fugitive felons
* Investigating each matched case to determine whether the individual with the felony arrest warrant and the VA beneficiary or dependent are the same person
* Referring matched cases, electronically, to the Veterans Benefits Administration (VBA), on *Form FFP-3, VA Investigative Summary Form*, and
* Providing VBA with ongoing advice, assistance, and investigative resources to help resolve issues concerning the legal status of any alleged fugitive felons.

**OIG Fugitive Felon Identification Process**

|  |  |
| --- | --- |
| **Stage** | **Description** |
| 1 | OIG routes to VBA batches of *Forms FFP-3* with the names of individuals that are receiving benefits from VA or are dependents of VA beneficiaries |
| 2 | For each fugitive felon case that meets the criteria for automated processing, VA systems* Establish an end product (EP) 600,
* Generate a notice of proposed adverse action, and
* Send the notice to the affected beneficiary (and apportionee, if the apportionee is the fugitive felon).

If the case does NOT meet the criteria for automated processing, the system will generate an EP 290. |
| 3 | VBA uploads the *Forms FFP-3* to the appropriate electronic claims folder.**NOTES**: Generally, VBA does NOT upload Form FFP-3 if the warrant for which the form was generated was cleared within 30 days of issuance.If the fugitive felon case remains eligible for automated processing, there is no further RO action required. ROs must follow the instructions in [M21-1, Part X, 8.2.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015136/M21-1%2C%20Part%20X%2C%20Chapter%2008%20-%20Fugitive%20Felon%20Match#2b), for each fugitive felon case that did *not* meet the criteria for automated processing (as indicated by the generation of the EP 290 referenced in Stage 2).Note: There are times a case may *initially* meet the criteria for automated processing but will later require manual processing by the RO (see M21-1, Part X, 8.2.c). |

**VBA Claim Development Considerations**

Important points to consider when working a fugitive felon case:

* Development is usually not necessary since OIG verifies that the warrant was still outstanding before referral to VA
* Do not take adverse action without first providing due process
* Process award adjustments (to stop or reduce benefits) under EP 600
* EP 290 date of claim (DOC) is the date of the OIG referral
* EP 600 DOC is the current date
* The Form FFP-3 remains in the eFolder. If Form FFP-4 is attached, complete and send it back to VA Central Office
* Do not initiate due process on a fugitive felon case without a referral from OIG on Form FFP-3 or similar document
* If you identify a possible fugitive felon through other sources, send an e-mail with identifying information about the individual and other available details to the VAVBAWAS/CO/212A mailbox. Compensation Service will refer the information to OIG to determine whether to issue Form FFP-3 or other referral document. Document the information received on VA Form 27-0820, Report of General Information, and do not take further action until a response is received from OIG.

**VBA Responsibilities**

VBA is responsible for:

1. Controlling each *Form FFP-3* it receives from OIG
2. Providing notice of proposed adverse action to the affected beneficiary
3. Determining whether it is more likely than not that the individual named on *Form FFP-3*
	1. *fle*d from justice, or
	2. violated a condition of probation or parole
4. Stopping or reducing the beneficiary’s award (if the determination referenced in the above bullet is unfavorable) during the period(s) when the beneficiary or beneficiary’s dependent is/was in a fugitive felon status
5. Notifying the beneficiary of the decision, whether favorable or unfavorable, and
6. Resuming benefits upon receipt of adequate evidence showing the beneficiary or beneficiary’s dependent is no longer a fugitive felon.

**NOTE**: Steps 1-5 may be accomplished via the automated process

**Manual Processing by RO**

If a fugitive felon case does not meet the criteria for automated processing, the system will establish an *EP 290-Fugitive Felon*, and assign the EP to an RO for manual processing.

A case may initially meet the criteria for automated processing then later require manual processing if:

* Beneficiary (and/or apportionee, if the apportionee is the fugitive felon) responds to the notice of proposed adverse action
* Beneficiary (and apportionee, if applicable) does not respond, but:
	+ the award is currently stopped or suspended
	+ there is history of an award override
	+ a withholding is in place (recoupment, apportionment, etc.)
	+ a separate award adjustment is pending authorization
	+ new documents were recently added to the e-folder

When the above occurs, take the actions in the following table:

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Make sure name, date of birth, and Social Security number printed on *Form FFP-3* match the individual (beneficiary or dependent) to or for whom VA has awarded benefits. If the information does NOT match, send an e-mail to VAVBAWAS/CO/212A (VSCs) or VAVBAWAS/CO/P&F POL & PROC (PMCs) and wait for a response. |
| 2 | If the information on *Form FFP-3* does match:* Clear the EP 290, and
* Establish EP 600 with the current date as the date of claim, enter a contention, and add Potential Under/Overpayment as a special issue.
 |
| 3 | Prepare and send the beneficiary (and apportionee, if applicable) the notice of proposed adverse action in the Letter Creator tool. If Form FFP-3 lists an arrest or “warrant invalid” date, the notice should also inform him/her that VA will resume the award effective that date.**REMINDER**: Make sure the notice includes the required elements discussed in M21-1, Part I, 2. |
| 4 | When the beneficiary (and apportionee, if applicable) responds, or 65 days pass, whichever occurs first, decide whether or not an award adjustment is required.**NOTE**: If a hearing is timely requested, it must be held before a decision is made. |

 |

**Making a Decision**

Upon expiration of the due process period, or receipt of a response from the beneficiary (and apportionee, if the apportionee is the fugitive felon) before the due process period ends, use the information in the table below to determine whether an award adjustment is necessary:

|  |  |
| --- | --- |
| **If** | **Then** |
| The beneficiary (or apportionee, if applicable) acknowledges the validity of the warrant listed on Form FFP-3 or fails to respond | Adjust the beneficiary’s (and apportionee’s, if applicable) award under the pending EP(s) 600 and notify the beneficiary (and apportionee, if applicable) using the letter in the Letter Creator tool. If evidence of records establishes that the beneficiary/dependent is no longer a fugitive felon, then resume the payment of benefits at the same time. |
| The beneficiary (and/or apportionee, if applicable) submits official documents from a court, police department, or other government agency showing:* The warrant was cleared/vacated within 30 days
* The warrant was determined to be void from its inception due to a mistake or defect
* The warrant was recalled from a specific date that is prior to the date of the warrant
* The terminology “nunc pro tunc” was used
* The warrant may have been due to identity theft
 | Clear the pending EP 600 and notify the beneficiary (and apportionee, if applicable) using the letter in the Letter Creator tool.Leave a permanent note in VBMS to explain why no award adjustment was made.  |
| The beneficiary (and/or apportionee, if applicable) or the court that issued the warrant submits official documents that contradict the information shown on Form FFP-3 and the RO is unable to resolve the inconsistencies  | E-mail a summary of the inconsistencies to VAVBAWAS/CO/212A (VSCs) or VAVBAWAS/CO/P&F POL & PROC (PMCs) and take no further action until a response is received.If the fugitive felon status is NOT confirmed:Clear the pending EP 600 and notify the beneficiary (and apportionee, if applicable) using the letter in the Letter Creator tool. |

Topic 3: Fugitive Felon Status

**Fugitive Felon Status Start and End Dates**

* **Start Date**: A person is considered to be in a fugitive felon status from the later of the following dates:
	+ the date of the warrant
	+ December 27, 2001, the effective date of 38 U.S.C. 5313B

Discontinue the award effective the later of the dates listed above.

* **End Date**: A person is no longer in a fugitive felon status from the earlierof the following dates:
	+ the date of arrest for the particular warrant that is the subject of the referral from OIG
	+ the date the warrant is determined to be invalid by the warrant agency, a court, or OIG

**NOTE**: Award adjustments based on fugitive felon status are not processed like award adjustments based on incarceration. We adjust the award effective the date of the warrant (or December 27, 2001, whichever is later); we do NOT wait until the 61st day after fugitive felon status begins.

Resumption of Payments

* Beneficiary Responsibilities
* VA Responsibilities
* 38 CFR 3.31(c)
* Notice That Fugitive Status Has Ended

**Beneficiary Responsibilities**

Before VA may resume payments, the following must occur:

* The beneficiary notifies VA that he/she is no longer in fugitive status
* The beneficiary submits official documentation or provides contact information of an official who can verify fugitive felon status has ended
* VSR documents information received via telephone on VA Form 27-0820, Report of General Information

**NOTE**: The beneficiary is responsible for contacting VA to request reinstatement of benefits

**VA Responsibilities**

Once a beneficiary is out of fugitive felon status, resume benefits at the rate at which the beneficiary is otherwise entitled. The effective date is the date of arrest for the warrant that is the subject of the referral from OIG or the date the warrant is determined invalid by the warrant agency, a court, or OIG, if the request for resumption is received within a year of that date. *Exception*: If the request for resumption is NOT received within a year, the effective date for resumption is the first of the month following the date VA received the request.

**38 CFR 3.31(c)**

38 CFR 3.31(c) provides an exception to the general provisions of 38 CFR 3.31. The resumption of payments is nottobedeferred until the first of the following month.

* Example: Joe Smith’s fugitive felon status ended October 14, 2018. Resume his payment effective October 14, not November 1.
* Exception: If John Smith failed to reopen a claim within one year after notification of the discontinuance of benefits, or within one year of of the date his fugitive felon status ended, resume payments, if appropriate, from the date of claim, and delay payments until the first of the month after the effective date of the award per 38 CFR 3.31.

**Notice That Fugitive Status Has Ended**

Establish a new EP 290 when an award has been discontinued/reduced and the beneficiary contacts VA alleging he/she/a dependent is no longer a fugitive.

Before VA may resume the payment of benefits to which the beneficiary is otherwise entitled, the beneficiary must provide to VA:

* A court order or letter from the warrant agency confirming the , or
* The name, title, and address or telephone number of an official who can verify the beneficiary/dependent is no longer a fugitive

Uncorroborated statements made by the beneficiary, a family member, or a private attorney are not acceptable to establish that a beneficiary/dependent is no longer a fugitive.If the beneficiary does not furnish acceptable documentary proof that he or she is no longer a fugitive but does furnish the name and address or telephone number of an official (parole officer) who can verify this information, then contact that official.

**Status Confirmation**

Status confirmation can be handled in one of the following ways:

* Contact an Official
* OIG Fugitive Felon Coordinator
* Beneficiary Notification
* Request for Hearing

**Contact an Official**

The VSR should make one attempt to contact an official to establish a beneficiary/dependent is no longer a fugitive. However, it is ultimately the responsibility of the beneficiary to provide evidence the fugitive status has been cleared. If an official confirms the beneficiary/dependent is no longer a fugitive, document the information on VA Form 27-0820, Report of General Information.

**OIG Fugitive Felon Coordinator**

It is appropriate to contact the OIG Fugitive Felon Coordinator for guidance if the

* VSC or PMC is having difficulty:
* Obtaining information from a law enforcement agency or other official agency regarding the status of the warrant, or
* Making sense of the information it received, or
* Beneficiary (or apportionee, if applicable) admits there was a valid warrant but:
	+ reports he/she (or a dependent, if applicable) never received notice of the warrant, or
	+ alleges other extenuating circumstances that prevented clearing of the warrant

**How to Contact the OIG Fugitive Felon Coordinator:**

* Send an e-mail to:
	+ VAVBAWAS/CO/212A (VSCs), or
	+ VAVBAWAS/CO/P&F POL & PROC (PMCs)
* Request the name of the regional OIG Fugitive Felon Coordinator, and
* Specify the jurisdiction where the warrant was issued

When the name of the OIG Fugitive Felon Coordinator is received, contact him/her by e-mail with a concise summary of the known facts and the issue to be resolved.

**Beneficiary Notification**

If you are unable to contact the official using the information provided by the beneficiary, advise the beneficiary by letter and remind him/her that payment cannot resume until VA receives proof that the beneficiary/dependent is no longer in a fugitive felon status. After sending the letter, clear the EP 290.

**Request for Hearing**

When a fugitive felon requests a hearing, schedule using normal procedures and send an e-mail to VAVBAWAS/CO/212A (VSCs) or VAVBAWAS/CO/P&F POL & PROC (PMCs) that includes:

* Information identifying the fugitive felon
* The date and location of the hearing, and
* The name of a point of contact at the VSC or PMC

Compensation Service or P&F Service sends the information to OIG to coordinate with the appropriate law enforcement authorities. If the LEA plans to apprehend the fugitive, the RO will be notified; otherwise, proceed with the hearing as usual.

**Warrants**

If a beneficiary presents to an LEA in a jurisdiction other than that which issued the warrant, it is the responsibility of the beneficiary to take the steps necessary to get the warrant cleared.

If the warrant agency will not extradite, and the local law enforcement agency does not arrest the beneficiary on the warrant, the individual is in fugitive status until the warrant is cleared by arrest or otherwise.

**Validity of Warrants**

A warrant is valid until the date it is declared invalid for any reason.

In cases where a warrant is dismissed, recalled, or quashed, a valid warrant exists through the date the warrant is cleared. VA benefits are subject to adjustment from the warrant date (or December 27, 2001, whichever is later) until the recall, dismissal, or quash date.

**Multiple Warrants**

There may be multiple warrants on an individual fugitive. Do not resume benefits without determining that the warrant that has been cleared is the same as the warrant that was the subject of the fugitive felon referral.

**Void Warrant, Recall, Nunc Pro Tunc**

Do not adjust or discontinue an award when:

* The warrant is specifically determined to have been void from its inception because of mistaken identity or a defect in the warrant
* The court order:
	+ states that the recall is effective from a specific date that is on or before the date of the warrant, or
	+ uses the terminology “nunc pro tunc,” a Latin term for “now for then,” which refers to changing back to an earlier date of an order (i.e., a court order that applies retroactively to correct an earlier court order)

Reinstate benefits in these cases, if they have been reduced or discontinued, effective the date of reduction or discontinuance.

**Incarcerated Felon**

Do not assume that a warrant is cleared when a beneficiary/dependent is incarcerated unless he/she is incarcerated by the agency that issued the warrant.

Example: The evidence shows the beneficiary is incarcerated by the New Jersey Department of Corrections, and the warrant was issued by the New Jersey Department of Corrections.

**Lodging the Warrant**

Lodging the warrant describes a situation in which a fugitive felon is incarcerated for reasons unrelated to the warrant that was the subject of the fugitive felon referral. In this situation, the warrant agency may file notice of the warrant at the prison facility.

If there is documented evidence that a warrant was lodged at a prison facility, you may consider the warrant cleared and the beneficiary or dependent removed from fugitive status as of the date the warrant agency lodged the warrant at the prison facility.

**Dependents That Are Fugitive Felons**

When a dependent of a primary beneficiary is a fugitive, consider the following:

* If the fugitive is the only dependent on the award, consider the primary beneficiary to be without a dependent during the period the dependent is in fugitive status.
* If there are multiple dependents, remove the dependent who is in fugitive felon status.

Remove the dependent from the award effective the later of the following dates:

* Date of the warrant
* December 27, 2001, the effective date of 38 U.S.C. 5313B

When reinstating benefits for a dependent, apply the same effective date rules for resuming a primary beneficiary’s award.

**Dependent as Apportionee**

Discontinue an apportionee's award effective the later of the following dates:

* Date of the warrant
* December 27, 2001, the effective date of 38 U.S.C. 5313B

**Pending Claims/Appeals**

After stopping a beneficiary’s award because the ***beneficiary*** is a fugitive felon:

* Discontinue development on and cancel any pending claims or requests for higher-level review (HLR)
* Disallow any claims for increased benefits
* Continue processing any pending legacy appeals

***Exception***: If the beneficiary is no longer a fugitive, continue processing any pending claims or HLRs.

**New Claims**

When a claim is received, the systems and eFolder should be checked to see if benefits are currently discontinued due to fugitive felon status**.**

If a beneficiary files a claim or HLR while in a fugitive felon status:

* Cancel any associated EP (if one was established), and
* If the beneficiary provided a new address, e-mail VAVBAWAS/CO/212A (VSCs) or VAVBAWAS/CO/P&F POL & PROC (PMCs)

**Action on *Form FFP-4***

If *Form FFP-4, VA Feedback Form*, was attached to *Form FFP-3*:

* Complete *Form FFP-4*
* Send an email to VAVBAWAS/CO/212A (VSCs) or VAVBAWAS/CO/P&F POL & PROC (PMCs) that requests the address to which *Forms FFP-4* should be sent, and
* Send the form by regular mail to the address Compensation Service or P&F Service provides in response to the email.

***Note***:  *Form FFP-3* must remain in the claims folder, if a traditional claims folder exists.  (If no claims folder exists, a copy of the form should already exist in the beneficiary’s eFolder.)

Attachment A: Fugitive Felon Status Start and End Dates

**Start Date of Fugitive Felon Status**

For VA purposes, a person is considered in fugitive felon status (and VA must reduce or discontinue benefits accordingly effective) the ***later*** of the following dates:

* The date of the warrant, or
* **December 27, 2001**, the effective date of 38 U.S.C. 5313B

Effective date for discontinuance/reduction of an award is the later of the following dates:

* The date of the warrant, or
* **December 27, 2001**, the effective date of 38 U.S.C. 5313B

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**End Date of Fugitive Felon Status**

A person is considered out of fugitive felon status from the ***earlier*** of the following dates:

* The date of arrest for the particular warrant that is the subject of the referral from the Office of Inspector General (OIG), or
* The date the warrant is determined to be invalid by the warrant agency, a court, or OIG.

**Resumption of payment:**

* A new EP 290 is established when the award has been discontinued/reduced Cancel any associated EP (if one was established), and
* The beneficiary subsequently contacts the RO alleging that he/she/a dependent is no longer a fugitive.
* Acceptable proof that a beneficiary is no longer a fugitive felon is required to resume benefits.
* Once a beneficiary is determined to be out of fugitive felon status, resume benefits. The effective date to resume an award is the date of arrest for the particular warrant that is the subject of the referral from OIG, or the date the warrant is determined to be invalid by the warrant agency, a court, or OIG, if the request for resumption is received within one year.
* Do not defer the resumption of payments until the first of the following month. This is considered an adjustment under 38 CFR 3.31(c), an exception to the general delayed-payment provisions.
* If the request for resumption is NOT received within a year, the effective date for resumption is the first of the month following the date VA received the request.

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Do ***not*** reduce or discontinue the award in cases in which:

* The warrant is specifically determined to have been void from its inception because of mistaken identity or a defect in the warrant, or
* The court order states that the recall is effective from a specific date that is on or before the date of the warrant, or
* The court order uses the terminology “nunc pro tunc,” which refers to changing back to an earlier date of a court order.

Attachment B: Evidence Required to Establish That a Beneficiary Is No Longer in a Fugitive Felon Status

* Official court order or letter from the warrant agency (official source at government level), or
* Beneficiary must provide name, title, and address, or name, title, and telephone number, of an official who ***can*** verify that he/she is no longer a fugitive. Verification is then obtained from this official.

Uncorroborated statements by beneficiary, a family member, or a private attorney may **not** be used to establish that a beneficiary/dependent is no longer a fugitive.

Verifying a Beneficiary/Dependent is No Longer a Fugitive Felon

If the beneficiary does not furnish acceptable documentation that he/she/a dependent is no longer a fugitive but does furnish the name, title, and address or telephone number of an official (e.g., parole officer) who can verify he/she/dependent is no longer a fugitive, then contact that official.If the official confirms that the beneficiary is no longer a fugitive, document this information on VA Form 27-0820, Report of General Information. You now have verification.

**OR**

If you are unable to contact the official with the information the beneficiary providedthen advise the beneficiary of this fact and remind him/her that payment cannot resume until VA receives proof that the beneficiary/dependent is no longer a fugitive. No further action can be taken, and the EP should be cleared.

**OR**

If you contact the official but the official is unwilling to release the information, contact the regional OIG fugitive felon coordinator for assistance.

Attachment C: Sample Notice of Proposed Adverse Action

BONNIE R SMITH

1200 USA ROAD

ANYWHERE USA 00000

Dear Beneficiary,

We have received information indicating that you or a dependent are the subject of a felony arrest warrant. Section 5313B of title 38, United States Code, prohibits the Department of Veterans Affairs (VA) from providing certain benefits to a Veteran or to or for a dependent of a Veteran who is identified as a fugitive felon. A fugitive felon is defined as a person:

(A) Fleeing 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

(B) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

What We Propose to Do

We plan to stop/reduce your benefits effective (*insert issue date of the warrant*), based on the information we received explaining that you/a dependent may be a “fugitive felon.” We will not take any action to stop/reduce your benefits until 60 days from the date of this letter unless you ask us to stop them sooner. We are giving you this time, so you can show us why we shouldn't stop/reduce your benefits.

VA will consider a failure to respond to this letter within 60 days as evidence of fleeing to avoid prosecution, custody, or confinement for conviction of a felony or of a violation of probation or parole for commission of a felony.

This adjustment may result in an overpayment of benefits that we have paid to you from the date of the felony arrest warrant.

What You Should Do

You should contact the law enforcement agency shown below as soon as possible to determine what must be done to establish that you are not a fugitive felon as defined in 38 U.S.C. § 5313B.

**Information About the Warrant:**

Warrant Agency: Name of agency (i.e. South Las Vegas Probation Dept.)

Telephone: (555) 555-5555

Warrant Number: Listed on the warrant (e.g., 3385120582727)

Date of Warrant: (e.g., April 2, 2012)

Warrant Offense Code: Listed on the warrant – Use the code and explanation (code definitions found in M21-1, Part X, 8.1.e)

You should then send us official documentation, such as a court order or letter from the agency issuing the warrant, to show that you are not fleeing from prosecution, custody, or confinement, or that you have not violated conditions of your probation or parole. Include your VA claim number on all documents you send to VA. We have enclosed VA Form 21-4138, *Statement in Support of Claim*, for you to provide any additional information regarding this warrant. You may submit evidence in person, through the mail or through your accredited representative. If you wait more than 60 days to respond, we will carefully consider your supporting evidence. However, the adverse adjustment of benefits we described above will continue until VA reviews your subsequent additional evidence.

Examples of evidence that may show you are not a fugitive felon:

* *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 copy of a court order that recalls the warrant from a specific date that is on or before the date of the warrant;*
* A copy of a court order noting that the warrant was “nunc pro tunc,” correcting the date of an earlier judgment;
* A police report or statement from the Social Security Administration, bank, or other reporting agency confirming theft of your identity; or

You can also provide us with the name, title, address, and telephone number of an official who can verify you are no longer a fugitive felon. We will make reasonable efforts to contact that official. However, it is ultimately your responsibility to provide evidence pertinent to your benefits.

How to Obtain a Personal Hearing

If you desire a personal hearing to present evidence or argument on any point in your claim, notify this office and we will arrange a time and place for the hearing. You may use the enclosed VA Form 21-4138, Statement in Support of Claim, for this purpose. If you want, you may bring witnesses and their testimony will be entered in the record. VA will furnish the hearing room and provide hearing officials. VA cannot pay for any other expenses of the hearing since a personal hearing is held only on your request. Please see the enclosed VA Form 21-0790, Your Rights to Representation and a Hearing (Potential Overpayment), for more information.

If, within 30 days from the date of this notice, VA receives your hearing request, we will continue payments at the present rate until we have held the hearing and reviewed the testimony. Continuing to receive the current rate of payment until a hearing is conducted could result in the creation of an overpayment, which you must repay. If you request a hearing but wish to minimize any overpayment which could result, you should submit a statement asking that we reduce or suspend your benefits beginning with your next check.

You may request a hearing after 30 days; however, we may continue with our proposed action.

How to Obtain Representation

An accredited representative of a veterans' organization or other service organization recognized by the Secretary of Veterans Affairs may represent you, without charge. An accredited agent or attorney may also represent you. However, an accredited agent or attorney may only charge you for services performed after the date you file either a notice of disagreement or supplemental claim, or request a higher-level review. If you desire representation, let us know and we will send you the necessary forms. If you have already designated a representative, no further action is required on your part.

**If You Have Questions or Need Assistance**

If you have any questions, you may contact us by telephone, e-mail, or letter.

|  |  |
| --- | --- |
| **If you wish to contact us**  | **Here is what to do.** |
|  Telephone | Call us at 1‑800‑827‑1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 711. |
|  Use the Internet | Send electronic inquiries through the Internet at https://iris.custhelp.va.gov. |
|  Write | VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached *Where to Send Written Correspondence.* |

In all cases, be sure to refer to your VA file number xxx-xx-xxxx.

If you are looking for general information about benefits and eligibility, you should visit our website at https://www.va.gov or search the Frequently Asked Questions (FAQs) at https://iris.va.gov.

We sent a copy of this letter to your representative, [VSR - *Please include the appropriate representative, if one is designated*.], whom you can also contact if you have questions or need assistance.

***or***

We have no record of your appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

Sincerely yours,

**Regional Office Director**

Enclosures: VA Form 21-4138 Where to Send Written Correspondence

 cc: [Please insert POA, if any.]

Attachment D: Topic 1 Exercise



**Across**

2. Regulation stating Veteran will not receive benefits as a fugitive felon

5. Spouse, surviving spouse, child, dependent parent

6. Office of Inspector General

**Down**

1. Person that has fled to avoid prosecution for a felony crime

3. Authorizes the arrest and detention of an individual

4. Crime punishable by death or imprisonment in excess of one year

Attachment E: Topic 2 Exercise

**Instructions:** In the blank, place VA or OIG to indicate who would be responsible for the action.

|  |
| --- |
| **Responsibility** |
|  | Match lists of individuals with felony arrest warrants with VA records to identify beneficiaries/dependents that may be fugitive felons  |
|  | Control fugitive felon forms referred by OIG  |
|  | Verify that the VA beneficiary and the fugitive are the same person |
|  | When a possible fugitive felon is identified, send an e-mail with identifying information and other available details to the VAVBAWAS/CO/212A mailbox |
|  | Enter into computer matching agreements with law enforcement agencies  |
|  | Discontinue benefits to beneficiaries and dependents during periods when they are in a fugitive felon status  |
|  | Generate Form FFP-3 |
|  | Establish EP 600 with DOC of the current date |
|  | Provide VA with ongoing advice, assistance, and investigative resources to help resolve issues concerning the legal status of fugitive felons |
|  | Resume benefits when adequate evidence is received that the warrant has been cleared |
|  | Initiate due process procedures  |
|  | Process the award adjustment under EP 600 |

Practical Exercise

1. What statute in the U.S.C. prohibits the payment of certain VA benefits with respect to persons who are fugitive felons?
2. To what two benefits does the prohibition of payment under the above regulation not apply?
3. Who is responsible for filling out Form FFP-4?
4. You have received a letter from the county tax collector’s office, stating that they know for certain that Mr. Veteran became a fugitive on June 2, 2006, in California. You have not received a Form FFP-3 from the OIG office. Would you initiate due process to the Veteran?
5. What should you as a VSR do if you contact a government official based on an indication by a beneficiary that the official can verify that the warrant in question is now clear and the official refuses to provide information regarding the status of the felony warrant?

**BONUS QUESTION:** A Veteran’s child is in receipt of Survivors Pension and loses eligibility for benefits because he/she is a fugitive felon. How does this affect the Survivors Pension payable to other children? Clue: VAOPGCPREC 7-2002