

Granting Waivers Under 38 U.S.C. § 3683

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Background

- ▶ On September 14, 2017, VA issued notice in the Federal Register indicating it was proposing to issue a blanket waiver for any VA employee who was otherwise in compliance with the ethics laws
- ▶ After release, VA received opposition to this plan from numerous stakeholders
- ▶ Based on the feedback, instead VA has developed a waiver process through which VA employees with a for-profit connection can request an individual-level waiver determination

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Overview of § 3683

- ▶ Unless a waiver is granted, requires the *removal* of VA employees who, during their VA employment, had certain connections to for-profit educational institutions (“FPEIs”)
- ▶ Prohibited connections:
 - Ownership interest in the FPEI
 - Salary or wages from the FPEI
 - Gift from the FPEI
 - Services (e.g., classes) from the FPEI

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Overview of 38 C.F.R. § 21.4005

- ▶ Establishes waiver framework
- ▶ Waiver standard: FPEI connection results in no “detriment” to the U.S., Veterans, or those entitled to VA benefits
- ▶ Waiver criteria: If an employee’s duties do NOT concern six education related activities, the employee satisfies the waiver criteria
 - Second waiver pathway concerning a former ownership interest, which will be less common for VA employees

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Overview of 38 C.F.R. § 21.4005 (cont.)

▶ Waiver Criteria:

- Policy determinations regarding payment of VA education benefits
- Processing applications for education benefits
- Decisions re individual education benefit applications
- Compliance inspections on education institutions or persons
- Processing claims by, or payments to, schools or students
- Inspection, approval, or supervision of education institutions

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Overview of 38 C.F.R. § 21.4005 (cont.)

- ▶ Satisfying the waiver criteria results in a presumption in favor of granting the waiver
- ▶ Granting officials may grant waivers only to employees who satisfy the waiver criteria
- ▶ For employees who do not satisfy the waiver criteria, only the Under Secretary for Benefits may grant a waiver

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Overview of 38 C.F.R. § 21.4005 (cont.)

- ▶ Granting officials are “facility heads,” for those employees under the jurisdiction of a facility, and the Director, VBA Education Service, for employees not under the jurisdiction of a facility
- ▶ Other than the Director, VBA Education Service, “granting officials” are VAMC Directors, Regional Office Directors, and National Cemetery Directors

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Waiver Request Process

- ▶ Employees will submit waiver requests through an internal VA SharePoint site
- ▶ Employees submit completed requests directly to their immediate supervisors
- ▶ Supervisors confirm employees' duties and review whether employees satisfy waiver criteria
- ▶ After evaluation, supervisors forward requests to appropriate granting official

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Granting a Waiver (cont.)

*in lieu
of
public
hearing
req'd
by
statute*

- ▶ Once waiver is approved by the granting official, data from each request will be posted on public site, www.va.gov/ogc/38_usc_3683.asp
- ▶ If, after 30 days, no comments on a waiver are received from the public, it is automatically approved
- ▶ If the public comments, VA's Office of General Counsel will forward the comment(s) to the appropriate granting official for consideration
 - After 30 days, SharePoint will notify the granting official via e-mail that the individual waiver is ready for final approval
 - After considering the comments, the granting official must approve or deny the waiver

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Granting a Waiver (cont.)

- ▶ If a granting official denies a waiver, either based upon comments received or because the employee does not satisfy the waiver criteria, the waiver will go to VA's Office of General Counsel, which will review for an Under Secretary for Benefits (USB) waiver
- ▶ If the USB denies a waiver, USB will notify employee's supervisor, who must notify the employee and work with HR to begin removal process

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Next Steps – Target Mid-May

- ▶ Brief Hill Staffers *(HVAC+SVAC meetings held already)*
- ▶ Brief VSOs *(May)*
- ▶ Brief State Approving Agency Directors
- ▶ Train VA Waiver Granting Officials
- ▶ Publish Notice in Federal Register
- ▶ Notify all VA Employees
- ▶ Execute media engagement (press release, websites, social media, etc)

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