FPEIs

(b)(6)
For-Profit Educational Institution (FPEI) Waiver

Quick Guide: to help identify the ethical and legal connections to an FPEI and determine whether a VA employee needs a waiver
Overview - Basic Outline of Law

- 38 U.S.C. § 3683 was enacted in 1952.
- The law was written in response to numerous instances where VA employees took official action to benefit for-profit educational institutions with which the employees were affiliated.
- The statute requires appropriate corrective or disciplinary action regarding a VA employee who, at any time during their VA employment, had a certain connection to a for-profit educational institution ("FPEI").
- However, if no detriment will result from a VA employee's connection to an FPEI, employees may request and be granted a waiver from leadership.
- No corrective/disciplinary action will be taken for approved waivers.
Overview - Impact of 9/29/18 Amendments

► On September 29, 2018, 38 U.S.C. § 3683 was amended.
► Modifications to the statute are not retroactive.
► Employees whose for-profit connections began prior to the amendment date are subject to the previous version of the statute.
► Employees whose for-profit connections began on or after that date are subject to the current version.
► The September 2018 amendments to 38 U.S.C. § 3683 included:
  • revisions to public notification of waivers
  • corrective/disciplinary action for denied waivers
  • which VA employees are required to seek a waiver
Guiding your way through the Waiver Process

1. Connection w/ FPEI+?
   - Yes → Connection during VA employment?
   - No → No further action required

2. Connection prior to 9/29/18?
   - Yes → FPEI have Gi Bill eligible students?
   - No → Enter Waiver Request

3. Are services (e.g., classes) your only connection?
   - Yes → Is your position specified in the law?
   - No → Enter Waiver Request

   - Yes → Enter Waiver Request
   - No → Enter Waiver Request

   - Yes → Enter Waiver Request
   - No → Enter Waiver Request
Do I need a Waiver?

Any connections that began **PRIOR TO September 29, 2018**, require that:

- Any employee who had **ANY OF THE PREVIOUSLY LISTED CONNECTIONS** during their VA employment—even if that connection no longer exists—is subject to the statute and must seek a waiver

  - FPEI Connection + While Employed By VA + FPEI is eligible to receive GI Bill Funds = I NEED A WAIVER

Any connections that began **ON OR AFTER September 29, 2018**, require that:

- Only those **POSITIONS SPECIFIED IN THE LAW** must seek a waiver for receiving services from an FPEI

  - FPEI Connection + While Employed By VA + Received Services + Position Specified in Law* = I NEED A WAIVER

- All employees with a connection **OTHER THAN RECEIVING SERVICES** must seek a waiver

  - FPEI Connection + While Employed By VA = I NEED A WAIVER

* All-Volunteer-Force Educational Assistance Program (chapter 30), Vocational Rehabilitation and Employment (chapter 31), Post-Vietnam Era Veterans' Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Veterans' Educational Assistance (chapter 34), Survivors' and Dependents' Educational Assistance (chapter 35), and Administration of Educational Benefits (chapter 36).
What’s my Connection?

Received Services
Received Salary or Wages
Received Gifts
Owned an Interest
Types of Schools

- GI Bill Comparison Tool
  Search results will indicate whether your school is Private, Public or For Profit.

- Only connections to For Profit schools require a waiver.

- For connections that began prior to 9/29/2018, if your school is not listed, it is not eligible to receive GI Bill funds and a waiver is not required.
Is My School For Profit?

► Go to GI Bill Comparison Tool
   https://www.va.gov/gi-bill-comparison-tool

► Enter School Name

► Determine Status
How do I Request a Waiver?

- Go to: [insert link]

- Follow the link to the Waiver Approval Form
Waiver Approval Form

- Complete the required information
- Submit to Supervisor
- Supervisors forward requests to granting official
What if I Need Help or Have Questions?

- Visit the 38 U.S.C. § 3683 Waiver Process Share Point site:

- FAQ’s, Ask a Question Link, Training Material and User Guide are available.
Definitions

**Connection with FPEI** - Had (or will have) a prohibited connection (ownership, salary/wages, gift, services)

**Connection During VA employment** - The connection existed while the person was a VA employee. (No need to submit a waiver request if the connection ended before the person became a VA employee, or if the connection will begin after the person leaves VA employment.)

**Position Specified** - Refers to “covered officers or employees,” which was added to the statute on September 29, 2018, and constitutes the only employees who must seek waivers for receiving services from FPEIs.

**Covered Officers or Employees** - Employees who work on the administration of benefits under chapters 30 through 36 or, as determined by the Secretary, have a potential conflict of interest involving FPEIs.

**Receiving Services from the FPEI** - Paid tuition with personal money; attended classes on personal time; the VA paid part of or all the tuition; the VA allowed changes in a tour of duty for the purposes of attending classes or completing assignments.

**Receiving salary or wages from the FPEI** - Refers to employees who receive salary or wages as a teacher, staff member, or official at an FPEI. If an employee works at an FPEI but does not receive a salary or wages, the employee does not have a prohibited relationship.

**Receiving Gifts from the FPEI** - Refers to employees who receive salary or wages as a teacher, staff member, or official at an FPEI. If an employee works at an FPEI but does not receive a salary or wages, the employee does not have a prohibited relationship.

**Ownership an Interest in the FPEI** - In addition to being an owner or part-owner of an FPEI, this includes owning stock in an FPEI or its parent company. However, employees with investments in diversified mutual funds do not have an ownership interest in an FPEI, even if the diversified mutual fund contains stock in an FPEI or its parent company.
Granting Waivers Under 38 U.S.C. § 3683
Agenda

Overview of statute and regulation
Waiver request process
How to grant a waiver
Recordkeeping
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") that enrolled GI Bill students. Prohibited connections: Ownership interest in the FPEISalary or wages from the FPEIGift from the FPEIServices (e.g., classes) from the FPEI
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—unlikely to see this
Overview of 38 C.F.R. § 21.4005 (cont.)

Waiver criteria: Policy determinations re payment of GI bill benefits. Processing applications for GI bill benefits. Decisions re individual GI bill benefit applications. Compliance inspections on ed. institutions or persons. Processing claims by, or payments to, schools or students. Inspection, approval, or supervision of ed. institutions.
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.
Granting officials are “facility heads,” for those employees under the jurisdiction of a facility, and the Director, VBA Education Service (Robert Worley), 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.
Waiver Request Process

Employees will submit waiver requests via SharePoint:

https://[b](b6)

[b](b6) submit completed requests to their supervisors. Supervisors confirm employees’ duties and whether employees satisfy waiver criteria. Supervisors forward requests to appropriate granting official.
### 38 USC 3863 Waiver Approval Form

This form is used to request approval for waiver.

#### Employee Information

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>(b)(6)</td>
</tr>
<tr>
<td>Position Title</td>
<td>Staff Attorney</td>
</tr>
<tr>
<td>Phone Number</td>
<td>(b)(6)</td>
</tr>
<tr>
<td>Email Address</td>
<td>(b)(6)@va.gov</td>
</tr>
<tr>
<td>Supervisor</td>
<td>(b)(6) OGC</td>
</tr>
<tr>
<td>Employing Office</td>
<td></td>
</tr>
<tr>
<td>Organization</td>
<td>VA Central Office (VACO)</td>
</tr>
<tr>
<td>Office</td>
<td>Office of General Counsel</td>
</tr>
<tr>
<td>Station</td>
<td>N/A</td>
</tr>
<tr>
<td>Brief Description of VA Duties</td>
<td>Provide advice regarding application of govt ethics laws; train employees on govt ethics laws</td>
</tr>
<tr>
<td>For-Profit Educational Institution (FPEI):</td>
<td>Strayer</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>FPEI Connection:</td>
<td></td>
</tr>
<tr>
<td>☑ Ownership Interest in the FPEI (includes owning stock and receiving profits or dividends)</td>
<td></td>
</tr>
<tr>
<td>☑ Salary or wages from the FPEI</td>
<td></td>
</tr>
<tr>
<td>☐ Gifts from the FPEI</td>
<td></td>
</tr>
<tr>
<td>☐ Services from the FPEI (includes classes)</td>
<td></td>
</tr>
<tr>
<td>FPEI Connection Status and Dates:</td>
<td>Current</td>
</tr>
<tr>
<td>Start Date:</td>
<td>4/2/2018</td>
</tr>
<tr>
<td>End Date:</td>
<td></td>
</tr>
<tr>
<td>Brief Description of Your FPEI Connection:</td>
<td>Teach business law class on weekends</td>
</tr>
</tbody>
</table>
Waiver Request Process (cont.)

Employee selects “yes” or “no” regarding whether the employee performs any of the six waiver criteria activities. Employee agrees to follow laws governing outside activities, and submits request.

Supervisor Acknowledgement

I confirm that the employee’s duties are summarized accurately and confirm that the employee [ ] satisfy the waiver criteria.

Date Acknowledged:

Please enter your facility head or, if you are not in a VA facility, the Director, Education Service [Robert Worley]:

[Image of VA and U.S. Department of Veterans Affairs logos]
Granting Official (Preliminary Approval)

Preliminary approval means that you agree that the waiver should be granted. After you approve, the proposed waiver will be subject to public comment for 30 days. If no comments are received, the waiver will be automatically finalized, with no need for your final signature. If comments are received, OGC will forward those comments to you and you will be notified when it is time to grant final approval/disapproval.

Please choose one of the following:

- Approved: Employee meets waiver criteria.
- Denied: Employee does not meet the waiver criteria.
- Denied: Waiver should be denied for other reasons.

Comments:

Submit Preliminary Approval Decision
Granting a Waiver

SharePoint will notify you via email that a waiver request is pending your review. This email will contain a link to the request, along with instructions. What to look for:

1. Description of employee’s duties—does it appear accurate?
2. Does the employee satisfy the waiver criteria?
3. Does the supervisor agree that criteria are satisfied?
4. Independent knowledge of reason to deny waiver?
Granting a Waiver (cont.)

When you review a request, you have no obligation to investigate. Take the facts provided on the request at face value, unless you have independent knowledge of matters outside of the request. If a supervisor or granting official sees mistakes on a waiver, direct the employee to go back into the waiver, correct, and resubmit.
Granting a Waiver (cont.)

As a granting official, as opposed to the USB, it is possible that you will approve every waiver request submitted to you. This is because you should only receive requests from employees who satisfy the waiver criteria.
Granting a Waiver (cont.)

After you agree to grant the waiver and submit the form, the waiver is not yet granted. This is because the statute requires that the public be notified and have the chance to comment before a waiver is granted. After you approve the waiver, OGC will post data from that waiver, for 30 days, on a public website.
Granting a Waiver (cont.)

Waiver denial: Granting officials should deny a waiver when they have knowledge of a detriment, or harm, that occurred or will occur in the employee’s relationship with the FPEI, such as an ethics violation. Examples: public office for private gain, endorsement, or misuse of nonpublic info. Consult with the EST if you believe a waiver should be denied.
Granting a Waiver (cont.)

If, after 30 days, no one comments on a waiver, it is automatically approved. If someone comments, OGC will forward the comment to you. After 30 days, SharePoint will notify you via email that the waiver is ready for final approval. After considering the comments, you must approve or deny the waiver.
Granting a Waiver (cont.)

If you deny a waiver, either based upon comments received or because the employee does not satisfy the waiver criteria, the waiver will go to OGC, which will review for a USB waiver. Before denying a waiver, you may consult with OGC’s Ethics Specialty Team. 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.
Recordkeeping

Once a waiver is finally granted or denied, granting officials may destroy all comments received. The employee will be instructed to forward a copy of the completed waiver to HR for inclusion in the employee’s OPF.
Submit questions not answered in FAQs to (b)(6)@va.gov
For-Profit Educational Institution (FPEI) Waiver Request Process 38 USC 3683 (Revised)
For-Profit Educational Institution (FPEI) Waiver Request Process
38 U.S.C. § 3683

Legend
Employee
Supervisor
Granting Official
Ethics Specialty Team
SECVA/Designee
Internet

*Including ownership interest or receipt of salary, wages, dividends, profits, gifts, or services (including classes).
**If you are uncertain whether FPEI provides services under GI Bill, answer "yes".
***All-Volunteer-Force Educational Assistance Program (chapter 30), Vocational Rehabilitation and Employment (chapter 31), Post-Vietnam Era Veterans' Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Veterans' Educational Assistance (chapter 34), Survivors' and Dependents' Educational Assistance (chapter 35), and Administration of Educational Assistance (chapter 36).
Employee Relationships with For Profit Educational Institutions (FPEI) Waiver Request User Guide

38 U.S.C. § 3683
Version 1.3
6 July 2018
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Background
38 U.S.C. § 3683 was written in 1952. The statute resulted from widespread abuses in the 1950s of VA employees using their government positions (especially at Veterans Benefit Administration (VBA)) to steer other employees to FPEIs, thereby receiving kickbacks.

For many years, VA has not had a standard mechanism in place for dealing with these connections. This statute, and the associated VA regulations in 38 C.F.R. § 21.4005, impact VA employees, State Approving Agencies (SAAs), and GI Bill beneficiaries. The statute prohibits VA employees from having certain connections to for-profit educational institutions.

The statute provides that, unless an employee receives a waiver, VA must remove an employee who, at any time during their VA employment—even in the past—has had a prohibited connection to a for-profit educational institution. However, the requirements for removal of a VA employee and non-approval or disapproval of the course(s) can be averted if the VA employee is granted a waiver. By VA regulation (38 C.F.R. § 21.4005(c)), the authority to waive the requirements has been delegated to facility heads (Medical Center Directors, Regional Office Directors, and National Cemetery Directors), the Director of VBA's Education Service, and the Secretary of Veterans Affairs. The Secretary's waiver authority has been delegated to the Under Secretary for Benefits.

Prohibited Connections
Prohibited connections with a for-profit educational institution include: owning an interest in a for-profit, such as owning stock or owning all or part of a for-profit; receiving salary or wages from a for-profit; receiving gifts from a for-profit; or receiving services, such as classes, from a for-profit.

Any employee who had any of these connections during their VA employment—even if that connection no longer exists—is subject to the statute and must seek a waiver.

For-Profit Educational Institution
For-profit Educational Institution (FPEI) refers to educational entities operated by private, profit seeking organizations. FPEIs operate as businesses where the product sold is education and in doing so generate a positive return, or profit, for their shareholders.

Some examples of for-profit institutions include:
- Kaplan University
- DeVry University
- University of Phoenix
- ITT Technical Institute
• Walden University

A Department of Education website allows employees to determine if an educational institution is for-profit. This information can also sometimes be found on the college’s specific website.

For that reason, VHA recommends that you report ALL relationships with any For Profit institution that is on the Department of Education website above.

Waiver Process

The waiver request procedure was developed by VA’s Office of General Counsel. The process utilizes SharePoint for the intake and review of waiver requests.

Employees who answer “yes” to the following questions must enter a waiver request.
   1. Do I have a relationship with an educational institution?
   2. Is this educational institution for profit?

If the employee is unsure what constitutes a for-profit educational institution refer to For-Profit Educational Institution section of this guide.

Employees must submit one waiver for each FPEI to which they are connected. Employees seeking a waiver will enter the required information into the SharePoint form and route the form to their supervisors. Supervisors will confirm that the employees accurately described their VA duties, confirm whether the employees satisfy the waiver criteria, and then route the form to the appropriate official authorized to grant a waiver. If the granting official decides to grant a waiver, the granting official will indicate preliminary approval via SharePoint, which will notify OGC to post the request to a publicly available website to allow the opportunity for public comment. After 30 days, and review of any submitted comments, waivers will be granted or denied.

Employees will be notified of the result of their waiver request. If a request for waiver is denied, the employee will be given an opportunity to discontinue the prohibited relationship. Only then will the human resources department be notified to initiate termination.

Waiver SharePoint

The waiver request form is located on a SharePoint site and is available to all VA employees. Using the link below will open a new waiver request form.

Employees can also enter a waiver request by accessing the site using this link,
The second link opens a new page (Screenshot 1) and will require the employee to click on “new item” to open the waiver request form.

Screenshot 1.

**Waiver Request Process**

The waiver request process begins when the employee enters the required information and submits the waiver approval form. The request will be routed to their self-identified supervisor. Supervisors will confirm the description of the employee’s duties. The supervisor will also identify the appropriate granting official. If you work for a VHA medical center, the appropriate granting official is the Medical Center Director. If you are a Medical Center Director, or any VISN or VHA Central Office Employee, the appropriate granting official is Mr. Robert Worley, the Director of VBA’s Education Service. The waiver request will then be forwarded to the appropriate granting official. Any errors in the waiver request should be directed back to the employee to correct and resubmit. The statute requires that the public be notified and have the chance to comment before a waiver is granted. Upon approval by the granting official, and OGC will post deidentified data on a public website for 30 days for comment. Requests receiving no comments will be automatically approved. Any comments posted will be forwarded to the granting official for consideration in determining whether to approve or deny waiver.

At any point during the process if the supervisor or the granting officials determine that the employee does not satisfy the waiver criteria the waiver will be forwarded to OGC to proceed through the process.

The basic process is outlined below (Flowchart 1) a more detailed depiction of the waiver request process can be found [Detailed Waiver Process](#).
User Guide

Employee Actions

Employees who have worked for, taken, planning to take, or are registered for classes at a for-profit educational institution must request a waiver or risk having their employment with the VA terminated. Unless a waiver is granted, Federal law (38 U.S.C. § 3683) requires the removal of any VA employee who during their VA employment had certain connections to for-profit educational institutions (FPEIs) approved for training under the GI Bill.

If the employee is unsure what constitutes a for-profit educational institution refer to [For-Profit Educational Institution](#) section of this guide.
Prohibited connections are grouped in four major categories and are outlined below. Receiving Services (such as classes) from the FPEI if one or more of the following criteria are applicable:
- you paid tuition with your own money;
- you attended classes on your own time;
- the VA paid part of or all the tuition;
- the VA allowed you to change your tour of duty to attend classes or complete assignments.

Having an ownership interest in the FPEI, as indicated by an affirmative answer to the following:
- Do you own stock in the FPEI?
- Do you sit on the Board of Directors of the FPEI in a paid or unpaid status?

Receiving salary or wages from the FPEI
- Are you a salaried employee, teacher, staff member or official of the FPEI? If you teach but do not get a salary, then you don’t have a prohibited relationship. However, if you do get faculty “perks” such as free parking, access to online journals, and other benefits that would otherwise cost something, then you are accepting “gifts” from the institution. See Gift section below.

Receiving Gifts from the FPEI
- Gifts can include faculty benefits that otherwise would incur a cost for the VA employee.

Employee Information
The first section of the form contains employee demographic data (Screenshot 2). Required fields are indicated by a red asterisk (*). The employee will enter their name, position, phone number, email address, and office. There is a search function that allows the employee to use the active directory to enter their supervisor’s name. There are drop down menus to choose employee organization, office, and station. Finally, there is a free text box where the employee can briefly describe their VA duties.
The second section captures information about the FPEI (Screenshot 3). Required fields are indicated by a red asterisk (*). The employee selects the for-profit institution they have a relationship with from the drop-down menu provided. If the institution is not included on the list, the employee selects “Other” and types in the full name of the institution in the space provided. Employees must submit one waiver for each FPEI to which they are connected. For the section marked FPEI Connection the employee must select the corresponding box(es) that best define the nature of their connection(s) with the for-profit. The employee then indicates whether the connection is past, current, or future using the drop-down menu. There are also optional fields for the employee to enter the actual start and end dates of the relationship. Finally, there is a free text box (character limit 250) where the employee can briefly describe their connection to the for-profit.
Screenshot 3.

For-Profit Educational Institution (FPEI):
(If your FPEI is not listed, select “Other” and then enter the name of your FPEI.)

FPEI Connection:

- Ownership interest in the FPEI (includes owning stock and receiving profits or dividends)
- Salary or wages from the FPEI
- Gifts from the FPEI
- Services from the FPEI (includes classes)

FPEI Connection Status and Dates:

Start Date:  [ ] End Date:  [ ]

Brief Description of Your FPEI Connection:

Waiver Criteria

In the next section the employee will respond to six duty-based waiver criteria statements (Screenshot 4). These criteria concern VA educational benefits under the GI Bill. These criteria do not concern duties affecting non-GI Bill educational programs, such as the National Nursing Education Initiative (NNEI) program or Health Professions Scholarship program, or any other VA tuition payment or reimbursement program in which VA trains or educates its employees. In other words, an employee whose duties concern the NNEI program, but not any GI Bill program, may satisfy the waiver criteria. Employees will indicate whether their VA duties involve the below activities. Response options for these questions can be selected using the drop-down menu for each question. Responses are “no” by default and must be actively changed to “yes” when appropriate. Employees who select “no” for each activity will satisfy the waiver criteria. Employees who select “yes” for one or more of the activities will not satisfy the waiver criteria.
Screenshot 4.

**Waiver Criteria**

Employees will indicate whether their VA duties involve the below activities. The VA educational benefits referenced in the six criteria are GI Bill educational benefits. The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, loan repayment programs, or any other program targeted as an educational benefit for VA employees. Employees who select “no” for each activity will satisfy the waiver criteria. Employees who select “yes” for one or more of the activities will not satisfy the waiver criteria (unless their connection is a past ownership interest). Waiver requests from employees who do not satisfy the waiver criteria will be submitted to the Under Secretary for Benefits.

1. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.
   - [ ] No
   - [x] Yes

2. My duties include processing any person’s application for education or training using GI Bill educational benefits.
   - [ ] No
   - [x] Yes

3. I make decisions regarding individual applications for education or training using GI Bill educational benefits.
   - [ ] No
   - [x] Yes

4. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.
   - [ ] No
   - [x] Yes

5. I perform duties concerning the processing of claims by, or payments to, schools or students or the reimbursements of costs of tests in connection with GI Bill educational benefits.
   - [ ] No
   - [x] Yes

6. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.
   - [ ] No
   - [x] Yes

**Employee Declaration**

The final section of the 38 USC 3863 Waiver Approval Form contains nine declaration statements regarding activities of the employee outside work (Screenshot 5). The employee must certify that they will follow the laws outlined in the statements. Certification of this section also indicates consent by the employee to have information associated with waiver request publicly posted. The employee must check the box, which will automatically enter the date of certification, prior to submitting the form for approval.
Screenshot 5.

Employee Declaration Regarding Outside Activities

I will abide by all applicable Federal laws in my relationship with the FPEI, even if my relationship with the FPEI has ended, including the following restrictions:


b. I will not participate in a VA matter that will directly and predictably affect the financial interest of the for-profit educational institution or that includes the for-profit educational institution as a party or representative of a party, to the extent such actions are prohibited by 18 U.S.C. § 208 or 5 C.F.R. § 2635.502.

c. I will not use my public office for the private gain of the for-profit educational institution. 5 C.F.R. § 2635.702.

d. I will not, with or without compensation, represent the for-profit educational institution before any Federal agency or court. 18 U.S.C. §§ 203 and 205.

e. I will not make unauthorized use of official time or Government property for my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.702 and 705.

f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 5 C.F.R. § 2635.702(6) and (e).

Under 18 U.S.C. § 1905, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 5 C.F.R. § 2635.702.

h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 5 C.F.R. part 2635, subpart B.

i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

☐ I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website.

Date Certified: 

Submit for Approval

After submitting the form for approval, the employee will receive an email (Screenshot 6) notifying them that the request has been submitted to their supervisor.

Screenshot 6.

To: Joanne, Karen S.

From: Ethics <b@6@VA.GOV>

38 USC 3683 Waiver Request Submitted

Your waiver request has been submitted to your supervisor. You can review the status of your request here.

If you need to make changes to your request before Supervisor Approval, you can do so here.

Modifying Supervisor

Employees can edit the forms if they enter the incorrect supervisor on their form, or if their supervisor changes prior to completion of the first level review. Employees may access their form using either of the links in the email received after initial submission or by accessing status of waiver request forms site through the following link and selecting the appropriate waiver request.

b@6@
When the waiver request form opens the employee will modify the supervisor field and click the box next to “Resend to Current Supervisor or Send to New Supervisor” (Screenshot 7).

Screenshot 7.

38 USC 3863 Waiver Approval Form

This form is used to edit and resend request approval for waiver.

<table>
<thead>
<tr>
<th>Employee Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Position Title:</td>
</tr>
<tr>
<td>Phone Number:</td>
</tr>
<tr>
<td>Email Address:</td>
</tr>
<tr>
<td>Supervisor:</td>
</tr>
<tr>
<td>Resend to Current Supervisor or Send to New Supervisor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employing Office:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization:</td>
</tr>
<tr>
<td>Office:</td>
</tr>
<tr>
<td>Office of General Counsel</td>
</tr>
<tr>
<td>Station:</td>
</tr>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

The employee must then scroll down to the bottom of the waiver request form and click on the “Save Changes” button (Screenshot 8) to finalize the changes to the form.

Screenshot 8.

- f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 38 U.S.C. § 3863.702(b) and (c).
- g. Under 38 U.S.C. § 3863, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 38 U.S.C. § 2635.702.
- h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 38 U.S.C. part 2635, subpart B.
- i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website. Date Certified: 7/6/2018

Save Changes

Supervisor Actions

The employee is responsible for entering the name of their supervisor. Email notifications for the request will be sent to the individual selected by the employee. If there was an error by the employee, in selecting the correct contact information for their supervisor, the individual who receives the email notification should contact the employee and direct them to correct and resubmit the form.
Review Employee Entered Data

After submission by the employee the identified supervisor will receive an email indicating that an employee has submitted a waiver request (Screenshot 9).

Screenshot 9.

New 38 USC 3683 Waiver Request

One of your employees has submitted a request for a waiver of 38 U.S.C. § 3683, which prohibits VA employees from having certain connections to a for-profit educational institution.

Please review the waiver request here. Your review is limited to whether the employee's duties are accurately described, and whether the employee satisfies the waiver criteria.

If the employee satisfies the waiver criteria, you will acknowledge this in the Supervisor Acknowledgement and, if you are in a VA facility, route the form to your facility director. If you are not in a VA facility, you will route the form to the Director, Education Service.

If the employee does not satisfy the waiver criteria, you will acknowledge this in the Supervisor Acknowledgement and will route the form to the Ethics Speciality Team for consideration of a waiver granted by the Secretary.

If you have questions, please contact the Ethics Speciality Team using one of the below email addresses.

- Va.gov for VACO
- Va.gov for CT, DC, DE, MA, MD, ME, NC, NJ, NY, PA, RI, VA, VT, WV
- Va.gov for AL, FL, GA, KY, Puerto Rico, SC, TN
- Va.gov for IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI
- Va.gov for AR, CO, LA, MS, MT, OK, TX, UT, WY
- Va.gov for AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

The supervisor can review the request by selecting the link in the email. This link will open the corresponding request. The supervisor must review the information, including the summary of the employee's duties, to ensure the information is correct, that the employee's duties are described accurately, and whether the employee satisfies the waiver criteria. If a supervisor sees mistakes on a waiver, direct the employee to go back into the waiver, correct, and resubmit.

Supervisors may also access a list of waivers in which they are identified as the supervisor with the following link:

This link will open a table of submitted waivers linked to your name. To review a record, select the record by clicking on any field. Then, select "ITEMS" in the grey menu bar in the upper left of the screen, and select EDIT from options provided (Screenshot 10).
Supervisor Acknowledgement

After review and confirmation of the information provided by the employee the supervisor must if the waiver criteria are satisfied (Screenshot 11). This is done by selecting “Does” or “Does Not” from the drop-down menu. If the employee responds “yes” to any of the waiver criteria statements the granting official must select “Does Not” satisfy waiver criteria. The date of acknowledgment is also entered. Finally, the supervisor must enter the name of the appropriate granting official. For requests at a VA Medical Center the granting official is the facility Director. All requests that do not satisfy criteria are submitted to OGC for review and recommendation then routed to the USB for action.

Granting Official Actions

There are two kinds of granting officials. For employees under the jurisdiction of a VA facility head, the facility head is the granting official. For employees not under the jurisdiction of a VA facility head, the granting official is the Director, VBA Education Service, who is Robert Worley. For waivers, the term “facility head” is defined as medical center directors (for VHA), regional office directors (for VBA), and national cemetery directors (for NCA).

Waiver requests where the supervisor has indicated that the employee does satisfy waiver criteria will generate an email to the identified granting official. This email will indicate that you have a request pending review, contain a link to the request, and instructions (Screenshot 12).
Screenshot 12.

**Subject:** New 38 USC 3683 Waiver Request

One of your employees has submitted a request for a waiver of 38 U.S.C. § 3683, which prohibits VA employees from having certain connections to a for-profit educational institution. The employee’s supervisor has confirmed that the employee satisfies the waiver criteria.

At this point, you may grant preliminary, but not final, waiver approval.

**Please review the waiver request here.** If you agree to grant the waiver, please select “Approved: Employee meets waiver criteria” from the drop-down menu. Your name and the date will auto populate, then select “Submit Preliminary Approval Decision.” At this point, the waiver is not yet granted, because the proposed waiver must be made available for public comment. OGC will publicly post select data from the waiver request. OGC will send you all comments submitted regarding this waiver. After the 30-day comment period closes, if OGC received any comments regarding this waiver, you will be notified when the waiver is ready for your final approval. However, if OGC received no comments regarding this waiver, final approval will occur automatically.

If you determine to deny the waiver request, either because the employee does not satisfy the waiver criteria or for another reason, please select the appropriate option from the drop-down menu and submit. The waiver request will be forwarded for consideration of a USDA waiver.

If you have questions, please contact the Ethics Specialty Team using one of the below email addresses.

- [email] for VACO
- [email] for CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT, VA, WV
- [email] for AL, FL, GA, KY, Puerto Rico, SC, TN
- [email] for IA, IL, IN, KS, ML, MN, MO, NE, ND, OH, SD, WI
- [email] for AR, CO, LA, MS, MT, OK, TX, UT, WY

Granting officials may also access a list of waivers in which they are identified as the granting official with the following link

This link will open a table of submitted waivers linked to your name. To review a record, select the record by clicking on any field. Then, select “ITEMS” in the grey menu bar in the upper left of the screen, and select EDIT from options provided (Screenshot 13).

**Screenshot 13.**

**Granting Official (Preliminary Approval)**

As granting official your responsibility is to review the information provided by the employee and supervisor. When you review a request, you have no obligation to investigate. Take the facts provided on the request at face value, unless you have independent knowledge of matters outside of the request. If a granting official sees mistakes on a waiver, direct the employee to go back into the waiver, correct, and
resubmit. As a granting official, as opposed to the Under Secretary for Benefits (USB), it is possible that you will approve every waiver request submitted to you. This is because you should only receive requests from employees who satisfy the waiver criteria. Some items to review include:

1. Description of employee’s duties—does it appear accurate?
2. Does the employee satisfy the waiver criteria?
3. Does the supervisor agree that criteria are satisfied?
4. Independent knowledge of reason to deny waiver?

After reviewing the provided information, the granting official selects one of the three options using the drop-down menu (Screenshot 14). If the employee responds “yes” to any of the waiver criteria statements the granting official must select “Denied: Employee does not meet waiver criteria.” This response will route the request to the OGC and the USB for review of the denied waiver request. There is also an opportunity to enter comments in the free text box provided. Finally, the granting official submits the request for preliminary approval.

Screenshot 14.

Comment Period

Upon submission of “preliminary approval” by the granting official the request status is still considered as not yet granted. The statute requires that the public be notified and have the chance to comment before a waiver is granted. Upon preliminary approval, OGC will receive notification and will post deidentified data from that waiver, for 30
days, on a public website. If, after 30 days, no one comments on a waiver, it is automatically approved.

Granting Official (Final Approval)

If, after 30 days, there are publicly submitted comments SharePoint OGC’s Ethics Specialty Team will compile the comments and send them to the granting official on the request.

The granting official will also receive email notification that there is a waiver is ready for final approval (Screenshot 15). The email will also contain a link to the request form and basic instructions.

Screenshot 15

Subject: 38 U.S.C. § 3683 Waiver Public Comments for Review

You previously decided to grant this § 3683 waiver request, and the 30-day comment period has ended. The EST has forwarded to you all comments received regarding this request.

To grant final approval for this waiver, scroll down to the ‘Granting Official (Final Approval)’ section and choose ‘Should’ from the drop down. If the comments received, or any other facts, prompted you to determine that waiver denial is required, choose ‘Should not’ from the drop down. Denial of the waiver will cause this waiver request to be submitted for consideration of a USBSECVA waiver. If the Secretary denies the waiver request, the employee will be removed from Federal service.

If you have questions, please contact the Ethics Specialty Team using one of the below email addresses.

VA.gov for VACO
CT, DC, DE, MA, MD, MENC, NH, NJ, NY, PA, RI, VA, VT, WV
FL, GA, KY, Puerto Rico, SC, TN
IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI
AR, CO, LA, MS, MT, OK, TX, UT, WY
AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

After considering the comments, you must indicate whether the waiver should or should not be granted (Screenshot 16). If you deny a waiver, either based upon comments received or because the employee does not satisfy the waiver criteria, the waiver will go to OGC, which will review for a USB waiver. Before denying a waiver, you may consult with OGC’s Ethics Specialty Team. If OGC determines that facts exist that may require OGC to recommend that the USB deny a waiver request, OGC will contact the employee to discuss the issue. In some situations, it may be possible for the employee to take action that removes the harm caused by the FPEI connection and allows OGC to recommend that the waiver request be granted. 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.
Checking Waiver Status

Employees, supervisors, and granting officials can check the status of waiver request forms by accessing the following link

[link]

[Redacted]
Additional Resources

Detailed Waiver Process

38 USC 3683 Waiver Request Process

Point(s) of Contact

DVA

**Education Service:** Tom Alphonso, Assistant Director for Policy & Procedures, Education Service.

**VBA Communications:** Senior Communications Advisor, VBACO.

**OGC:** Staff Attorney, Office of General Counsel’s Ethics Law Group.

**VHA:** Karen Sanders, Deputy Chief Officer, Office of Academic Affiliations, VHA.

**NCA:** Mary Elder, Director, Training and Safety, NCA.
Questions
Frequently asked questions (FAQ) related to the statute and waiver process can be found using the following link: 38 U.S.C. § 3683(a) Frequently Asked Questions.

If this document does not answer your question, additional questions or comments about the waiver process can be sent to karen.va.gov.

VHA Resource Site
Additional resources for VHA implementation (including a toolkit, FAQ and user guide) can be found using the following link: 38 USC 3683.

Future Training
Two training modules that focus on the requirements granting officials and employees related to 38 U.S.C. § 3683 have been added to TMS. These trainings include:
- Granting 3683 Waivers (4450591)
- Requesting 3683 Waivers (4450590)

Training for Employees and Granting Officials is also located using the following link: Waiver Request.

Mandatory training, Government Ethics - The Essentials (VA 3812493), is being updated to include content related to 38 U.S.C. § 3683 and is available via eLearning on TMS.
# 38 USC 3863 Waiver Approval Form

This form is used to request approval for waiver.

## Employee Information

<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>10[61]</td>
</tr>
<tr>
<td>Position Title</td>
<td>Veteran service representative</td>
</tr>
<tr>
<td>Phone Number</td>
<td></td>
</tr>
<tr>
<td>Email Address</td>
<td>10[61]@va.gov</td>
</tr>
<tr>
<td>Supervisor</td>
<td>10[61] VBAATLD</td>
</tr>
<tr>
<td>Employing Office</td>
<td>Organization:</td>
</tr>
<tr>
<td></td>
<td>Veterans Benefits Administration (VBA)</td>
</tr>
<tr>
<td></td>
<td>Office: Southeast District</td>
</tr>
<tr>
<td></td>
<td>Station: 316- Atlanta Regional Office</td>
</tr>
<tr>
<td>Brief Description</td>
<td>I currently work in compensation and pension serving veteran with disability claims. My job is to process Rating Decision for accuracy, by reviewing all evidence and ensuring that it is properly prepared.</td>
</tr>
</tbody>
</table>

Waiver Status: Granting Official Approved
For-Profit Educational Institution (FPEI): Devry University-Keller Graduate Sch Mgmt

FPEI Connection:
- Ownership Interest in the FPEI (includes owning stock and receiving profits or dividends)
- Salary or wages from the FPEI
- Gifts from the FPEI
- Services from the FPEI (includes classes)

FPEI Connection Status and Dates:
- Past
- Start Date: 2/16/2010
- End Date: 9/12/2019

Brief Description of Your FPEI Connection:
I am currently working with Veteran Affairs while attending DeVry (Keller school of management) and then went into Workstudy or On the Job Training (OJT) for 4 months until all Chapter DEA 35 benefits were exhausted. I worked with Education in Department of Veterans Affairs as Veteran Claims Examiner for 4 years.

Waiver Criteria
Employees will indicate whether their VA duties involve the below activities. The VA educational benefits referenced in the six criteria are GI Bill educational benefits. The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, or any other program targeted as an educational benefit for VA employees. Employees who select "no" for each activity will satisfy the waiver criteria. Employees who select "yes" for one or more of the activities will not satisfy the waiver criteria (unless their connection is a past ownership interest). Waiver requests from employees who do not satisfy the waiver criteria will be reviewed and determined on a case-by-case basis.
a. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.

   Yes □

b. My duties include processing any person's application for education or training using GI Bill educational benefits.

   Yes □

c. I make decisions regarding individual applications for education or training using GI Bill educational benefits.

   Yes □

d. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.

   Yes □

e. I perform duties concerning the processing of claims by, or payments to, schools or students or the reimbursements of costs of tests in connection with GI Bill educational benefits.

   Yes □

f. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.

   Yes □

Explanation for Not Satisfying Waiver Criteria

Please explain why you do not meet the waiver criteria. You should explain your duties that do not meet the waiver criteria. Please also describe whether your duties have ever impacted the FPEI with which you have the connection. If you have an FPEI ownership interest, please describe the ownership interest.

Employee Declaration Regarding Outside Activities

I will abide by all applicable Federal laws in my relationship with the FPEI, even if my relationship with the FPEI has ended, including the following provisions.

b. I will not participate in a VA matter that will directly and predictably affect the financial interest of the for-profit educational institution or that includes the for-profit educational institution as a party or representative of a party, to the extent such actions are prohibited by 18 U.S.C. §§ 208 or 5 C.F.R. § 2635.502.

c. I will not use my public office for the private gain of the for-profit educational institution. 5 C.F.R. § 2635.702.

d. I will not, with or without compensation, represent the for-profit educational institution before any Federal agency or court. 18 U.S.C. §§ 203 and 205.

e. I will not make unauthorized use of official time or Government property for my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.704 and 705.

f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.702(b) and (c).

g. Under 18 U.S.C. § 1905, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 5 C.F.R. § 2635.703.

h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 5 C.F.R. part 2635, subpart B.

i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

☐ I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website. Date Certified: 9/12/2019
Supervisors must select "DOES NOT" if the employee properly selected "yes" for any of the above waiver criteria.

I confirm that the employee’s duties are summarized accurately and confirm that the employee **DOES** satisfy the waiver criteria.

Date Acknowledged: 8/4/2022

Please enter your facility head or, if you are not in a VA facility, the Director, Education Service (Joseph L. Garcia). Facility heads are Medical Center Directors, Regional Office Directors, and National Cemetery Directors.

Granting Official

Preliminary Approval

Preliminary approval means that you agree that the waiver should be granted (i.e., the employee correctly selected “no” for each criterion). After you approve, the proposed waiver will be subject to public comment for 30 days. If no comments are received, the waiver will be automatically finalized, with no need for your final signature. If comments are received, OGC will forward those comments to you and you will be notified when it is time to grant final approval/disapproval.

Please choose one of the following:

- Approved: Employee meets waiver criteria.

Date: 8/4/2022

Approver: [Redacted]

Comments:

USB Official Preliminary Review

I have reviewed the waiver request and recommendations by the OGC Ethics group.

USB Official Decision: [Redacted]
# 38 USC 3683 Waiver Approval Form

This form is used to request approval for waiver.

## Employee Information

<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Position Title</td>
<td>Education Quality and Training Specialist (EQTS)</td>
</tr>
<tr>
<td>Phone Number</td>
<td></td>
</tr>
<tr>
<td>Email Address</td>
<td>[Redacted] @va.gov</td>
</tr>
<tr>
<td>Supervisor</td>
<td>[Redacted] VBAUBUFF:</td>
</tr>
<tr>
<td>Employing Office</td>
<td></td>
</tr>
<tr>
<td>Organization</td>
<td>Veterans Benefits Administration (VBA)</td>
</tr>
<tr>
<td>Office</td>
<td>North Atlantic District</td>
</tr>
<tr>
<td>Station</td>
<td>307- Buffalo Regional Office</td>
</tr>
<tr>
<td>Brief Description of VA Duties</td>
<td>Education Quality and Training Specialist (EQTS), Senior Veterans Claims Examiner (Education)</td>
</tr>
</tbody>
</table>

Waiver Status: [Redacted] SECV Approved
For-Profit Educational Institution (FPEI):
(If your FPEI is not listed, select "Other" and then enter the name of your FPEI.)

FPEI Connection:
- Ownership Interest in the FPEI (includes owning stock and receiving profits or dividends)
- Salary or wages from the FPEI
- Gifts from the FPEI
- Services from the FPEI (includes classes)

FPEI Connection Status and Dates:
- Start Date: 3/1/2010
- End Date: 2/15/2013

Brief Description of Your FPEI Connection:
- Received services (classes) from APUS.
  - I paid tuition with my own money;
  - I attended classes on my own time;
  - the VA paid part of the tuition;
  - the VA allowed me to change my tour of duty to attend classes/complete assignments (1)

Note:
(1) I did not receive special permission from my employer. I chose a compressed work schedule, available to any employee,
a. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.
   
   [ ] No
   
   [ ] Yes

b. My duties include processing any person’s application for education or training using GI Bill educational benefits.
   
   [ ] Yes

   [ ] No

c. I make decisions regarding individual applications for education or training using GI Bill educational benefits.
   
   [ ] Yes

   [ ] No

d. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.
   
   [ ] No

   [ ] Yes

e. I perform duties concerning the processing of claims by, or payments to, schools or students or the reimbursements of costs of tests in connection with GI Bill educational benefits.
   
   [ ] Yes

   [ ] No

f. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.
   
   [ ] No

   [ ] Yes

Employee Declaration Regarding Outside Activities

I will abide by all applicable Federal laws in my relationship with the FPEI, even if my relationship with the FPEI has ended, including the following restrictions:


b. I will not participate in a VA matter that will directly and predictably affect the financial interest of the for-profit educational institution or that includes the for-profit educational institution as a party or representative of a party, to the extent such actions are prohibited by 18 U.S.C. § 208 or 5 C.F.R. § 2635.502.

c. I will not use my public office for the private gain of the for-profit educational institution. 5 C.F.R. § 2635.702.

d. I will not, with or without compensation, represent the for-profit educational institution before any Federal agency or court. 18 U.S.C. §§ 203 and 205.

e. I will not make unauthorized use of official time or Government property for my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.704 and 705.
f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 5 C.F.R. § 2635.702(b) and (c).

g. Under 18 U.S.C. § 1905, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 5 C.F.R. § 2635.703.

h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 5 C.F.R. part 2635, subpart B.

i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

- [ ] I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website. Date Certified: 4/15/2020

Supervisor Acknowledgement

Supervisors must select “DOES NOT” if the employee properly selected “yes” for any of the above waiver criteria.

I confirm that the employee’s duties are summarized accurately and confirm that the employee □ DOES NOT □ satisfy the waiver criteria. Date Acknowledged: 7/13/2022

Please enter your facility head or, if you are not in a VA facility, the Director, Education Service (Mary Glenn). Facility heads are Medical Center Directors, Regional Office Directors, and National Cemetery Directors.

[Blank]

Since the employee does not satisfy the waiver criteria, the request will be sent to the Office of General Counsel Ethics Specialty Team (EST) for
OGC Ethics Official Review

Recommendation:
Grant Waiver

Recommendation Notes:
Employee’s FPEI connection ended over nine years ago. The employee confirmed that he never received any gifts from the FPEI, or ever encouraged any person to attend the FPEI. He has processed education claims for students attending the FPEI, but he approved those claims based upon the laws governing the GI Bill program. We see no basis for denial. Further, because the statute has been amended, had the employee sought a waiver under the new statute (i.e., had his relationship began on or after 9/29/2018), correction action would also not be required, as the employee no longer has a relationship with the FPEI.

USB Official Preliminary Review

I have reviewed the waiver request and recommendations by the OGC Ethics group.

USB Official Decision: Approved
USB Review Date: 7/21/2022

Save Changes (non approval)

Created: 4/15/2020 10:26:15 AM
Modified: 7/21/2022 2:56:21 PM
# 38 USC 3683 Waiver Approval Form

This form is used to request approval for waiver.

<table>
<thead>
<tr>
<th>Employee Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>[b][6]:</td>
</tr>
<tr>
<td>Position Title:</td>
<td>Vocational Rehabilitation Counselor</td>
</tr>
<tr>
<td>Phone Number:</td>
<td></td>
</tr>
<tr>
<td>Email Address:</td>
<td>[b][6]:@va.gov</td>
</tr>
<tr>
<td>Supervisor:</td>
<td></td>
</tr>
<tr>
<td>Employing Office:</td>
<td></td>
</tr>
<tr>
<td>Organization:</td>
<td>Veterans Benefits Administration (VBA)</td>
</tr>
<tr>
<td>Office:</td>
<td>North Atlantic District</td>
</tr>
<tr>
<td>Station:</td>
<td>304- Providence Regional Office</td>
</tr>
</tbody>
</table>

| Brief Description of VA Duties:       | Provide vocational and rehabilitation counseling services to Veterans with service connected disabilities. |

| Waiver Status:                       | SECVA Approved |

(OGC 22-06816-F) 071
For-Profit Educational Institution (FPEI):  Capella University

FPEI Connection:
- Ownership Interest in the FPEI (includes owning stock and receiving profits or dividends)
- Salary or wages from the FPEI
- Gifts from the FPEI
- Services from the FPEI (includes classes)

FPEI Connection Status and Dates:
- Start Date: 5/1/2012
- End Date: 3/1/2015

Brief Description of Your FPEI Connection:
Student in the PhD in Education program

Waiver Criteria
Employees will indicate whether their VA duties involve the below activities. The VA educational benefits referenced in the six criteria are GI Bill educational benefits. The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, or any other program targeted as an educational benefit for VA employees. Employees who select “no” for each activity will satisfy the waiver criteria. Employees who select “yes” for one or more of the activities will not satisfy the waiver criteria (unless their connection is a past ownership interest). Waiver requests from employees who do not satisfy the waiver criteria must be submitted.
I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.

- [ ] No

My duties include processing any person's application for education or training using GI Bill educational benefits.

- [ ] Yes

I make decisions regarding individual applications for education or training using GI Bill educational benefits.

- [ ] Yes

I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.

- [ ] No

I perform duties concerning the processing of claims by, or payments to, schools or students or the reimbursements of costs of tests in connection with GI Bill educational benefits.

- [ ] No

I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.

- [ ] No

**Explanation for Not Satisfying Waiver Criteria**

Please explain why you do not meet the waiver criteria. You should explain your duties that do not meet the waiver criteria. Please also describe whether your duties have ever impacted the FPEI with which you have the connection. If you have an FPEI ownership interest, please describe the ownership interest.

I do not meet the criteria above as I provide Vocational Rehabilitation and Employment determinations for Veterans. My duties have not impacted...

**Employee Declaration Regarding Outside Activities**

I will abide by all applicable Federal laws in my relationship with the FPEI, even if my relationship with the FPEI has ended, including the following provisions...

b. I will not participate in a VA matter that will directly and predictably affect the financial interest of the for-profit educational institution or that includes the for-profit educational institution as a party or representative of a party, to the extent such actions are prohibited by 18 U.S.C. §§ 203 and 205.

c. I will not use my public office for the private gain of the for-profit educational institution. 5 C.F.R. § 2635.702.

d. I will not, with or without compensation, represent the for-profit educational institution before any Federal agency or court. 18 U.S.C. §§ 203 and 205.

e. I will not make unauthorized use of official time or Government property for my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.704 and 705.

f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 5 C.F.R. § 2635.702(b) and (c).

 g. Under 18 U.S.C. § 1905, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 5 C.F.R. § 2635.703.

h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 5 C.F.R. part 2635, subpart B.

i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

☒ I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website. Date Certified: 7/26/2018

Supervisor Acknowledgement
Supervisor Acknowledgement

Supervisors must select "DOES NOT" if the employee properly selected "yes" for any of the above waiver criteria.

I confirm that the employee’s duties are summarized accurately and confirm that the employee **DOES NOT** satisfy the waiver criteria.

Date Acknowledged: 7/26/2018

Please enter your facility head or, if you are not in a VA facility, the Director, Education Service (Mary Glenn). Facility heads are Medical Center Directors, Regional Office Directors, and National Cemetery Directors.

Since the employee does not satisfy the waiver criteria, the request will be sent to the Office of General Counsel Ethics Specialty Team (EST) for review.

OGC Ethics Official Review

Recommendation:
Grant Waiver

Recommendation Notes:
The employee confirmed that she never received any gifts or compensation from the FPEI. While she was a student, she did not encourage Veterans to attend th

USB Official Preliminary Review

I have reviewed the waiver request and recommendations by the OGC Ethics group.

USB Official Decision: Approved
USB Review Date: 7/21/2022

Save Changes (non approval)
# 38 USC 3683 Waiver Approval Form

This form is used to request approval for waiver.

<table>
<thead>
<tr>
<th>Employee Information</th>
<th>Waiver Status:</th>
<th>SECVA Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Position Title:</td>
<td>Supervisory Management and Program Analyst</td>
<td></td>
</tr>
<tr>
<td>Phone Number:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email Address:</td>
<td>@va.gov</td>
<td></td>
</tr>
<tr>
<td>Supervisor:</td>
<td>VBAVACO</td>
<td></td>
</tr>
<tr>
<td>Employing Office:</td>
<td>Veterans Benefits Administration (VBA)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>VBACO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>101ADUSPPM- DUSB for Economic Opportunity</td>
<td></td>
</tr>
</tbody>
</table>

**Brief Description of VA Duties:**


July 2014 - December 2017: Assigned to VA Central Office, Education Services, Business Architect Teams to support data an:
For-Profit Educational Institution (FPEI):
(If your FPEI is not listed, select "Other" and then enter the name of your FPEI.)

<table>
<thead>
<tr>
<th>FPEI Connection:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership Interest in the FPEI (includes owning stock and receiving profits or dividends)</td>
<td>☐</td>
</tr>
<tr>
<td>Salary or wages from the FPEI</td>
<td>☐</td>
</tr>
<tr>
<td>Gifts from the FPEI</td>
<td>☐</td>
</tr>
<tr>
<td>Services from the FPEI (includes classes)</td>
<td>☑</td>
</tr>
</tbody>
</table>

FPEI Connection Status and Dates:

<table>
<thead>
<tr>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/1/2013</td>
<td>12/31/2017</td>
</tr>
</tbody>
</table>

Brief Description of Your FPEI Connection:
I used my remaining CH30 MGIB benefits to complete undergraduate level courses. The courses supported my personal prc

Waiver Criteria

Employees will indicate whether their VA duties involve the below activities. The VA educational benefits referenced in the six criteria are GI Bill educational benefits. The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, loan repayment programs, or any other program targeted as an educational benefit for VA employees. Employees who select “no” for each activity will satisfy the waiver criteria. Employees who select “yes” for one or more of the activities will not satisfy the waiver criteria (unless their connection is a past ownership interest). Waiver requests from employees who do not satisfy the waiver criteria will be denied.
a. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.
   
   No

b. My duties include processing any person's application for education or training using GI Bill educational benefits.
   
   No

c. I make decisions regarding individual applications for education or training using GI Bill educational benefits.
   
   No

d. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.
   
   Yes

e. I perform duties concerning the processing of claims by, or payments to, schools or students or the reimbursements of costs of tests in connection with GI Bill educational benefits.
   
   No

f. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.
   
   Yes

**Explanation for Not Satisfying Waiver Criteria**

Please explain why you do not meet the waiver criteria. You should explain your duties that do not meet the waiver criteria. Please also describe whether your duties have ever impacted the FPEI with which you have the connection. If you have an FPEI ownership interest, please describe the ownership interest.

I completed compliance inspections, approval actions, and training at schools that received GI Bill education benefits in the State of Montana and From 2014 - 2017 I was not assigned duties that would have not satisfied a waiver criteria.

**Employee Declaration Regarding Outside Activities**

I will abide by all applicable Federal laws in my relationship with the FPEI, even if my relationship with the FPEI has ended, including the following criteria.

b. I will not participate in a VA matter that will directly and predictably affect the financial interest of the for-profit educational institution or that includes the for-profit educational institution as a party or representative of a party, to the extent such actions are prohibited by 18 U.S.C. § 208 or 5 C.F.R. § 2635.502.

c. I will not use my public office for the private gain of the for-profit educational institution. 5 C.F.R. § 2635.702.

d. I will not, with or without compensation, represent the for-profit educational institution before any Federal agency or court. 18 U.S.C. §§ 203 and 205.

e. I will not make unauthorized use of official time or Government property for my activities with the for-profit educational institution. 5 C.F.R. §§ 2635.704 and 705.

f. I will not give the appearance that VA sanctions or endorses the for-profit educational institution or my activities with the for-profit educational institution. 5 C.F.R. § 2635.702(b) and (c).

g. Under 18 U.S.C. § 1905, I will not use or disclose trade secrets and confidential business information. I will not disclose or misuse any information that I acquired as part of my official duties and which is not available to the general public. 5 C.F.R. § 2635.703.

h. I will not accept a gift from the for-profit educational institution unless 1) the same gift was offered to non-VA employees with the same for-profit connection and 2) gift acceptance is permissible under 5 C.F.R. part 2635, subpart B.

i. I will request a new waiver if 1) while having an FPEI connection, my VA duties change to include duties affecting FPEIs or 2) I intend to enter into an FPEI connection that is of a different category than the FPEI connection for which I presently seek a waiver.

☑ I certify that I will follow the above laws, and I consent to VA posting select data from this request on a publicly available website.  

Date Certified: 10/3/2018
Supervisors must select “DOES NOT” if the employee properly selected “yes” for any of the above waiver criteria.

I confirm that the employee’s duties are summarized accurately and confirm that the employee **DOES NOT** satisfy the waiver criteria.

Date Acknowledged: 10/11/2018

Please enter your facility head or, if you are not in a VA facility, the Director, Education Service (Mary Glenn). Facility heads are Medical Center Directors, Regional Office Directors, and National Cemetery Directors.

(b)(6) VBAHOUS:

Since the employee does not satisfy the waiver criteria, the request will be sent to the Office of General Counsel Ethics Specialty Team (EST) for review.

OGC Ethics Official Review

Recommendation:

Grant Waiver

Recommendation Notes:

Employee confirmed that during the connection, he did not use his VA position to encourage others to attend the FPEI, did not approve Federal money flowing to

USB Official Preliminary Review

I have reviewed the waiver request and recommendations by the OGC Ethics group.

USB Official Decision: Approved

USB Review Date: 7/21/2022

Save Changes (non approval)
Requesting Waivers Under 38 U.S.C. § 3683
Agenda

Overview of statute and regulation
Who must request a waiver?
How to identify FPEI status
Waiver request process
Waiver denial
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") that enrolled GI Bill students. Prohibited connections: Ownership interest in the FPEISalary or wages from the FPEIGift from the FPEIServices (e.g., classes) from the FPEI
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—unlikely to use this
Overview of 38 C.F.R. § 21.4005 (cont.)

Waiver criteria: Policy determinations re payment of GI bill benefits. Processing applications for GI bill benefits. Decisions re individual GI bill benefit applications. Compliance inspections on ed. institutions or persons. Processing claims by, or payments to, schools or students. Inspection, approval, or supervision of ed. institutions.
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.
Granting officials are “facility heads,” for those employees under the jurisdiction of a facility, and the Director, VBA Education Service (Robert Worley), 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.
Who must request a waiver?

You must request a waiver if:

- You had (or will have) a prohibited connection (ownership, salary/wages, gift, services)
- During your VA employment (even in the past, or in the future)
- To an FPEI
- And the FPEI had students under the GI Bill
How to Determine FPEI Status

To determine if a school is for-profit:

“Download Data on All Schools (Excel)” from GI Bill Comparison Tool
To determine if school has GI Bill students: use GI Bill Comparison Tool (https://www.vets.gov/gi-bill-comparison-tool), which lists schools approved for VA educational benefits.
Waiver Request Process

Employees will submit waiver requests via SharePoint. Submit completed requests to their supervisors. Supervisors confirm employees’ duties and whether employees satisfy waiver criteria. Supervisors forward requests to appropriate granting official.
38 USC 3863 Waiver Approval Form

This form is used to request approval for waiver.

<table>
<thead>
<tr>
<th>Employee Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: (b)(6)</td>
</tr>
<tr>
<td>Position Title: Staff Attorney</td>
</tr>
<tr>
<td>Phone Number: (b)(6)</td>
</tr>
<tr>
<td>Email Address: (b)(6)@va.gov</td>
</tr>
<tr>
<td>Supervisor: (b)(6) DGC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employing Office:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization:</td>
</tr>
<tr>
<td>VA Central Office (VACO)</td>
</tr>
<tr>
<td>Office:</td>
</tr>
<tr>
<td>Office of General Counsel</td>
</tr>
<tr>
<td>Station:</td>
</tr>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

| Brief Description of VA Duties: |
| Provide advice regarding application of govt ethics laws; train employees on govt ethics laws |
For-Profit Educational Institution (FPEI):
Strayer

FPEI Connection:
- Salary or wages from the FPEI

FPEI Connection Status and Dates:
- Current
- Start Date: 4/2/2018

Brief Description of Your FPEI Connection:
Teach business law class on weekends
Waiver Request Process (cont.)

Employee selects “yes” or “no” regarding whether the employee performs any of the six waiver criteria activities. Employee agrees to follow laws governing outside activities, and submits request. The request will go to the supervisor listed previously in the waiver request. The supervisor will receive an email notification that a waiver request is ready for review.
Waiver Request Process (cont.)

The supervisor will submit the request to the appropriate granting official: If employee does not satisfy the waiver criteria: USB If employee satisfies the waiver criteria and is under the jurisdiction of a VAMC, RO, or National Cemetery director: facility director If employee satisfies the waiver criteria and is NOT under the jurisdiction of a VAMC, RO, or National Cemetery director: Director, Education Service (Robert Worley)
After granting official agrees to grant the waiver and submits the form, the waiver is not yet granted. This is because the statute requires that the public be notified and have the chance to comment before a waiver is granted. After granting official approves the waiver, OGC will post data from that waiver, for 30 days, on a public website.
Waiver Request Process (cont.)

If, after 30 days, no one comments on a waiver, it is automatically approved. If someone comments, OGC will forward the comment to the granting official. After 30 days, SharePoint will notify the granting official via email that the waiver is ready for final approval. After considering the comments, the granting official must approve or deny the waiver. Employee will be notified to forward completed waiver to HR for inclusion in OPF.
Waiver Request Process (cont.)

If 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 OGC, which will review for a USB waiver. OGC may contact the employee or supervisor to gather more facts. 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.
Waiver Denials

OGC will recommend waiver denial when there are facts showing a detriment, or harm, that occurred or will occur in the employee’s relationship with the FPEI, such as an ethics violation. Examples: sending money to FPEI as part of VA duties, public office for private gain, endorsement, or misuse of nonpublic info.
Submit questions not answered in FAQs to info@va.gov"
38 USC § 3683 Waiver Process

38 U.S.C. § 3683 was enacted in 1952, in response to numerous instances where VA employees took official action to benefit for-profit educational institutions with which the employees were affiliated.

The statute requires VA management to take appropriate corrective or disciplinary action regarding a VA employee who, at any time during their VA employment, had a certain relationship to a for-profit educational institution ("FPEI"). However, if no detriment will result from a VA employee's connection to an FPEI, management may issue a waiver and no corrective or disciplinary action will occur.

On September 29, 2018, 38 U.S.C. § 3683 was amended and the modifications to the statute are not retroactive. Therefore, employees whose for-profit connections began prior to the amendment date are subject to the previous version of the statute, while employees whose for-profit connections began on or after that date are subject to the current version. The September 2018 amendments to 38 U.S.C. § 3683 included revisions to public notification of waivers, corrective/disciplinary action for denied waivers, and which VA employees are required to seek a waiver.

I need to submit a waiver: If you know that you need to submit a waiver request, submit it here.
Do I need to submit a waiver?

If you’re unsure about whether you need to submit a waiver request, answer the following questions:

Have you ever in the past had, or do you currently have or plan in the future to have, a prohibited relationship (ownership interest or receipt of salary, wages, dividends, profits, gifts, or services (including classes)) with a for-profit educational institution?

[YES] [NO]

**Notice:** 38 U.S.C. § 3683 was recently amended, changing the requirements for when an employee must submit a waiver request. Employees whose FPEI connection began prior to September 29, 2018, must submit a waiver request in accordance with the prior version of § 3683, which is described in the below FAQs. If an employee's FPEI connection began, or will begin, on or after September 29, 2018, the employee must submit a waiver request in the following situations:

1. Only employees who work on chapters 30-36 programs* must submit a waiver request due to receiving “services” (i.e., taking classes) from an FPEI. All other employees, unless the Secretary determines otherwise in the future, are NOT required to submit a waiver request due to taking classes from an FPEI.
2. All VA employees who have an ownership interest in, or receive any wage, salary, dividend, profit, or gift from, an FPEI must submit a waiver request.

*These programs are the All-Volunteer-Force Educational Assistance Program (chapter 30), Vocational Rehabilitation and Employment (chapter 31), Post-Vietnam Era Veterans’ Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Veterans’ Educational Assistance (chapter 34), Survivors’ and Dependents’ Educational Assistance (chapter 35), and Administration of Educational Benefits (chapter 36).

38 U.S.C. § 3683(a) requires the removal of a VA employee who, at any time during their VA employment, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit (“FPEI”) in which a person was pursuing a program of education using VA educational benefits. However, under 38 U.S.C. § 3683(d) and 38 C.F.R. § 21.4005, the Secretary; the Director, VBA Education Service; and facility heads may waive application of § 3683(a) if no detriment will result by reason of a VA employee's connection to an FPEI. The Secretary has delegated his waiver authority to the Under Secretary for Benefits.

These frequently asked questions seek to address issues surrounding the reach of the statute and the requirement for certain employees to seek a waiver. Employees should submit additional questions to bva.gov.

**Requirement to Request a Waiver**

1. Who must request a waiver?

   **Answer:** All employees who, at any time during their VA employment, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit (“FPEI”) in which a person was pursuing a program of education using VA educational benefits.

2. Must I request a waiver if I previously had a connection to an FPEI, but do not currently?

   **Answer:** Yes, if your connection to an FPEI existed during your VA employment.

3. Must I request a waiver if I currently have no connection to an FPEI, but will have a connection in the future?

   **Answer:** Yes, if you have plans, for example, to teach or take classes at an FPEI in which a person is pursuing a program of education using VA educational benefits, you must seek a waiver prior to entering into the relationship with the FPEI.

4. Must I request a waiver if my duties concern educational benefits or FPEIs, but I do not have a prohibited connection to an FPEI?

   **Answer:** No.

5. Who is a VA employee?
Answer: A VA employee is an individual who has a VA appointment, is subject to supervision by a Federal employee, and is engaged in the performance of a Federal function. Contractors and volunteers are not employees.

6. Must without compensation ("WOC") employees request a waiver?
Answer: Yes. WOC employees are considered VA employees under § 3683(a) and thus must request a waiver if they have an FPEI connection listed in the statute.

7. What constitutes an ownership interest in an FPEI?
Answer: In addition to being an owner or part-owner of an FPEI, this includes owning stock in an FPEI or its parent company. However, employees with investments in diversified mutual funds do not have an ownership interest in an FPEI, even if the diversified mutual fund contains stock in an FPEI or its parent company.

8. What constitutes a gift from an FPEI?
Answer: A gift is anything that employees are prohibited from receiving under § 3683. For example, if an FPEI gives an employee a $500 watch, that would constitute a gift because the gift regulations do not permit the employee to accept the watch. But, if an FPEI gives an employee a $5 mug, that would not constitute a gift because the de minimis exception allows employees to accept items worth $50 or less. (Note that an employee cannot accept more than $50 in gifts from one source in a calendar year. Further, before accepting an otherwise permissible gift, an employee must consider whether acceptance would cause a reasonable person to question the employee’s integrity or impartiality.)

9. Must I request a waiver if my spouse or child has a connection to an FPEI?
Answer: No, the statute is triggered only by an employee’s personal connection to an FPEI.

10. What constitutes "services" from an FPEI?
Answer: Taking classes at, and receiving instruction or training from, an FPEI constitutes receiving "services." Additionally, "services" may also include something of value other than classes, wages, or salary.

11. Must I request a waiver if VA is paying for my classes at an FPEI in which a person is pursuing a program of education using VA educational benefits?
Answer: Yes. Regardless of who pays for your classes at an FPEI, if you are taking classes at an FPEI you are receiving "services" from the FPEI.

12. Must I request a waiver if I am an FPEI employee who seeks to teach a class at a VA facility or to VA employees?
Answer: Generally, no. Section 3683(a) only applies to VA employees. However, if the FPEI employee is also a VA employee (e.g., a WOC employee), and the FPEI is one in which an eligible person or veteran is pursuing a program of education under VA education benefits, the individual must request a waiver.

13. Must I request a waiver if I am an FPEI student who performs rotations at VA facilities?
Answer: Yes. FPEI students who perform rotations at VA facilities receive VA appointments and are VA employees (see FAQ #5). Thus, if the FPEI student’s FPEI is one in which an eligible person or veteran is pursuing a program of education using VA educational benefits (see FAQ #23), the individual must request a waiver. Note that VHA has not yet developed a waiver-request process for students performing rotations at VHA facilities. Until that process is developed, students performing rotations are not required to request waivers.

14. Must I request a waiver if I accepted a scholarship from an FPEI in which a person is pursuing a program of education using VA education benefits?
Answer: Yes, if you are a VA employee who accepted a scholarship from such an FPEI, you are also a student at the FPEI and are thus receiving "services" from the FPEI.

15. Must I request a waiver to attend an educational program at a for-profit hospital?
Answer: Maybe. A waiver is required only if a VA employee has a relationship with an FPEI that has students attending using VA educational benefits. If the hospital’s name appears in a search of the GI Bill Comparison Tool, discussed at FAQ #23 above, then the hospital has one or more programs approved for VA education benefits and the employee must request a waiver.
How to Request a Waiver

16. How do I request a waiver?
   Answer: Employees requiring a waiver will fill out and submit a waiver request at this internal VA site:
   [Insert link to VA website]
   Your supervisor will review the request and forward to the appropriate granting official if you satisfy the waiver criteria. If you do not satisfy the waiver criteria, your supervisor will indicate this on the waiver request, which will result in your request being forwarded to OGC for consideration of a waiver from the Under Secretary for Benefits (USB). Employees currently requiring a waiver must submit their waiver request in accordance with management guidance. Granting officials will review waiver requests on a rolling basis, as soon as possible, and determine whether to grant the requests.

17. Who may grant a waiver?
   Answer: Facility heads or, for employees not in a VA facility, the Director, VBA Education Service, are the “granting officials” who are authorized to grant waivers to employees who satisfy six waiver criteria. [1] (See FAQ #20). The USB may grant a waiver to any VA employee. Thus, the USB will consider waiver requests from employees who do not satisfy the waiver criteria and from VA employees whose requests for waivers were otherwise denied by a granting official.

18. Who is a “facility head”?
   Answer: Facility heads are directors of VA Medical Centers, National Cemeteries, and Regional Benefit Offices.

19. How do I request a USB waiver?
   Answer: For the requesting employee, the process is no different than requesting a waiver from a facility head. If you certify on your waiver request form that you do not satisfy the waiver criteria, your supervisor will forward your waiver request to OGC for consideration of a USB waiver.

20. What are the waiver criteria?
   Answer: The criteria are listed in 38 C.F.R. § 21.4005(b)(1)(ii) and also contained in the waiver request form. These are the criteria, in plain English (see FAQ #21 for the definition of “VA educational benefits”). The VA educational benefits referenced in the six criteria are GI Bill educational benefits (note that, for purposes of criteria B and C only, “GI Bill educational benefits” includes Vocational Rehabilitation and Employment duties). The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, loan repayment programs, or any other program targeted as an educational benefit for VA employees. In order to satisfy the waiver criteria, employees must answer “no” to each question:
   a. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.
   b. My duties include processing any person’s application for education or training using GI Bill educational benefits (this includes Vocational Rehabilitation and Employment duties).
   c. I make decisions regarding individual applications for education or training using GI Bill educational benefits (this includes Vocational Rehabilitation and Employment duties).
   d. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.
   e. I perform duties concerning the processing of claims by, or payments to, schools or students or reimbursements of the costs of tests in connection with GI Bill educational benefits.
   f. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.

21. What does “VA educational benefits” include?
   Answer: The § 3683 prohibition applies only regarding FPEIs where a person is pursuing, or was pursuing at the time when the requestor had the prohibited FPEI connection, a program of education using VA educational benefits. This includes the All-Volunteer-Force Educational Assistance Program (chapter 30), Post-Vietnam Era Veterans’ Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), and...
33. Survivors' and Dependents' Educational Assistance (chapter 35), and Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 1606). For purposes of determining whether an FPEI is one where a person is pursuing a program of education using VA educational benefits, Vocational Rehabilitation and Employment (chapter 31) is not considered. For example, if an FPEI's only VA program is Vocational Rehabilitation and Employment, employees need not request a waiver based upon a connection to that FPEI. Additionally, the waiver criteria ask whether the employee's duties concern activities related to VA educational benefits. For purposes of determining whether an employee satisfies the waiver criteria, Vocational Rehabilitation and Employment (chapter 31) duties must be considered.

22. How do I know if an educational institution is for-profit?
   Answer: This Department of Education website (https://nces.ed.gov/collgenavigator/) allows employees to determine if a particular educational institution is for-profit. In addition, at the bottom of the GI Bill Comparison Tool website (see FAQ #23) there is a “Download Data on All Schools (Excel)” link through which all data on schools can be downloaded. For-profit status is listed in column G of the excel spreadsheet.

23. How do I know if an FPEI has students pursuing a program of education using VA educational benefits?
   Answer: Enter your school’s name into the GI Bill Comparison Tool (https://www.vets.gov/gi-bill-comparison-tool). If your school appears in the search results, it is a school that has one or more programs approved for VA educational benefits. Because there is no real-time tool showing whether an FPEI has students using VA educational benefits presently enrolled, VA employees should assume that any school with a program approved for VA educational benefits is one in which students using VA educational benefits are enrolled.

24. Are companies that offer continuing education or board reviews considered FPEIs under the statute?
   Answer: Maybe. Employees should use the GI Bill Comparison Tool (see FAQ #23) to determine if a particular company has one or more programs approved for VA educational benefits.

25. If an employee’s FPEI connection is in the past, and the employee’s VA position and/or duties are different than they were at the time of the connection, which position and/or duties should be described on the waiver request?
   Answer: If your FPEI connection is in the past, and your VA position and/or duties have changed since the time of your FPEI connection, on the waiver request you must describe your position and/or duties as of the time of the FPEI connection. This affects only the “position title” and “brief description of VA duties” fields, as well as your responses to the waiver criteria questions. All other form fields (e.g., phone number, supervisor) must contain current information.

26. If I have more than one FPEI connection, must I submit a separate waiver request for each connection?
   Answer: If you have more than one kind of connection to one FPEI (e.g., you receive services and wages from one FPEI), submit one waiver request form. The form allows employees to indicate multiple FPEI connections. The different connections should be described in the “Brief Description of Your FPEI Connection” box.

If you have connections to multiple FPEIs (e.g., you take classes at two different FPEIs), submit a separate waiver request form for each FPEI.

27. If my FPEI connection is current, must I end that connection while awaiting waiver approval?
   Answer: No. If your FPEI connection is current, consideration of your waiver request will not be negatively impacted by your maintaining the connection while management considers your waiver request.

28. Am I required to request a new waiver each semester, or at some point in the future?
   Answer: Generally, no. You are required to request a new waiver if 1) during your existing FPEI connection, your VA duties change to include duties affecting FPEIs or 2) you intend to enter into an FPEI connection that is of a different category than the FPEI connection for which you have a waiver.

Waiver Request Process and General Information

29. How will waiver requests be processed?
   Answer: Supervisors will review waiver requests, confirming the description of the employee’s duties, as well as whether the employee satisfies the waiver criteria. If the employee satisfies the waiver criteria, the supervisor will route the waiver request to the appropriate granting official. If the employee does not satisfy the waiver criteria, the supervisor will route the waiver request to OGC for consideration of a USB waiver.

Granting officials will review waiver requests as soon as possible. When granting officials determine that a waiver should be granted, granting...
officials will indicate their preliminary approval on the waiver request so that select data from the request are posted to a publicly available website, which is required by the statute. The data that will be posted publicly are: position title, facility/office, brief description of employee's duties, the name of the FPEI, the nature of the employee's FPEI connection (e.g., "salary or wages," "services," etc.), and whether the connection is past, present, or future.

If no one submits a comment about a proposed waiver, SharePoint will automatically approve the waiver after the 30-day comment period ends and OGC confirms that no comments were received. If a person submits a comment about a proposed waiver, OGC will forward the comment to the granting official. After the 30-day comment period ends, and OGC confirms that it forwarded the granting official all comments regarding a proposed waiver, SharePoint will notify the granting official via email that the waiver is ready for final approval or denial.

After the granting official approves the waiver, the granting official may destroy any comments received, as OGC will retain comments. SharePoint will send an email notification to the employee, supervisor, and granting official, which will instruct the employee to forward the completed waiver to HR for inclusion in the employee's OPF.

30. What is the timeline for waiver requests?
   Answer: For VA employees with a current or past FPEI connection, waiver requests must be submitted in accordance with management guidance. Granting officials will review each request as soon as possible. After the notice is published, the public will have 30 days to comment on proposed waivers. OGC will forward all comments to the appropriate granting official for consideration. SharePoint will mark as approved all proposed waivers that receive no comments. SharePoint will notify granting officials when it is time to approve or deny waiver requests that received comments. Grant officials will approve or deny such waivers as soon as possible after receiving notification from SharePoint. OGC's Ethics Specialty Team is available to provide legal guidance.

For VA employees who will have an FPEI connection in the future, requests must be submitted before these employees establish a prohibited FPEI connection.

31. Where will completed waivers be retained?
   Answer: Completed waiver requests, whether granted or denied, will be retained in the employee's Official Personnel Folder ("OPF").

Employees requesting waivers are responsible for forwarding completed waivers to the appropriate HR official. HR officials are responsible for uploading completed waivers into employee OPFs. Facility heads must ensure that a process exists for uploading completed waivers into OPFs.

32. Does § 3683(a) affect affiliation agreements or other VA relationships with FPEIs?
   Answer: No. Section 3683(a) only applies to VA employees and has no effect on affiliation agreements or other VA relationships with FPEIs.

33. Does the statute prohibit VA employees from participating in accreditation site visits at FPEIs?
   Answer: No, the statute applies to VA employees who own any interest in, or receive any wages, salary, dividends, profits, gratuities, or services from, an FPEI in which an eligible person or veteran was pursuing a program of education using VA educational benefits, but the statute does not affect VA's relationships with FPEIs. Participating in a site visit is not owning an interest in, or receiving wages, salary, dividends, profits, gratuities, or services from, an FPEI. Whether a VA employee conducts accreditation site visits, the employee must request a waiver if the employee has a connection with an FPEI in which an eligible person or veteran is pursuing a program of education using VA educational benefits.

34. What happens when a waiver request is denied?
   Answer: If a granting official denies a waiver request, SharePoint will automatically forward the waiver request to OGC for consideration of a USB waiver. If the USB denies a waiver request, the USB must provide the denial to the employee's supervisor, who will work with HR to begin removal proceedings in accordance with applicable laws and/or policies.

35. Will employees receive notice that a waiver request may be denied?
   Answer: Yes. If OGC determines that facts exist that may require OGC to recommend that the USB deny a waiver request, OGC will contact the employee to discuss the issue. In some situations, it may be possible for the employee to take action that removes the harm caused by the FPEI connection and allows OGC to recommend that the waiver request be granted.

How to Review a Waiver Request

36. What is the supervisor's role in the review process?
Answer: The supervisor will confirm that the employee’s duties are accurately described and whether the employee satisfies the waiver criteria. The supervisor must also forward the waiver request to the appropriate official (see FAQ #16).

37. What is the granting official’s role in the review process?
Answer: Granting officials should only receive waiver requests from employees who satisfy the waiver criteria. Accordingly, for such employees there is a presumption in favor of granting the waiver. Granting officials should deny a waiver request only if they have independent knowledge that the employee’s FPEI relationship causes a “detriment” to the United States or Veterans, such as if the employee has committed, or will commit, an ethics violation regarding the FPEI or FPEIs generally. Granting officials should take the information provided on the waiver request at face value, unless they have knowledge that the information is incorrect or incomplete, and are encouraged to confer with the Ethics Specialty Team if questions arise about a potential ethics violation.

38. May granting officials deny a waiver request if the employee satisfies the waiver criteria at 38 C.F.R. § 21.4005(b)(1)?
Answer: Possibly. If an employee satisfies the waiver criteria, there will be a presumption in favor of granting the waiver. However, if the granting official believes that a reason for denying the waiver nonetheless exists, they should consult with the Office of General Counsel’s Ethics Specialty Team.

39. What if a mistake is discovered on a waiver request?
Answer: If, after waiver submission, the requesting employee or any reviewer discovers a mistake on the request that should be corrected, the employee should return to the waiver (using the link contained in the email sent by SharePoint following submission), edit the form, then click the “Save Changes” button at the bottom of the form.

[1] There is a second basis upon which granting officials may grant a waiver, but we anticipate that this waiver basis will rarely apply, if at all. Granting officials may grant a waiver if 1) an employee’s connection to an FPEI is an ownership interest, 2) the employee acquired their ownership interest through an inheritance (or some other situation where a law required the employee to take an ownership interest) or before the employee became a VA employee, and 3) the ownership interest has been disposed of and the employee’s connection to the FPEI discontinued. The waiver request form will allow employees to seek a waiver under these criteria, if applicable.

Notice: This guidance applies only to FPEI connections that began, or will begin, on or after September 29, 2018. See these FAQs for guidance concerning FPEI connections that began prior to September 29, 2018.

For all VA employees, 38 U.S.C. § 3683(a) requires corrective or disciplinary action for a VA employee who, at any time during their VA employment, owned any interest in, or received any wage, salary, dividend, profit, or gift from, any educational institution operated for profit ("FPEI"). However, under 38 U.S.C. § 3683(d) and 38 C.F.R. § 21.4005, the Secretary; the Director, VBA Education Service; and facility heads may waive application of § 3683(a) if no detriment will result by reason of a VA employee’s connection to an FPEI. The Secretary has delegated his waiver authority to the Under Secretary for Benefits.

Only certain "covered employees" must seek a waiver for receiving "services" (e.g., classes) from an FPEI. These "covered employees" are those who work on chapters 30-36 programs. The Secretary has the authority to require other VA employees to seek a waiver for taking classes, but has not exercised that authority.

These frequently asked questions seek to address issues surrounding the reach of the statute and the requirement for certain employees to seek a waiver. Employees should submit additional questions to b(6) va.gov.

*These programs are the All-Volunteer-Force Educational Assistance Program (chapter 30), Vocational Rehabilitation and Employment (chapter 31), Post-Vietnam Era Veterans’ Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Veterans’ Educational Assistance (chapter 34), Survivors’ and Dependents’ Educational Assistance (chapter 35), and Administration of Educational Benefits (chapter 36).

Requirement to Request a Waiver

1. Who must request a waiver?
   Answer: All employees who, at any time during their VA employment, owned any interest in, or received any wage, salary, dividend, profit, or gift from, any educational institution operated for profit ("FPEI"). The requirement to request a waiver for receiving "services" (e.g., classes) from an FPEI applies only to "covered employees."

2. Must I request a waiver if I previously had a connection to an FPEI, but do not currently?
   Answer: Yes, if your connection to an FPEI existed during your VA employment. For connections that began prior to September 29, 2018, please see these FAQs.

3. Must I request a waiver if I currently have no connection to an FPEI, but will have a connection in the future?
   Answer: Yes, if you have plans, for example, to teach or take classes at an FPEI, you must seek a waiver prior to entering into the relationship with the FPEI.

4. Must I request a waiver if my duties concern educational benefits or FPEIs, but I do not have a prohibited connection to an FPEI?
   Answer: No.

5. Who is a VA employee?
   Answer: A VA employee is an individual who has a VA appointment, is subject to supervision by a Federal employee, and is engaged in the performance of a Federal function. Contractors and volunteers are not employees.

6. Must without compensation ("WOC") employees request a waiver?
Answer: Yes, WOC employees are considered VA employees under § 3683(a) and thus must request a waiver if they have an FPEI connection listed in the statute.

7. Who is a "covered employee"?

Answer: A "covered employee" must request a waiver for receiving services (e.g., classes) from an FPEI. "Covered employees" are those who work on chapters 30-36 programs. These programs are the All-Volunteer-Force Educational Assistance Program (chapter 30), Vocational Rehabilitation and Employment (chapter 31), Post-Vietnam Era Veterans' Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Veterans' Educational Assistance (chapter 34), Survivors' and Dependents' Educational Assistance (chapter 35), and Administration of Educational Benefits (chapter 36). The Secretary has the authority to require other VA employees to seek a waiver for taking classes, but has not exercised that authority.

8. What constitutes an ownership interest in an FPEI?

Answer: In addition to being an owner or part-owner of an FPEI, this includes owning stock in an FPEI or its parent company. However, employees with investments in diversified mutual funds do not have an ownership interest in an FPEI, even if the diversified mutual fund contains stock in an FPEI or its parent company.

9. What constitutes a gift from an FPEI?

Answer: A "gift" under § 3683 is anything that employees are prohibited from accepting under the gift regulations at 5 C.F.R. part 2635, subpart B. For example, if an FPEI gives an employee a $500 watch, that would constitute a "gift" under § 3683 because the gift regulations do not permit the employee to accept the watch. But, if an FPEI gives an employee a $5 mug, that would not constitute a "gift" under § 3683 because the de minimis exception allows employees to accept items worth $20 or less. (Note that an employee cannot accept more than $50 in gifts from one source in a calendar year. Further, before accepting an otherwise permissible gift, an employee must consider whether acceptance would cause a reasonable person to question the employee's integrity or impartiality.)

10. Must I request a waiver if my spouse or child has a connection to an FPEI?

Answer: No, the statute is triggered only by an employee's personal connection to an FPEI.

11. What constitutes "services" from an FPEI?

Answer: Taking classes at, and receiving instruction or training from, an FPEI constitutes receiving "services." Additionally, "services" may also include something of value other than classes, wages, or salary.

12. Must I request a waiver if VA is paying for my classes at an FPEI in which a person is pursuing a program of education using VA educational benefits?

Answer: Yes, if you are a "covered employee." Regardless of who pays for your classes at an FPEI, if you are taking classes at an FPEI you are receiving "services" from the FPEI.

13. Must I request a waiver if I am an FPEI employee who seeks to teach a class at a VA facility or to VA employees?

Answer: Generally, no. Section 3683(a) only applies to VA employees. However, if the FPEI employee is also a VA employee (e.g., a WOC employee), the individual must request a waiver.

14. Must I request a waiver if I am an FPEI student who performs rotations at VA facilities?

Answer: Currently, no. However, the Secretary is authorized to expand the definition of "covered employee." (See FAQ #7).

15. Must I request a waiver if I accepted a scholarship from an FPEI?

Answer: Yes, if you are a "covered employee." If you are a VA covered employee who accepted a scholarship from such an FPEI, you are also a student at the FPEI and are thus receiving "services" from the FPEI.

16. Must I request a waiver to attend an educational program at a for-profit hospital?

Answer: Maybe, if you are a "covered employee" and if the for-profit hospital appears in the search results of the Department of Education's website (see FAQ #23).

**How to Request a Waiver**

17. How do I request a waiver?
Answer: Employees requiring a waiver will fill out and submit a waiver request at this internal VA site. Your supervisor will review the request and forward to the appropriate granting official if you satisfy the waiver criteria. If you do not satisfy the waiver criteria, your supervisor will indicate this on the waiver request, which will result in your request being forwarded to OGC for consideration of a waiver from the Under Secretary for Benefits ("USB"). Employees currently requiring a waiver must submit their waiver request in accordance with management guidance. Granting officials will review waiver requests on a rolling basis, as soon as possible, and determine whether to grant the requests.

18. Who may grant a waiver?

Answer: Facility heads or, for employees not in a VA facility, the Director, VBA Education Service, are the "granting officials" who are authorized to grant waivers to employees who satisfy six waiver criteria. [1] (See FAQ #21). The USB may grant a waiver to any VA employee. Thus, the USB will consider waiver requests from employees who do not satisfy the waiver criteria and from VA employees whose requests for waivers were otherwise denied by a granting official.

19. Who is a "facility head"?

Answer: Facility heads are directors of VA Medical Centers, National Cemeteries, and Regional Benefit Offices.

20. How do I request a USB waiver?

Answer: For the requesting employee, the process is no different than requesting a waiver from a facility head. If you certify on your waiver request form that you do not satisfy the waiver criteria, your supervisor will forward your waiver request to OGC for consideration of a USB waiver.

21. What are the waiver criteria?

Answer: The criteria are listed in 38 C.F.R. § 21.4005[b](1)(ii) and also contained in the waiver request form. Below are the criteria, in plain English. See FAQ #22 for a list of programs considered "GI Bill educational benefits" for 3838 purposes. Note that, for purposes of criteria B and C only, "GI Bill educational benefits" includes Vocational Rehabilitation and Employment duties. The six criteria do not concern educational benefits or programs outside of the GI Bill, such as VA scholarship programs, tuition reimbursement programs, loan repayment programs, or any other program targeted as an educational benefit for VA employees. In order to satisfy the waiver criteria, employees must answer "no" to each question:

a. I perform duties concerning policy determinations that pertain to payment of GI Bill educational benefits.

b. My duties include processing any person's application for education or training using GI Bill educational benefits (this includes Vocational Rehabilitation and Employment duties).

c. I make decisions regarding individual applications for education or training using GI Bill educational benefits (this includes Vocational Rehabilitation and Employment duties).

d. I perform duties concerning compliance inspections on educational institutions or persons in connection with GI Bill educational benefits.

e. I perform duties concerning the processing of claims by, or payments to, schools or students or reimbursements of the costs of tests in connection with GI Bill educational benefits.

f. I perform duties concerning the inspection, approval, or supervision of educational institutions desiring to train persons or to offer a reimbursable test through GI Bill educational benefits.

22. What does "GI Bill educational benefits" include?

Answer: This includes the All-Volunteer-Force Educational Assistance Program (chapter 30), Post-Vietnam Era Veterans' Educational Assistance (chapter 32), Post-9/11 Educational Assistance (chapter 33), Survivors' and Dependents' Educational Assistance (chapter 35), and Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 1606). Additionally, for criteria B and C, Vocational Rehabilitation and Employment (chapter 31) duties must be considered.

23. How do I know if an educational institution is for-profit?

Answer: This Department of Education website (https://nces.ed.gov/collegenavigator/) allows employees to determine if a particular

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educational institution is for-profit.

24. Are companies that offer continuing education or board reviews considered FPEIs under the statute?
   Answer: Maybe. Employees should use the Department of Education website (see FAQ #23) to determine if a particular company is considered an FPEI.

25. If an employee’s FPEI connection is in the past, and the employee’s VA position and/or duties are different than they were at the time of the connection, which position and/or duties should be described on the waiver request?
   Answer: If your FPEI connection is in the past, and your VA position and/or duties have changed since the time of your FPEI connection, on the waiver request you must describe your current position and/or duties as of the time of the FPEI connection. This affects only the “position title” and “brief description of VA duties” fields, as well as your responses to the waiver criteria questions. All other form fields (e.g., phone number, supervisor) must contain current information.

26. If I have more than one FPEI connection, must I submit a separate waiver request for each connection?
   Answer: If you have more than one kind of connection to one FPEI (e.g., you receive services and wages from one FPEI), submit one waiver request form. The form allows employees to indicate multiple FPEI connections. The different connections should be described in the “Brief Description of Your FPEI Connection” box.

   If you have connections to multiple FPEIs (e.g., you take classes at two different FPEIs), submit a separate waiver request form for each FPEI.

27. If my FPEI connection is current, must I end that connection while awaiting waiver approval?
   Answer: No. If your FPEI connection is current, consideration of your waiver request will not be negatively impacted by your maintaining the connection while management considers your waiver request.

28. Am I required to request a new waiver each semester, or at some point in the future?
   Answer: Generally, no. You are required to request a new waiver if 1) during your existing FPEI connection, your VA duties change to include duties affecting FPEIs or 2) you intend to enter into an FPEI connection that is of a different category than the FPEI connection for which you have a waiver.

Waiver Request Process and General Information

29. How will waiver requests be processed?
   Answer: Supervisors will review waiver requests, confirming the description of the employee’s duties, as well as whether the employee satisfies the waiver criteria (note that employees satisfy the waiver criteria only when answering “no” to each waiver criteria question). If the employee satisfies the waiver criteria, the supervisor will route the waiver request to the appropriate granting official. If the employee does not satisfy the waiver criteria, the supervisor will route the waiver request to OGC for consideration of a USB waiver.

   Granting officials will review waiver requests as soon as possible. When granting officials determine that a waiver should be granted, granting officials will indicate their approval on the waiver request and some data from the approved request will be posted to a publicly available website, which is required by the statute. The data that will be posted publicly are: position title, facility/office, brief description of employee’s duties, the name of the FPEI, the nature of the employee’s FPEI connection (e.g., “Salary or wages,” “services,” etc.), and whether the connection is past, present, or future.

   SharePoint will send an email notification to the employee, supervisor, and granting official, which will instruct the employee to forward the completed waiver to HR for inclusion in the employee’s OPF.

30. What is the timeline for waiver requests?
   Answer: For VA employees with a current or past FPEI connection, waiver requests must be submitted in accordance with management guidance. Granting officials will review each request as soon as possible. For VA employees who will have an FPEI connection in the future, requests must be submitted before these employees establish a prohibited FPEI connection.

31. Where will completed waivers be retained?
   Answer: Completed waiver requests, whether granted or denied, will be retained in the employee’s Official Personnel Folder (“OPF”). Employees requesting waivers are responsible for forwarding completed waivers to the appropriate HR official. HR officials are responsible for uploading completed waivers into employee OPFs. Facility heads must ensure that a process exists for uploading completed waivers into OPFs.

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32. Does § 3683(a) affect affiliation agreements or other VA relationships with FPEIs?
   Answer: No. Section 3683(a) only applies to VA employees and has no effect on affiliation agreements or other VA relationships with FPEIs.

33. Does the statute prohibit VA employees from participating in accreditation site visits at FPEIs?
   Answer: No, because participating in a site visit is not owning an interest in, or receiving wages, salary, dividends, profits, gratuities, or services from, an FPEI.

34. What happens when a waiver request is denied?
   Answer: If a granting official denies a waiver request, SharePoint will automatically forward the waiver request to OGC for consideration of a USB waiver. If the USB denies a waiver request, the USB must provide the denial to the employee’s supervisor, who will work with HR to take appropriate corrective and/or disciplinary action.

35. Will employees receive notice that a waiver request may be denied?
   Answer: Yes. If OGC determines that facts exist that may require OGC to recommend that the USB deny a waiver request, OGC will contact the employee to discuss the issue. In some situations, it may be possible for the employee to take corrective action that removes the harm caused by the FPEI connection and allows OGC to recommend that the waiver request be granted.

**How to Review a Waiver Request**

36. What is the supervisor’s role in the review process?
   Answer: The supervisor will confirm that the employee’s duties are accurately described and whether the employee satisfies the waiver criteria. Note that an employee does NOT satisfy the waiver criteria if the employee answers “yes” to any of the waiver criteria questions. The supervisor must also forward the waiver request to the appropriate official (see FAQ #17).

37. What is the granting official’s role in the review process?
   Answer: Granting officials should only receive waiver requests from employees who satisfy the waiver criteria. Accordingly, for such employees there is a presumption in favor of granting the waiver. Granting officials should deny a waiver request only if they have independent knowledge that the employee’s FPEI relationship causes a “detriment” to the United States or Veterans, such as if the employee has committed, or will commit, an ethics violation regarding the FPEI or FPEIs generally. Granting officials should take the information provided on the waiver request at face value, unless they have knowledge that the information is incorrect or incomplete, and are encouraged to confer with the Ethics Specialty Team if questions arise about a potential ethics violation.

38. May granting officials deny a waiver request if the employee satisfies the waiver criteria at 38 C.F.R. § 21.4005(b)(1)?
   Answer: Possibly. If an employee satisfies the waiver criteria, there will be a presumption in favor of granting the waiver. However, if the granting official believes that a reason for denying the waiver nonetheless exists, they should consult with the Ethics Specialty Team.

39. What if a mistake is discovered on a waiver request?
   Answer: If, after waiver submission, the requesting employee or any reviewer discovers a mistake on the request that should be corrected, the employee should return to the waiver (using the link contained in the email sent by SharePoint following submission), edit the form, then click the “Save Changes” button at the bottom of the form.

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[1] There is a second basis upon which granting officials may grant a waiver, but we anticipate that this waiver basis will rarely apply, if at all.
Granting officials may grant a waiver if 1) an employee's connection to an FPEI is an ownership interest, 2) the employee acquired their ownership interest through an inheritance (or some other situation where a law required the employee to take an ownership interest) or before the employee became a VA employee, and 3) the ownership interest has been disposed of and the employee's connection to the FPEI discontinued. The waiver request form will allow employees to seek a waiver under these criteria, if applicable.