



DEPARTMENT OF VETERANS AFFAIRS
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Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

The Fugitive Felon Benefits
Adjustment Process Needs
Better Monitoring

REVIEW

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Executive Summary

The Veterans Benefits Administration (VBA) oversees the delivery of benefits and services to veterans and other beneficiaries.¹ VBA’s disability compensation program provides tax-free monthly payments to veterans with disabilities caused by diseases, events, or injuries incurred or aggravated during active military service. VBA also pays pension benefits to wartime veterans meeting certain age or disability requirements and having income and net worth within specified limits. Although VBA provides a wide range of other benefits and services, this report focuses on only compensation and pension benefits.

When a veteran no longer meets the requirements to receive benefits, VBA must adjust payments for the duration of ineligibility.² Federal law holds that veterans who are fugitive felons are not entitled to the payment of VBA benefits.³ Referred to within VBA as the “fugitive felon act” (and throughout this report), the relevant provision states a fugitive felon is defined as a person who is

- fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
- violating a condition of probation or parole imposed for commission of a felony under federal or state law.⁴

The VA Office of Inspector General (OIG) conducted this review to determine whether VBA accurately adjusted compensation and pension benefit payments for fugitive felons as mandated.

The OIG, in its capacity as a federal entity with full law enforcement authority, has access to warrant information maintained by the National Crime Information Center (NCIC), the federal government’s central database for tracking crime-related information. The OIG routinely sends VBA a list of veterans with outstanding felony arrest warrants and offense codes (felony referrals) to facilitate VA’s obligations under the fugitive felon act.⁵ During calendar years 2019

¹ For the purpose of this report, the term “veteran” is used to refer to veterans, dependents, and other beneficiaries.

² Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107-103, § 505, codified at 38 U.S.C. § 5313B (2020).

³ 38 U.S.C. § 5313B.

⁴ 38 U.S.C. § 5313B.

⁵ The OIG undertakes this activity consistent with its authority to conduct, supervise, or coordinate matters relating to the prevention and detection of fraud, waste, and abuse in VA programs and operations, as well as identification and prosecution of participants in such fraud. See Inspector General Act of 1978, as amended, Pub. L. No. 95-452, §1, 92 Stat. 1101, (1978); 5 U.S.C. app. 3 § 4(a)(4). The OIG sends the felony referrals to VBA; however, it is VBA’s responsibility to carry out and oversee its fugitive felon benefits adjustment process.

and 2020 (the review period), VBA received referrals from the OIG for veterans with outstanding felony arrest warrants whose benefits may have required adjustments.

What the Review Found

The OIG found that VBA leaders need to better monitor the fugitive felon benefits adjustment process. After the 2001 passage of the fugitive felon act and continuing through June 2014, VBA interpreted the law to presume that *all* veterans for whom a felony arrest warrant had been issued were fugitives *in a flight status* for the purpose of benefit adjustments. During this period, VBA did not distinguish between the various offense codes used by the NCIC—some of which did not include indicators of fleeing.⁶ However, in June 2014, VBA updated its definition of a fugitive felon to include only seven specific NCIC offense codes—those indicating escape, flight, or violation of the conditions of probation or parole (flight codes).⁷ With this updated definition, VBA revised its process to determine whether benefits should be suspended only for veterans with felony referrals containing at least one of the flight codes. That meant VBA no longer required a benefit adjustment determination to be made for felony referrals that did not include at least one of the seven flight codes.⁸

VBA Did Not Process 46 Percent of Cases in 2019 and 2020

During the review period, the OIG sent five lists to VBA containing felony referrals.⁹ The lists included a total of 4,575 referrals related to veterans with outstanding felony arrest warrants containing at least one of the seven flight codes, who were also receiving VA compensation and pension benefits. These referrals were the focus of the OIG review as they required VBA action based on its updated policy and procedures. However, due to inadequate monitoring, VBA did not process two of these five lists—sent in July 2019 and October 2020—that together contained 2,088 felony referrals requiring additional action. In those cases, VBA failed to determine whether adjustments to compensation and pension payments were needed. These two lists accounted for about 46 percent of the cases containing at least one of the seven flight codes referred by the OIG to VBA during the review period.

Due Process Letters Did Not Comply with VBA Policy and Procedures

Before adjusting benefits, VBA is required to send veterans a letter providing notice of the proposed action and the veteran's right to a hearing. These letters are commonly referred to

⁶ The NCIC's four-digit uniform offense classification codes identify the category of each criminal offense, such as robbery (1299), assault (1301), and dangerous drugs (3599).

⁷ For details on VBA's June 2014 change, see appendix A.

⁸ VBA Letter 20-14-09, "New Fugitive Felon Policy and Procedures," June 23, 2014.

⁹ The total number of felony referrals was 8,870.

within VBA as “pre-determination letters” or “due process letters.” However, in addition to VBA failing to process more than 2,000 felony referrals sent by the OIG during the review period, the team found that VBA’s due process letters did not always provide the information required by internal guidance. In 2014, VBA issued guidance adopting specific requirements for due process letters to veterans who have at least one of the flight codes. Examples of required information include the law enforcement agency issuing the warrant, the warrant number, the date of the warrant, the warrant offense code, and the warrant reason.¹⁰

However, based on a statistical sample, the OIG determined that VBA did not follow its own policy and procedures during the review period. VBA failed to include all the required information in due process letters for an estimated 1,883 of 2,487 felony referrals (76 percent) completed during that time.¹¹ Most commonly, VBA failed to include the reason for the issuance of the arrest warrant in the due process letter. The OIG provided VBA leaders with examples of due process letters missing the required language. VBA agreed with the deficiencies the OIG found and acknowledged that the majority of the due process letters were inadequate.

VBA Did Not Process Fugitive Felon Cases in 2012 and 2013

While reviewing internal VBA correspondence dated in calendar year 2016 and related to fugitive felon due process letters, the review team identified a statement indicating that fugitive felon cases had not been processed since 2011. Therefore, the team expanded its review to determine whether this statement was accurate. The team found that in April 2012, VBA instructed regional offices to postpone making decisions on fugitive felon cases while it prepared new guidance; however, the guidance was not issued until June 2014. VBA did not process referrals during this period. Moreover, staff did not revisit these fugitive felon cases even after benefit adjustment work resumed.

What the OIG Recommended

The OIG recommended the under secretary for benefits

- improve monitoring procedures and demonstrate progress toward ensuring all felony referrals are processed;
- update fugitive felon letters and ensure they are consistently sent with all required information; and

¹⁰ VBA Letter 20-14-09, “New Fugitive Felon Policy and Procedures,” June 23, 2014.

¹¹ Of the 4,575 referrals, 2,088 were not processed; 2,487 referrals were completed.

- review unprocessed felony referrals identified in this report, take corrective action as needed, and report the efforts taken to the OIG.¹²

VA Comments and OIG Response

The acting under secretary for benefits concurred with all three recommendations, provided information on actions taken by VBA, and requested closure of the recommendations. The acting under secretary also provided general comments on this report. The full text of the general comments and actions taken by VBA to address the recommendations appear in appendix D.

The actions taken by VBA were responsive to all three recommendations. Based on the evidence provided by VBA, the OIG considers recommendation 2 closed. However, recommendations 1 and 3 will remain open, and the OIG will continue to assess VBA's monitoring of the actions taken. The OIG will close the recommendations when VBA demonstrates that sufficient progress has been made to address the intent of the recommendations.

As part of VBA's general comments, the acting under secretary stated the "process is a joint VA OIG and VBA process by which VBA receives data and input from VA OIG in order to initiate the process for Fugitive Felon Adjustments." However, the OIG's minimal role in the process is limited to just sending felony referrals to VBA—it is VBA's responsibility to develop, implement, and monitor its fugitive felon benefits adjustment process.



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¹² The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

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Abbreviations

NCIC	National Crime Information Center
OIG	Office of Inspector General
SSA	Social Security Administration
VBA	Veterans Benefits Administration



Introduction

The Veterans Benefits Administration’s (VBA) compensation program provides tax-free monthly payments to veterans for the effects of disabilities caused by diseases, events, or injuries incurred or aggravated during active military service. VBA also pays pension—a needs-based benefit designed to provide certain wartime veterans and their survivors with a minimum level of income that raises their standard of living. Although VBA provides a wide range of additional benefits and services, this report focuses on only those related to compensation and pension.

Federal law prohibits the payment of federal benefits to fugitive felons.¹³ When a veteran no longer meets the requirements to receive benefits, VBA is required to adjust payments for the time the veteran is ineligible.¹⁴ Veterans will continue to receive benefits during periods of ineligibility if VBA does not adjust them as required. A failure to discontinue benefits creates an overpayment, which may subject veterans to collection actions.

The VA Office of Inspector General (OIG) conducted this review to determine whether VBA accurately adjusted VA compensation and pension benefit payments in compliance with the law. Accordingly, this report also provides background information on the Veterans Education and Benefits Expansion Act of 2001 (referred to by VBA as the “fugitive felon act”), as well as a similar statute requiring the Social Security Administration (SSA) to adjust its benefits for fugitive felons.

Fugitive Felon Act

A fugitive felon is defined as a person who is

- fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
- violating a condition of probation or parole imposed for commission of a felony under federal or state law.¹⁵

Prior to adjusting benefits in accordance with the fugitive felon act, VBA must provide the veteran with notice of the proposed action and the right to a hearing—commonly referred to within VBA as a “pre-determination letter” or a “due process letter.”

¹³ Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107-103, § 505, codified at 38 U.S.C. § 5313B (2020).

¹⁴ For the purpose of this report, the term “veteran” is used to refer to veterans, dependents, and other beneficiaries.

¹⁵ 38 U.S.C. § 5313B.

When alerted that a veteran has had a felony arrest warrant meeting the statutory definition, VBA is responsible for notifying the veteran of the warrant, proposing an adjustment of benefits, and providing due process. Specifically, VBA provides veterans with a due process letter allowing the veteran 60 days to submit evidence that the warrant was the result of error or mistaken identity, or was vacated by the issuing court.¹⁶ At the end of the 60-day period, if no additional evidence is submitted or VBA determines that the veteran is a fugitive felon, benefits are suspended for the duration of the active warrant. Those benefits resume when evidence is received that establishes the warrant is no longer active.

VBA's Initial Interpretation of the Fugitive Felon Act

After the passage of the fugitive felon act in 2001, VBA interpreted the law to presume that all veterans for whom a felony arrest warrant had been issued were fugitives under the law.¹⁷ In doing so, VBA used the offense codes established by the National Crime Information Center (NCIC)—the federal government's centralized database for tracking crime-related information—only to assess whether the arrest warrant involved a felony, not whether that felony charge involved an attempt to flee or evade prosecution, custody, or confinement.

The OIG, in its capacity as a federal entity with full law enforcement authority, has access to warrant information maintained by the NCIC. Approximately twice each year, the OIG provides VBA with a list of individuals with felony arrest warrants gathered from federal and local law enforcement agencies to facilitate VA's obligations under the fugitive felon act.¹⁸ The OIG matches this data against VA records to identify veterans receiving benefits who might be fugitive felons. Once VBA receives a list, it can assess each case and take action to adjust VA benefits payments as appropriate. VBA is responsible for determining whether benefits need to be suspended.

Procedurally, after being notified of a felony arrest warrant by the OIG, VBA is also responsible for sending the due process letter detailed above that proposes the suspension of benefits. VBA then notifies veterans of the decision, whether favorable or unfavorable. Benefits resume when evidence is received demonstrating the veteran is no longer wanted for a felony.¹⁹

¹⁶ VA Manual 21-1, part 1, chap. 2, sec. A, topic 1, subpart b, "Due Process and VA," January 29, 2018. "Due process in the administration of VA benefits informs the veteran of a proposed adverse action that could reduce or terminate benefits and provides the veteran with the opportunity to provide additional evidence to contest the action or hold a hearing before VA decision makers, or both."

¹⁷ VA Manual 21-1, part X, chap. 16, topic 1, sec. c, "Definition: Fugitive Felon" March 20, 2007.

¹⁸ The OIG undertakes this activity consistent with its authority to conduct, supervise, or coordinate matters relating to the prevention and detection of fraud, waste, and abuse in VA programs and operations, as well as identification and prosecution of participants in such fraud. See Inspector General Act of 1978, as amended, Pub. L. No. 95-452, §1, 92 Stat. 1101, (1978); 5 U.S.C. app. 3 § 4(a)(4).

¹⁹ VA Manual 21-1, part 14, chap. 8, topic 2, sec. d, "Deciding Whether an Individual Is a Fugitive Felon and Notifying the Beneficiary of the Decision," April 1, 2021.

Social Security Administration’s Interpretation of Its Corresponding Fugitive Felon Statute

SSA has a similar statute that requires adjustments to social security benefits under like circumstances.²⁰ In applying its terms, SSA used similar presumptions regarding flight. Like VA, SSA initially interpreted the law to presume that all beneficiaries with felony arrest warrants were fugitive felons.²¹ However, in August 2009, following legal challenges and a class action lawsuit, SSA entered a settlement and agreed to limit enforcement of its fugitive felon statute to only three felony offense codes referring expressly to flight or escape.²² The three offense codes are listed in table 1.

Table 1. Offense Codes Processed by the Social Security Administration

Offense code	Description
4901	Escape
4902	Flight to avoid prosecution
4999	Flight-escape

Source: SSA Program Operations Manual System.

In July 2009, VA’s Office of General Counsel notified VBA of the legal decision overturning SSA’s original interpretation of its fugitive felon law.²³ The Office of General Counsel informed VBA that VA’s fugitive felon act was similar to the SSA’s law and suggested implementing formal regulations. Despite this notification, VBA continued to process fugitive felon adjustments in the same manner until 2014 when its guidance was updated.²⁴

VBA’s Updated Guidance Concerning the Fugitive Felon Act

In June 2014, VBA issued new guidance stating it would no longer presume that all veterans with active felony arrest warrants were “in flight” for purposes of establishing fugitive felon status. Instead, the updated guidance—based on VBA’s interpretation of the fugitive felon act—instructed staff only to initiate action for veterans with arrest warrants based on at least one of seven specifically identified offense codes, each of which was considered to have a finding of

²⁰ 42 U.S.C. § 1382(e)(4)(A).

²¹ SSA Program Operations Manual System, “Fugitive Felon Automated Case Processing,” accessed July 12, 2021, <https://secure.ssa.gov/poms.nsf/lnx/0500530205>.

²² SSA Program Operations Manual System, “Fugitive Felon Automated Case Processing.”

²³ An Office of General Counsel attorney’s email message to a VBA Central Office employee, “Fugitive Felons,” July 10, 2009. (Names withheld to protect individuals’ privacy.)

²⁴ As described in later sections of this report, no fugitive felon adjustments were made by VBA in 2012 and 2013 while new guidance was being considered.

flight, escape, or a violation of the conditions of probation or parole as an element of the offense.²⁵ VBA’s process no longer required a determination to be made for felony referrals that did not include at least one of the seven flight codes. These seven codes are itemized in table 2 below.²⁶

Table 2. Offense Codes Processed by VBA

Offense code	Description
4901	Escape
4902	Flight to avoid prosecution
4999	Flight-escape
5011	Parole violation
5012	Probation violation
8101	Juvenile offender abscond (escape/flee) while on parole
8102	Juvenile offender abscond while on probation

Source: VA Manual 21-1.

Based on the updated guidance, VBA issued due process letters informing veterans with offense codes listed in table 2 that VBA proposed suspending or reducing benefits. It also allowed 60 days for the recipient to submit evidence to contest the proposed adverse action or request a hearing. After that period, VBA also provided notice of its final determinations.

Because VBA discontinued its practice of presuming that all veterans with felony arrest warrants are considered fugitive felons for the purposes of benefits adjustments (except the seven listed above), felony offense codes that do not specifically refer to flight, escape, or a violation of the conditions of probation or parole are no longer considered for that purpose. A partial list of the codes not considered in the fugitive felon analysis, based on VBA’s interpretation of the fugitive felon act, is provided in table 3.

²⁵ VBA Letter 20-14-09, “New Fugitive Felon Policy and Procedures,” June 23, 2014.

²⁶ VA Manual 21-1, part 14, chap. 8, topic 1, sec. e, “NCIC [National Crime Information Center] Offense Codes,” June 28, 2021. Juvenile offense codes are included because the fugitive felon act prohibits VA benefits payments to beneficiaries in a fugitive felon status, which can include dependents.

**Table 3. Examples of Offense Series
No Longer Processed by VBA**

Offense series	Description
0900	Homicides
1000	Kidnappings
1100	Sexual assaults
1600	Threats—Terrorism

Source: For a full list of offense codes, see the [NCIC Code Manual](#).

Results and Recommendations

Finding: VBA Leaders Need to Improve Monitoring of the Fugitive Felon Benefits Adjustment Process

The review team identified issues with VBA's process to adjust benefits for fugitive felons. VBA did not review all felony referrals made by the OIG during calendar years 2019 and 2020 (the review period). The OIG sent VBA five lists of felony referrals.²⁷ For this review, the team focused on just those referrals with at least one of the seven flight codes, a total of 4,575 that required further VBA review and processing. VBA did not process two of the five lists of referrals with flight codes—those sent in July 2019 and October 2020—leaving 2,088 felony referrals with no determination as to whether they required an adjustment to compensation and pension payments. The OIG determined the two lists were not reviewed due to inadequate monitoring by VBA leaders.

VBA processed the remaining 2,487 felony referrals—all of which contained at least one of the seven flight codes—from the other three lists sent by the OIG during 2019 and 2020; however, the majority were not processed in compliance with VBA's policy and procedures. The most common issue was that the due process letters to veterans did not include the elements required by VBA policy or procedure before terminating their benefits. Examples of some required elements for fugitive felon due process letters include specific information about the warrant, including the law enforcement agency issuing the warrant, the warrant number, the date of the warrant, the warrant offense code, and the warrant reason.²⁸

Based on its statistical sample, the team estimated that 76 percent of the VBA-processed felony referrals during the review period (1,883 of 2,487) did not contain the reason for the warrant in the due process letter—a key required element. The high percentage of due process letters that did not contain the reason for the warrant reflects the fact that VBA did not monitor the letters to ensure they complied with established guidance.

In addition, the review team determined in conducting this initial review that VBA also did not process any felony referrals in 2012 and 2013 while it was drafting new guidance. VBA's new guidance was released in June 2014, and the processing of felon referrals resumed that year. Even after the guidance was issued, VBA did not revisit the cases that had not been processed for those two years.

²⁷ The total number of felony referrals was 8,870.

²⁸ Appendix A includes information on VBA's due process letter requirements, as well as an example of a compliant letter.

Until VBA improves monitoring of the fugitive felon benefits adjustment process, some veterans could receive funds to which they are not entitled, while others may not be informed of their legal rights, potentially resulting in VBA improperly suspending their benefits.

What the OIG Did

The review team's analysis is based on two samples of felony referrals. The team initially examined felony referrals received by VBA in 2019 and 2020 (the review period). In the course of that review, however, another potential gap in referral processing was identified and the team conducted additional analysis.

- *Initial review:* The team identified 4,575 felony referrals with at least one of the seven flight codes as part of the lists the OIG sent to VBA in 2019 and 2020. The team discovered, however, that 2,088 of the 4,575 referrals had not been reviewed by VBA to determine whether an adjustment was needed to compensation and pension payments. Therefore, the initial review focused on sampling only the subset of referrals *actually processed* by VBA, which consisted of the remaining 2,487 cases containing at least one of the seven flight codes.
- *Additional review:* In the course of its initial review, the team found VBA documents from 2016 indicating that processing of felony referrals stopped in 2011. Therefore, the team also analyzed a random sample of 140 cases from the 17,438 cases the OIG referred to VBA between 2010 and 2016. This sample review was conducted to determine if VBA had in fact stopped processing fugitive felon benefits adjustments, and if so, when it stopped adjusting them.²⁹ Based on this review, the team saw indications that VBA did not process felony referrals in 2012 and 2013. Having identified the parameters of the gap, the team then reviewed an additional random sample of 120 felony referrals from calendar years 2012 through 2014.³⁰

The team considered laws, regulations, policies, procedures, and guidelines applicable to processing fugitive felon benefits adjustments. The team also interviewed management and staff with VBA's Compensation Service, Pension and Fiduciary Service, and Hines Information Technology Center to obtain information about how felony referrals are processed.

The team coordinated with VBA and provided the sample review results. VBA concurred with the OIG's findings. See appendixes B and C for additional detail on the review team's scope,

²⁹ VBA conducted a special review of felony referrals received in 2017, which was published in 2019. For this reason, the team did not review referrals from 2017 or 2018.

³⁰ With the additional 120 cases reviewed, the review team examined a total of 180 felony referrals from calendar years 2012 through 2014; 60 cases were from the 140 analyzed when defining the referral-processing gap.

methodology, and sample design. The following sections detail the three determinations in support of the OIG’s finding:

- VBA did not process 46 percent of felony referrals containing at least one of the seven flight codes sent by the OIG in 2019 and 2020.
- Due process letters did not comply with VBA policy and procedures.
- VBA did not process felony referrals from 2012 to 2013.

VBA Did Not Process 46 Percent of Referrals in 2019 and 2020

As previously stated, the OIG sent five lists of data that included 4,575 felony referrals with flight codes requiring VBA review during calendar years 2019 and 2020. However, the OIG’s initial assessment found VBA did not review two of the five lists—those sent in July 2019 and October 2020—to determine whether those veterans’ compensation and pension payments required adjustment. These two lists had 2,088 cases with at least one of the seven flight codes, accounting for about 46 percent of all OIG referrals with flight codes over those two years. VBA was unaware of the missed lists until the OIG team’s notification during this review.

Table 4 summarizes the lists.

Table 4. Felony Referrals with Flight Codes Sent to VBA in 2019 and 2020

Date	Number of felony referrals with flight codes
March 2019	1,113
July 2019	917
January 2020	694
June 2020	680
October 2020	1,171
Total	4,575

Source: VA OIG data.

July 2019 Referrals Not Processed

The team found 917 felony referrals with at least one flight code sent to VBA in July 2019 were received but not reviewed to determine if benefit adjustments needed to be processed.

On July 17, 2019, the OIG notified VBA’s Compensation Service that a new list of felony referrals was available for review and processing. Email correspondence confirmed that the Compensation Service acknowledged receipt of the list. However, due to human error and a lack of monitoring, the individual responsible for moving the list of names to the next step in the

process did not do so; the cases were neither reviewed nor processed. The individual reported being at a VBA conference when the list was received and not following up after returning to the office. The assistant director of the Compensation Service stated there was a single point of failure because there was no backup process in place. This resulted in 917 veterans who were potentially fugitive felons continuing to receive benefits.

October 2020 Cases Not Processed

The review team found VBA received but did not process an additional 1,171 felony referrals with one or more of the seven flight codes. On October 30, 2020, the OIG notified the Compensation Service that a new list was ready for VBA to review and process. On November 23, 2020, the Compensation Service acknowledged receipt of the list. Email correspondence shows that individuals within the Compensation Service were then notified the list was ready to be reviewed and processed. However, emails with Compensation Service staff confirmed no further action was taken to process the list. The team determined this occurred due to human error and a lack of monitoring within VBA’s existing process.

Adequate Monitoring Was Not in Place

VBA’s workflow process and monitoring were inadequate for ensuring the processing of fugitive felon benefits adjustments.³¹ The workflow procedure involves multiple offices. As seen in table 5, several offices have roles and responsibilities within VA’s fugitive felon process.

Table 5. Entities and Roles

Entity	Roles
VBA entities	
Compensation Service	Responsible for processing referrals and any subsequent automated fugitive felon adjustments
<i>Policy and Procedures Staff</i>	Develops and disseminates procedures Creates and updates due process and determination letters as needed Maintains a workgroup that informally reviews letters
<i>Quality Assurance Staff</i>	Assesses claims-processing accuracy
Pension and Fiduciary Service	Responsible for processing referrals and any subsequent manual fugitive felon adjustments for pension benefits
Regional offices (fall under the jurisdiction of the Office of Field Operations)	Responsible for manual fugitive felon adjustments for compensation benefits

³¹ Managers from the Compensation Service informed the review team that VBA took action in October 2014 to create a SharePoint site as an historical digital repository to store fugitive felon data from the OIG.

Entity	Roles
Non-VBA entities	
Hines Information Technology Center	Updates letter templates in the information technology system based on information provided by the Compensation Service
Office of General Counsel	Provides legal advice and services

Source: VA OIG analysis.

Although VBA had a process, interviews with VBA staff revealed they were unclear which individuals were responsible for specific actions. Staff also stated no one was responsible for the entire program to ensure processing. Because the missed lists relied on a process that was inadequately monitored, a total of 2,088 referrals containing at least one flight code were never processed in 2019 and 2020.

If VBA continues its routine practices, it will remain at risk of not detecting future failures to review or process felony referral lists. This can lead to beneficiaries receiving compensation and pension payments to which they are not lawfully entitled.

Recommendation 1 addresses the need to improve monitoring procedures and demonstrate progress toward ensuring all felony referrals are processed.

Due Process Letters Did Not Comply with VBA Policy and Procedures

Even when VBA processed felony referrals, the review team found the majority of due process letters did not comply with prevailing policy and procedures. Beginning in June 2014, VBA guidance required due process letters to include specific information.³² The VBA guidance also included a due process standard form letter with the required elements.³³

However, based on its statistical sample, the OIG determined that VBA did not comply with its own policy and procedures by leaving out required language. For example, of the 2,487 felony referrals completed during the review period, an estimated 1,883 cases (76 percent) were missing the required language concerning the specific reason for the issuance of the warrant.³⁴ Without the specifics concerning the warrant, some veterans may not have possessed sufficient information to contest the adjustment of benefits within the specified 60 days.³⁵

When VBA automated due process letters in 2016, the letters did not include warrant reasons. VBA leaders further stated they were not aware of the requirement to include warrant reasons in

³² VBA Letter 20-14-09, “New Fugitive Felon Policy and Procedures,” June 23, 2014.

³³ VBA Letter 20-14-09, “New Fugitive Felon Policy and Procedures,” Enclosure 1, June 23, 2014.

³⁴ Appendix C provides additional details on the OIG’s statistical sampling methodology.

³⁵ The OIG found a similar lack of detail in several determination letters notifying veterans of the termination of their benefits following due process under the fugitive felon act. However, the team made no determination regarding whether these letters violated VA policy or law with respect to the contents of the notification letters under 38 C.F.R. § 3.103 (Procedural Due Process and Other Rights), as that was outside the scope of the audit.

the due process letters, and that the issue was never raised as a concern by VBA staff. The review team provided VBA leaders with examples of due process letters that did not contain all the required language. VBA agreed with the deficiencies and acknowledged that due process letters were insufficient.

Recommendation 2 addresses the need for VBA to update fugitive felon letters and ensure they are consistently sent with all required information.

VBA Did Not Process Fugitive Felon Cases from 2012 to 2013

While reviewing internal VBA correspondence from 2016 related to fugitive felon due process letters, the review team identified a statement indicating that fugitive felon cases had not been processed since 2011. Therefore, the team expanded its review to determine whether this statement was accurate. The team found that an April 2012 Compensation Service bulletin instructed regional offices to postpone making decisions on fugitive felon cases while the Compensation Service prepared guidance related to processing felony referrals received from the OIG. The guidance was not issued until 2014.

To determine whether VBA stopped processing referrals, the OIG team reviewed a random sample of 150 felony referrals with at least one flight code that the OIG sent to VBA from calendar year 2012 through April 2014.³⁶ The team determined that none of the 150 cases had been processed at the time of the referrals. Further, VBA had not reviewed the felony referrals received between the April 2012 bulletin and the June 2014 issuance of the new fugitive felon guidance. The Compensation Service staff indicated the initial stop was done while awaiting guidance prior to processing. When interviewed, VBA leaders told the team that, given so much time had passed, they had no knowledge of why felony referrals were not processed when adjustment work resumed.

Recommendation 3 addresses the need for VBA to review unprocessed felony referrals identified in this report, take corrective action as needed, and report the efforts taken to the OIG.

Conclusion

The OIG determined VBA leaders need to improve monitoring of the fugitive felon benefits adjustment process. Due to VBA's process design, failures could be caused by a single individual's error or missed alert. VBA missed processing two lists of fugitive felon cases due to inaction that was undetected by those tasked with monitoring. In addition, when cases were processed, due process letters for an estimated 1,883 veterans did not comply with VBA's established policy and procedures by including the specific reason for the issuance of the warrant. Finally, VBA stopped processing fugitive felon cases for over two years and did not

³⁶ These cases were selected from the VA OIG case management system.

take action to revisit them. Until VBA improves its oversight of the fugitive felon benefits adjustment processes, some veterans may receive funds to which they are not entitled, while others may not receive critical due process information.

Recommendations 1–3

The OIG made the following recommendations to the under secretary for benefits:³⁷

1. Improve monitoring procedures and demonstrate progress toward ensuring all felony referrals are processed.
2. Update fugitive felon letters and ensure they are consistently sent with all required information.
3. Review unprocessed felony referrals identified in this report, take corrective action as needed, and report the efforts taken to the OIG.

VA Management Comments

The acting under secretary for benefits concurred with all three recommendations, provided information on actions taken by VBA, and requested closure of the recommendations. The actions taken by VBA are detailed in appendix D. A summary of VBA's responses to the recommendations follow:

- **Recommendation 1.** VBA updated the existing fugitive felon standard operating procedure in June 2022 to include the timeframe VA can expect data from OIG to initiate fugitive felon adjustments, current points of contact, procedures for monitoring successful completion, and the location of historical records and analyses for transparency and oversight. The response stated that progress has been demonstrated because VBA is up to date with all referral lists received, including the most recent list adjusted June 6, 2022.
- **Recommendation 2.** The automated fugitive felon due process letters were updated in October 2021 with all required information, and VBA confirmed the appropriate letters have been dispersed.
- **Recommendation 3.** On October 1, 2021, VBA processed the July 2019 and October 2020 fugitive felon referral lists to issue veterans due process letters. On December 10, 2021, VBA completed final award adjustments, and notifications were sent to the appropriate veterans.

³⁷ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

The acting under secretary for benefits also provided general comments on this report. The full text of the comments are in appendix D.

OIG Response

The actions taken by VBA were responsive to all three recommendations. The OIG's response to those actions follows:

- **Recommendation 1.** VBA provided the OIG with a copy of the updated fugitive felon standard operating procedure, which now includes monitoring guidance to help ensure VBA processes felony referrals received from the OIG. Even though VBA reported being up to date with all referral lists received, this recommendation will remain open, and the OIG will continue to assess VBA's implementation and monitoring of its updated procedures to ensure improvements are sustained.
- **Recommendation 2.** The OIG received a copy of an updated fugitive felon due process letter, which contained required elements that were not included in due process letters reviewed by the OIG. Based on the evidence provided by VBA, the OIG considers recommendation 2 closed.
- **Recommendation 3.** VBA reported that it processed the July 2019 and October 2020 fugitive felon referral lists and provided the OIG with summary reports of the results. Because VBA's response did not include information on how VBA plans to address the fugitive felon referrals that were not processed from 2012 to 2013, this recommendation will remain open. The OIG, as part of its follow-up process, will also request and review additional details on the actions taken by VBA regarding the July 2019 and October 2020 fugitive felon referral lists.

The OIG will close recommendations 1 and 3 when VBA demonstrates that sufficient progress has been made to address the intent of the recommendations.

As part of VBA's general comments, the acting under secretary stated the "process is a joint VA OIG and VBA process by which VBA receives data and input from VA OIG in order to initiate the process for Fugitive Felon Adjustments." However, the OIG's minimal role in the process is limited to just sending felony referrals to VBA—it is VBA's responsibility to develop, implement, and monitor its fugitive felon benefits adjustment process.

Appendix A: VBA Letter 20-14-09, “New Fugitive Felon Policy and Procedures”

The OIG removed contact information prior to publication.

June 23, 2014

VBA Letter 20-14-09

Director (00)

All VBA Regional Offices and Centers

SUBJ: New Fugitive Felon Policy and Procedures

Purpose

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

New Fugitive Felon Policy

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

Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

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

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

Effective immediately, VBA no longer presumes that any valid outstanding felony arrest warrant establishes a beneficiary’s fugitive felon status under 38 U.S.C. § 5313B. As outlined below, VA Office of Inspector General (OIG) will send the Form FFP-3 (VA Investigative Summary Form) to VA Central Office (VACO) for all business lines. As required by section 5313B, VBA will request the information only for beneficiaries who have a felony arrest warrant with a National Crime Information Center (NCIC) offense code indicating flight or a probation or parole violation. These codes are:

4901 – Escape

4902 – Flight to avoid prosecution

4999 – Flight-escape

5011 – Parole violation

5012 – Probation violation

8101 – Juvenile offender abscond while on parole

8102 – Juvenile offender abscond while on probation

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

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

A judge issued a felony arrest warrant with a NCIC offense code indicating flight or a probation or parole violation,

VA provided the beneficiary notice regarding the reason for the warrant and an opportunity to present evidence, such as an acknowledgement of the validity of the warrant or failure to respond to the due process notification, or that he or she did not flee from justice or did not violate any condition of probation or parole, and

VA determines, based upon the warrant and evidence submitted by the beneficiary (if any), that the beneficiary was fleeing from justice or violated a condition of probation or parole. Benefits will be terminated for Veterans while they are fugitive felons and dependents of Veterans while the Veteran is a fugitive felon.

Responsibilities

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

OIG Responsibilities:

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

Investigate matched records to determine whether the individual who is the subject of the warrant is the same as the VA beneficiary,

Send electronic records regarding confirmed matches for beneficiaries in the benefit programs administered by VBA on Form FFP-3 (VA Investigative Summary Form) to VBA (Compensation Service), and

Provide VBA (Compensation Service) with the advice, assistance, and investigative resources necessary to determine the legal status of any alleged fugitive felon.

VBA Responsibilities:

- Provide due process regarding proposed benefit adjustments to beneficiaries who are the subject of an OIG referral (FFP-3),
- Make a determination regarding whether it is more likely than not that the beneficiary fled from justice or violated a condition of probation or parole based upon the warrant, evidence submitted by the beneficiary, and development of any other evidence,

- Send the beneficiary a post-determination notice clearly stating the decision, outlining the evidence received and reviewed, and providing all reasons and bases for the decision rendered,
- Terminate payment of benefits based on the facts found,
- Resume benefits based upon a VBA determination that the beneficiary is no longer a fugitive felon. Establish an effective date for restoring benefits retroactively and resuming benefits based upon facts found, and
- Draft a formal notice of the decision and forward it to the beneficiary.

Procedures

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

Compensation, Pension, and DIC

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

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

	<ul style="list-style-type: none"> A source other than OIG submits documents that purportedly establish that a fugitive felon warrant exists 	<ul style="list-style-type: none"> Forward the information to the RO/PMC fugitive felon coordinator and cc the [information removed] Document the receipt of any information and/or referral received in person or by telephone on VA Form 27-0820, Report of General Information. Do not take action until Compensation Service responds with instructions on the required action.
4	<p>Due Process: If the evidence indicates that the beneficiary may be a fugitive felon, afford due process as required by 38 C.F.R. § 3.103:</p> <ul style="list-style-type: none"> Send a pre-determination letter to the beneficiary notifying him/her of the warrant and the proposed adverse action (See Enclosure 1). PCLR the EP 290 when releasing the pre-determination letter. Establish an EP 600 to control the response period. The date of claim for EP 600 is the date of the notice. <p>Companion EP for potential overpayments</p> <ul style="list-style-type: none"> EP 690 is used to help monitor timeliness in completing action on pending issues with potential overpayments. The date of claim (DOC) for EP 690 is the date of the source document that generates the proposed adverse action. EP 690 must remain pending with the controlling EP until all actions are completed. The EP 690 is cleared when the final action for the EP 600 has been taken. 	
5	<p>Final Determination: After receiving a response from the beneficiary, or waiting 60 days, whichever is earlier, determine whether the beneficiary is a fugitive felon by reviewing the evidence submitted in response to our notice.</p>	
	<p>If...</p>	<p>Then...</p>
	<ul style="list-style-type: none"> The beneficiary or the court that issued the warrant submits documentation that is inconsistent or contradictory with the FFP-3 	<ul style="list-style-type: none"> Review all evidence available and determine whether or not the beneficiary should be designated as a fugitive felon. Follow the guidance in the below two blocks for further procedures depending on whether the beneficiary is found to be a fugitive felon.
	<ul style="list-style-type: none"> The beneficiary acknowledges the validity of the warrant, or Does not respond to the due process notice 	<ul style="list-style-type: none"> Conclude that the beneficiary has fled from justice or violated a condition of probation or parole and, thus, is a fugitive felon. Terminate the beneficiary's award based on the facts found under the EP 600. Follow the procedures in M21-1MR, X, 16.2.i to discontinue payments.

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

Please note:

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

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

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

2) If the fugitive felon referral form included an FFP-4, VA Feedback Form, complete the FFP-4 and send it to the [information removed]. The FFP-3 form should remain in the claims file.

Insurance

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

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

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

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

Education

Regional Processing Offices (RPOs) should continue to follow current policies and procedures as outlined in Circular 22-03-01 "*Fugitive Felon*" Provisions of PL 107-103, August 27, 2003, and all subsequent advisories except to the extent that previous guidance conflicts with VBA's new policy, which no longer presumes that any valid outstanding felony arrest warrant establishes a Veteran's or beneficiary's fugitive felon status under 38 U.S.C. § 5313B. As such, the RPOs must provide the Veteran or beneficiary an opportunity to present evidence that he or she did not flee from justice, and the RPO must determine -- based upon the warrant, evidence submitted by the Veteran or beneficiary, or any other evidence gathered through development -- that it is more likely than not that the Veteran or beneficiary was fleeing from justice or violated a condition of probation or parole.

If there are additional questions, please contact the Policy and Regulations Development Team at [information removed].

Vocational Rehabilitation and Employment

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

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

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

Claims for Restoration of Benefits

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

Effective Date for Restoration Claims

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

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

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

QUESTIONS

General questions concerning this policy should be directed to [information removed]. Questions regarding Service-specific procedures should be addressed directly to the affected Service.

/s/

Allison A. Hickey

Under Secretary for Benefits

Enclosures

Enclosure 1 – Pre-determination Letter

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

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

**Enclosure 1
Pre-Determination Letter**

In Reply Refer to:
Beneficiary's Claim #CLAIM_NUMBER

ADDRESS_LINE 1
ADDRESS_LINE 2
ADDRESS_LINE 3
ADDRESS_LINE 4
ADDRESS_LINE 5
ADDRESS_LINE 6 ZIP_CODE

IMPORTANT — reply needed

Dear ADDRESS_LINE 1:

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

- (A) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
- (B) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

What We Propose to Do

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

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

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

What You Should Do

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

Information About the Warrant:

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

Telephone: (555) 555-5555

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

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

Warrant Offense Code: Listed on the warrant –Use the code and explanation

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

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

- A copy of a court order that clears or vacates the warrant within 30 days of issuance;
- A copy of evidence that a court specifically determined the warrant void from its inception because of mistaken identity or a defect in the warrant;
- A copy of a court order that finds the recall is effective from a specific date that is on or before the date of the warrant was received;
- A copy of the court order noting that the warrant was “nunc pro tunc,” correcting the date of an earlier judgment;
- A police report, statement from the Social Security Administration, bank, or other reporting agency confirming theft of your identity; or
- A police report or statement stating your parole or probation was not violated.

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

How to Obtain a Personal Hearing

If you desire a personal hearing to present evidence or argument showing why we should not take our proposed action, notify this office and we will arrange a time and place for the hearing. You may have witnesses if you desire, and their testimony will be entered in the record. VA will provide the place of hearing and hearing officials. VA cannot pay any other expenses of the hearing, since a personal hearing is held only upon your request.

If, within 30 days from the date of this notice, VA receives your hearing request, we will continue payments at the present rate until we have held the hearing and reviewed the

testimony. Continuing to receive the current rate of payment until a hearing is conducted could result in the creation of an overpayment or increase the amount of an existing overpayment, which you must repay. If you request a hearing but wish to minimize any overpayment that could result, you should submit a statement asking that we reduce or terminate your benefits beginning with your next check.

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

How to Obtain Representation

An accredited representative of a Veterans' organization or other service organization recognized by the Secretary of Veterans Affairs may represent you, without charge. An accredited agent or attorney may also represent you. If you desire representation, let us know, and we will send you the necessary forms. If you have already designated a representative, no further action is required on your part.

If You Have Questions or Need Assistance

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

If you wish to contact us	Here is what to do.
Telephone	For service connected compensation benefits, call 1-800-827-1000 and for pension benefits, call 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

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

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

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

or

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

Sincerely yours,

John Doe

Veterans Service Center Manager

Enclosure: VA Form 21-4138

cc: [Please insert POA, if any.]

Enclosure 2
Post-Determination Letter: Notice of Adverse Action

In Reply Refer to:
Beneficiary's Claim #CLAIM_NUMBER

ADDRESS_LINE 1
ADDRESS_LINE 2
ADDRESS_LINE 3
ADDRESS_LINE 4
ADDRESS_LINE 5
ADDRESS_LINE 6 ZIP_CODE

IMPORTANT — reply needed

Dear ADDRESS_LINE 1

Our letter dated <insert date>, informed you that you were the subject of a felony arrest warrant we received and we were going to terminate your benefits if we determined you were a fugitive felon under 38 U.S.C. § 5313B. This letter tells you what we decided, how we reached our decision, and what evidence we used. We have also included information on what you can do if you do not agree with our decision and who to contact if you have questions or need assistance.

Award Amount and Payment Change Date

We adjusted your [compensation/pension/DIC] benefits as follows:

Monthly Award Amount	Payment Change Date	Reason For Change
\$0.00	Month Day, Year	State reason for change

What You Owe

This adjustment will result in an overpayment of benefits that we have paid you. You will receive a separate letter, which will explain how much you owe, and how you can repay this debt.

We Decided

We have terminated your benefits because we determined that you are a fugitive felon as defined in 38 U.S.C. § 5313B. A fugitive felon is a person who is:

- (A) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
- (B) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

In order to resume your benefits, please provide evidence showing you are not fleeing from prosecution, custody, or confinement. Examples of evidence that may show you are not a fugitive felon:

- A copy of a court order that clears or vacates the warrant within 30 days of issuance;
- A copy of evidence that a court specifically determined the warrant void from its inception because of mistaken identity or a defect in the warrant;
- A copy of a court order that finds the recall is effective from a specific date that is on or before the date of the warrant was received;
- A copy of the court order noting that the warrant was “nunc pro tunc,” correcting the date of an earlier judgment;
- A police report, statement from the Social Security Administration, bank, or other reporting agency confirming theft of your identity; or
- Police report or statement stating your parole or probation was not violated.

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

How We Made Our Decision

The evidence we reviewed shows <insert what the evidence indicates>

Evidence Used to Decide Your Claim

In making our decision, we used the following evidence:

- xxxxxxxxxxxxxxxxxxxx
- xxxxxxxxxxxxxxxxxxxx
- xxxxxxxxxxxxxxxxxxxx

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, please download and complete VA Form 21-0958, “Notice of Disagreement.” You can download the form at <http://www.va.gov/vaforms>, or you can call us at 1-800-827-1000 for assistance. You have one year from the date of this letter to appeal the decision. The enclosed VA Form 4107, “Your Rights to Appeal Our Decision,” explains your right to appeal.

If You Have Questions or Need Assistance

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

If you wish to contact us	Here is what to do.
Telephone	For service connected compensation benefits, call 1-800-827-1000 and for pension benefits, call 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.

Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

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

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

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

or

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

Sincerely yours,
Veterans Service Center Manager

Enclosure(s): VA Form 21-4107

cc: [Please insert POA here if any.]

Enclosure 3
Post-Determination Letter: Confirming and Continuing Payments

In Reply Refer to:
Beneficiary's Claim #CLAIM_NUMBER

ADDRESS_LINE 1
ADDRESS_LINE 2
ADDRESS_LINE 3
ADDRESS_LINE 4
ADDRESS_LINE 5
ADDRESS_LINE 6 ZIP_CODE

IMPORTANT — reply needed

Dear ADDRESS_LINE 1

Our letter dated <insert date>, Indicated that we were going to terminate your benefits because a felony arrest warrant showed that you might be a fugitive felon who was

- (a) Fleeing from prosecution, custody or confinement after conviction of a felony or attempt to commit a felony, or
- (b) Violating a condition of probation or parole for the commission of a felony.

However, we will not change your benefits. You are not a fugitive felon because we received: [VSR - Please use only the appropriate information received. If none of these situations apply, please insert as a free text reason instead one of the reasons below. VSR -Adjust the below statements for accuracy and appropriateness.]

[a copy of a court order that clears or vacates the warrant within 30 days of issuance
or

evidence that a court specifically determined the warrant void from its inception because of mistaken identity or another defect

or

a copy of a court order that finds a recall of the warrant is effective from a specific date that is on or before the date of the warrant

or

a copy of the court order noting that the warrant was “nunc pro tunc,” correcting the date of an earlier judgment

or

a police report, statement from the Social Security Administration, bank or other reporting agency indicating theft of your identity

or

a police report or other official statement indicating that you did not violate your parole or probation]

If You Have Questions or Need Assistance

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

If you wish to contact us	Here is what to do.
Telephone	For service connected compensation benefits, call 1-800-827-1000 and for pension benefits, call 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

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

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

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

Sincerely yours,

John Doe

Veterans Service Center Manager

cc: [POA here, if any]

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

Appendix B: Scope and Methodology

Scope

The review team conducted its work from May 2021 through June 2022. The review focused on the 4,575 cases that had at least one of the seven “flight codes” involving veterans who were in receipt of compensation or pension benefits and had an outstanding felony arrest warrant during calendar year 2019 or 2020.

Methodology

To accomplish the review objectives, the team considered applicable laws, regulations, policies, procedures, and guidelines for fugitive felon benefits adjustments. The team also interviewed VBA central office managers and staff associated with the fugitive felon match program.

Sampling Design

As previously stated, the review team’s analysis was based on two samples of fugitive felon cases. The team initially examined the processing of fugitive felon cases received by VBA in 2019 and 2020, then expanded the review.

- *Initial review:* The review team identified 4,575 fugitive felon cases that had at least one flight code the OIG referred to VBA in 2019 and 2020. The team discovered that 2,088 of those 4,575 fugitive felon cases had not been processed. Therefore, the team removed the 2,088 cases from the population and reviewed a statistical sample (70) of the 2,487 remaining cases with flight codes that VBA did process.³⁸
- *Additional review:* In the course of the initial review, the team found VBA internal documents from 2016 indicating that VBA stopped processing felony referrals in 2011. Therefore, the team expanded its review to include a random sample of 140 cases from the 17,438 cases the OIG referred to VBA between 2010 and 2016. This sample review was completed to determine if VBA had in fact stopped processing fugitive felon benefits adjustments, and, if so, when it stopped adjusting them. Based on this review, the team saw indications that VBA stopped processing felony referrals following an April 2012 bulletin directing a pause until new guidance had been issued, which was done in June 2014. The team then reviewed an additional random sample of 120 felony referrals with at least one flight code from calendar years 2012 through 2014. The team

³⁸ See appendix C for additional details in the OIG’s statistical sampling methodology.

reviewed a total of 180 felony referrals from calendar years 2012 through 2014.³⁹ The data were obtained from the OIG's case management system.

The review team used VBA's electronic systems, including the Veterans Benefits Management System, to review the sampled veterans' electronic case records and relevant documentation required to assess whether VBA took appropriate action to address compensation and pension benefits for fugitive felons.

Internal Controls

The review team assessed VBA's internal controls significant to the objective. The four internal control components assessed were control environment, control activities, information and communication, and monitoring. In addition, the team assessed the principles of those internal control components. The team identified internal control deficiencies with three of the components and six principles:

Component: Control Environment

- Principle 2: The oversight body should oversee the entity's internal control system.
- Principle 3: Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.

Component: Control Activities

- Principle 10: Management should design control activities to achieve objectives and respond to risks.
- Principle 11: Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
- Principle 12: Management should implement control activities through policies.

Component: Monitoring

- Principle 16: Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

Fraud Assessment

The review team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant within the context of the review

³⁹ With the additional 120 cases reviewed, the review team examined a total of 180 felony referrals from calendar years 2012 through 2014 (60 cases coming from the 140 analyzed when defining the referral-processing gap).

objectives, could occur during this review. The team exercised due diligence in staying alert to any fraud indicators, including

- soliciting the OIG's Office of Investigations for indicators, and
- reviewing OIG hotline complaints and concerns for indicators.

The OIG did not identify any instances of fraud or potential fraud during this review.

Data Reliability

The review team compared OIG fugitive felon warrant data to VBA file numbers, veteran names, claim dates, claim types, and award types. These comparisons were used to determine whether there were any discrepancies. Testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the Veterans Benefits Management System electronic claims folders did not disclose any problems with data reliability, as the team did not find any discrepancies in the fields in any of the data sets.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix C: Statistical Sampling Methodology

Approach

To accomplish the objective, the team reviewed a statistical sample of cases involving veterans who received compensation or pension benefits and had an outstanding felony arrest warrant during calendar years 2019 or 2020 with at least one of the seven flight codes. The team used statistical sampling to quantify the number of records for which VBA did not properly process benefits adjustments involving individuals with outstanding felony arrest warrants that included flight codes.

Population

The initial review focused on 2,487 cases involving veterans who received compensation or pension benefits and had an outstanding felony arrest warrant record with at least one flight code for calendar years 2019 and 2020. An additional random sample of 260 fugitive felon cases was drawn from the population of 17,438 total cases that the OIG referred to VBA between 2010 and 2016. The data were obtained from the OIG's case management system.

Sampling Design

The review team selected a statistical sample of 70 records from the population of veterans receiving compensation or pension benefits who had an outstanding felony arrest warrant.

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team calculated the error rate estimates by first summing the sampling weights for all sample records that contained the given error, then dividing that value by the sum of the weights for all sample records.

Projections and Margins of Error

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While

precision improves with larger samples, the rate of improvement decreases significantly as more records are added to the sample review.

Figure C.1 shows the effect of progressively larger sample sizes on the margin of error.

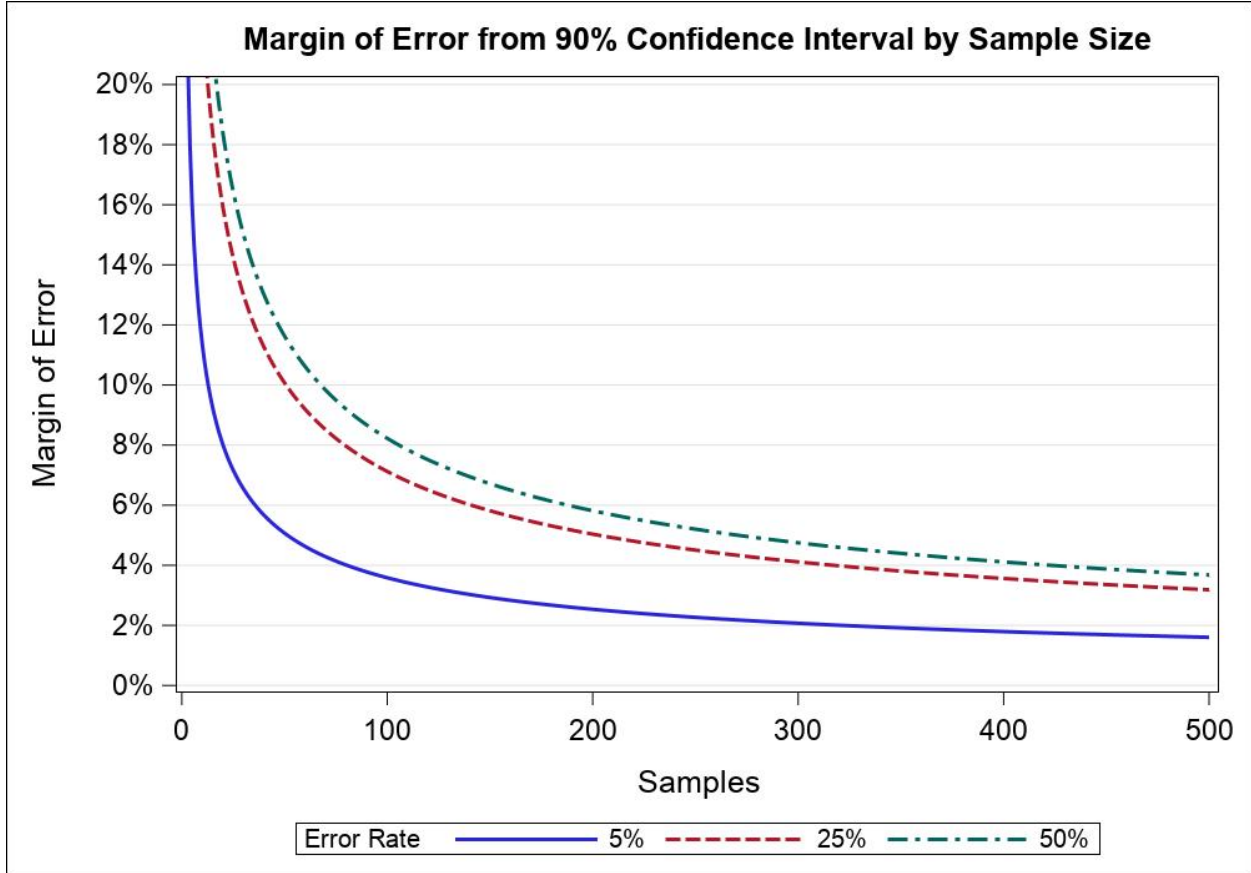


Figure C.1. Effect of sample size on margin of error.

Source: VA OIG statistician’s analysis.

Projections

Table C.1 details the review team’s analysis and projected results.

Table C.1. Summary of Projections and Confidence Intervals for Estimated Cases with Due Process Letter Errors

	Projection	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
Total estimated due process exceptions	1,883	214	1,669	2,097	53
	76%	9%	67%	84%	53

Source: VA OIG analysis of fugitive felon adjustments from 2019 and 2020, which included a total universe of 2,487 cases with a statistical sample of 70 cases.

Note: 53 of the 70 cases were due process errors.

Appendix D: VA Management Comments

Department of Veterans Affairs Memorandum

Date: July 14, 2022

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report – The Fugitive Felon Benefits Adjustment Process Needs Better Monitoring
[Project No. 2021-02401-AE-0107] [VIEWS 05818654]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the OIG Draft Report: The Fugitive Felon Benefits Adjustment Process Needs Better Monitoring.

The OIG removed point of contact information prior to publication.

(Original signed by)

Mike Frueh, for Thomas J. Murphy

Director, Northeast District Performing the Delegable Duties of the Under Secretary for Benefits

Attachments

**Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
The Fugitive Felon Benefits Adjustment Process Needs Better Monitoring**

The Veterans Benefits Administration concurs with OIG's findings and provides the following comments:

The Department of Veterans Affairs (VA) Fugitive Felon Program was designed, in accordance with the Veterans Education and Benefits Expansion Act of 2001, to determine if a Veteran or beneficiary meets the requirements to receive benefits and adjust payments for the time the Veteran is ineligible. In 2014, the Veterans Benefits Administration (VBA), in alignment with 38 U.S.C § 5313B, instructed staff to only initiate action against Veterans with arrest warrants based on at least one of seven specifically identified offense codes, each of which was considered to have a finding of flight, escape, or a violation of the conditions of probation or parole as an element of the offense. The process is a joint VA OIG and VBA process by which VBA receives data and input from VA OIG in order to initiate the process for Fugitive Felon Adjustments. Collaboratively with VA OIG, VBA has made improvements to the process as noted in the report.

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: OIG recommends that the acting under secretary for benefits improve monitoring procedures and demonstrate progress toward ensuring all felony referrals are processed.

VBA Response: Concur. In June 2022, VBA updated the existing Fugitive Felon Standard Operating Procedures (SOP) to include the timeframe VA can expect data from OIG to initiate fugitive felon adjustments. The SOP includes current points of contact (POCs), procedures for monitoring successful completion, and the location where historical records and analyses are retained for transparency and oversight. The updated SOP is attached as evidence of improvement of monitoring procedures. VBA is demonstrating progress toward ensuring all available felony referrals are processed, as evidenced by response to recommendation 3. VBA is currently up to date with all referral lists received, to include the most recent list adjusted June 6, 2022. Based upon this information, VBA requests closure of this recommendation.

Recommendation 2: OIG recommends that the acting under secretary for benefits update fugitive felon letters and ensure they are consistently sent with all required information.

VBA Response: Concur. In October 2021, VBA updated the batched notification letters with all required information and has confirmed the appropriate letters have been dispersed. Attached is a copy of the updated letter. Based upon this information, VBA requests closure of this recommendation.

Recommendation 3: OIG recommends that the acting under secretary for benefits review unprocessed felony referrals identified in this report, take corrective action as needed, and report the efforts taken to the OIG.

VBA Response: Concur. On October 1, 2021, VBA processed the July 2019 and October 2020 Fugitive Felon referral lists to issue Veterans due process. On December 10, 2021, VBA completed the final award adjustments (attached), and notifications were sent to the appropriate Veterans. As VBA has demonstrated that it has taken corrective action as needed, VBA requests closure of this recommendation.

*The OIG did not include VBA's attachments as part of this appendix.
For accessibility, the original format of this appendix has been modified
to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

OIG Contact and Staff Acknowledgments

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