Income Replacement Benefit – Overpayments: Recovery, Remission and Write Off

Issuing Authority: Director General, Policy and Research
Effective Date: 1 April 2019
Document ID: 2831

Table of Contents

Purpose
Policy
Definitions
General
Recovery
Remission
Write-off
Erroneous Award
Career Impact Allowance (CIA) Supplement
References

Purpose

This policy provides guidance regarding an Income Replacement Benefit (IRB) overpayment, or an overpayment arising from the IRB transitional provisions, and provides a general description of the three methods (recovery, remission and write off) which may be used to address the overpayment. Guidance is provided regarding the specific treatment for overpayments related to the Career Impact Allowance Supplement Protected Amount (paragraph 31).

Policy

1. Income Replacement Benefit overpayments are managed under the authority of section 88 of the *Veterans Well-being Act*.

Definitions

2. **Recovery**, in this context, is a process whereby VAC recoups monies paid out as overpayments from persons, including their estates or successions, from future payments which would have been made under the *Veterans Well-being Act* or, in some circumstances, from other benefits which VAC would normally pay (i.e., disability pension payments payable under the *Pension Act*, etc.)
3. **Remission** means to forgive an otherwise legally enforceable debt. In this context, it is an act of clemency on the part of the Minister and not a right. Once remission has been approved, the Department gives up its right to recover the overpayment at a later date.

4. **Write-off** is an accounting action which removes the debt, in whole or in part, from the active accounts receivable records in the Public Accounts. Write-off does not mean that the debt is forgiven. Presumably, collection of the debt could resume in the future if information is received that would appear to make the prospect of recovery likely.

General

5. Any compensation amount, or part of it, that is paid to a person, including their estate or succession, to which there is no entitlement, or which exceeds entitlement, is considered an overpayment under section 88 of the *Veterans Well-being Act (VWA)*.
6. Effective April 1, 2019, the Earnings Loss Benefit (ELB) and Retirement Income Security Benefit (RISB) have been repealed, and the Income Replacement Benefit and IRB transitional provisions have been implemented. If the Department becomes aware of any overpayments under the Earnings Loss Benefit or Retirement Income Security Benefit after April 1, 2019, these will be handled under the previous policy, "Earnings Loss Benefit and Retirement Income Security Benefit Overpayments: Recovery, Remission and Write Off." As per paragraph 14(c) both overpayments in existence on March 31, 2019 and new overpayments that the Department becomes aware of on or after April 1, 2019 may be recovered from the IRB.
7. No part of an overpayment may be remitted if the person, the executor of the estate, or the liquidator of the succession, has been convicted of an offence under the *Criminal Code* in connection with receiving or obtaining the overpayment.
8. All overpayment cases which involve suspected fraud or willful misrepresentation should immediately be referred to Veterans Affairs Canada's (VAC's) Director General, Finance, for appropriate action.
9. Any overpayment, regardless of the cause, is considered a Crown debt and may be addressed by:
    1. recovery;
    2. remission; or
    3. write-off.
10. Regardless of whether the overpayment will be recovered, remitted or written off, the total amount of the overpayment must be recorded on the person's account as soon after discovery as possible.
11. Centralized Operations Division is responsible for identifying and notifying Finance Division of any overpayments. Finance Division is responsible for administering all subsequent activities relating to recovery, remission or write-off, including establishing the applicable effective date and, in the case of recovery, the amount of the IRB to be released, if any.
12. The final decision regarding all issues relating to recovery, remission and write-off will be made and administered by the Finance Division.
13. The person must be advised, in writing, of the existence of the overpayment, the amount and proposed start date of recovery deductions, if applicable, and his/her redress rights.
14. Decisions regarding overpayments are subject to departmental review; however, such decisions are not subject to review by the Veterans Review and Appeal Board.

Recovery

15. All overpayments being considered for recovery must be forwarded to the Finance Division for administration.
16. An IRB overpayment may be recovered:
    a. by lump-sum repayment from the person;
    b. by deduction from available IRB payments;

c. by deduction from any current or future payments payable (other than the CFIS Benefit) under the *Veterans Well-being Act*;
d. by deduction or set-off from any current or future payments payable under any act or program administered by VAC, in accordance with section 155 of the *Financial Administration Act*;
e. by deduction or set-off against any current or future payments payable by the Government of Canada, in accordance with section 155 of the *Financial Administration Act*; and/or
f. in proceedings in any court of competent jurisdiction.

17. The proposed start date of recovery should allow sufficient time for the person to respond if he/she feels recovery of the overpayment will cause undue hardship, or if he/she wishes to make alternate repayment arrangements. A minimum of 30 days is acceptable.
18. Before establishing the rate of recovery (RoR) of the outstanding IRB overpayment, the following must be determined:
    a. the amount of the outstanding overpayment;
    b. the amount of the monthly net IRB payable;
    c. the time period needed to recoup the outstanding balance within specified time lines; and
    d. the source from which the overpayment may be recovered.
19. Regardless of the amount owing, the person should be given the option of repaying the IRB overpayment in a lump sum. If this is unacceptable to the person, the following options shall be considered:
    a. a. An overpayment of $100 or less shall be recovered in a lump sum from the next monthly IRB payment following notification of the overpayment;
    b. b. An overpayment greater than $100 shall be recovered through a monthly amount equal to at least 30% and not more than 50% of the net monthly IRB payable (after income offsets but before taxes), based on a 24-month recovery period, effective the date of the notification of the overpayment.
20. Example #1:

    An overpayment amount of $3,200 with a net monthly IRB payable of $1,000 would result in a RoR of $300/month (minimum of 30% of the net IRB payable). The person would receive $700/month IRB before taxes.

21. Example #2:

    An initial overpayment amount of $2,000 with a monthly net IRB payable of $100 would result in a RoR of $50/month (maximum of 50% of the net IRB) which would continue beyond the 24-month period until the total overpayment had been recovered. The person would receive $50/month IRB payable before taxes.

22. Subsequent Overpayments:
    a. When there is a subsequent recalculation that results in a further overpayment, the RoR will remain the same so long as the amount is sufficient to recover the new total amount within 24 months from the date of notification of the subsequent recalculation and new outstanding balance. (The requirement to establish a minimum RoR of 30% to a maximum of 50% of net IRB shall not apply).
        i. Example: There is a RoR of $200/month currently in effect. The balance left on that overpayment is $1,000. A new overpayment is declared today of $2,000 creating a new outstanding balance of $3,000. Since the RoR of $200/month will result in the new balance of $3,000 being recovered within 24 months, the RoR will remain the same.
    b. When there is a subsequent recalculation that results in a further overpayment and the current RoR is not sufficient to recover the new balance within 24 months from the effective date of notification, then a new RoR shall be calculated using the formula and approach described in paragraph 19.

i. Example: There is a RoR of $100/month currently in effect. The balance left on that overpayment is $2,500. A new overpayment of $2,000 is declared today creating a new overpayment total of $4,500. Since the RoR of $100/month will not result in the new balance of $4,500 being recovered within 24 months, a new RoR must be recalculated as per paragraph 19.

23. If there is no IRB available, the person should be given the option of repaying the IRB overpayment in a lump sum, regardless of the amount owing. Additionally, recovery may be obtained:
    i. i. From current or future benefits due and/or payable under another *Veterans Well-being Act* program, other than the CFIS Benefit. If a RoR had previously been established, the RoR from the new source of funds would continue using the same rate.
    ii. From current or future payments due and/or payable under any act or program administered by VAC, in accordance with section 155 of the *Financial Administration Act*. If a RoR had previously been established, the RoR from the new source of funds would continue using the same rate.
    iii. From other monies due and/or payable by the Government of Canada, in accordance with section 155 of the *Financial Administration Act*.

c. Other Exceptions for Recovery and Set-off:
    i. The department will not recover or set-off an overpayment that results from the adjusting or indexing at source of any variable ”B” used for the purposes of determining the amount of IRB payable.
    ii. The Department will not recover or set-off IRB overpayments from any *ex-gratia* payments, redress or similar payments made to Veterans or others.
    iii. Funeral and burial grants awarded under the *Veterans Burial Regulations 2005* do not form part of the estate of the deceased. Therefore, they cannot be set-off against an overpayment within the meaning of Section 155 of the *Financial Administration Act*.

24. In the event of the person’s death, the remaining balance of the overpayment becomes recoverable from his/her estate or succession. In this situation, the case should be referred to Finance Division.

Remission

25. Although recovery is normally the first consideration in the overpayment process, there may be instances where such action is not desirable. According to section 88 of the *Veterans Well-being Act*, if a person, including their estate or succession, has received or obtained an overpayment, all or a portion of the overpayment may be remitted in the following circumstances:
    a. the overpayment cannot be recovered within the reasonably foreseeable future - applicable in those situations where an overpayment is being recovered, but it has not been completely repaid five years after the date the overpayment recovery action began;
    b. the administrative costs of recovering the overpayment are likely to equal or exceed the amount to be recovered - only applicable in those situations where the amount of the overpayment does not exceed $150;
    c. the repayment of the overpayment would cause undue hardship to the person or a beneficiary - applicable in those situations where the person is in receipt of income-tested benefits (i.e., Guaranteed Income Supplement, CFIS benefit, etc.), and/or if emotional distress caused by the overpayment appears to pose a threat to the person’s state of health;
    d. the overpayment is the result of an administrative error, a delay or an oversight on the part of an officer or employee of the federal public administration - applicable in those situations where the overpayment is the result of:

i. a payment system error;
ii. a misinterpretation of legislation;
iii. a misunderstanding of a decision;
iv. a mistake concerning an effective date; or
v. a procedural error.

26. Factors to be considered for remission of an overpayment:
    a. health of the person (a person who is very ill should be given special consideration);
    b. a financial statement should be completed to ascertain if hardship exists;
    c. other government pensions received, in particular the Guaranteed Income Supplement;
    d. other facts pertinent to the case.
27. There is a graduated scheme for authorizing remission where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the Delegated Authorities Manual.

Write-off

28. There are no debt write-off provisions in the *Veterans Well-being Act*. The authority for debt write-off is found in the Financial Administration Act and the *Debt Write-off Regulations, 1994*.
29. An overpayment may only be written off in accordance with the *Debt Write-off Regulations, 1994*, which list the criteria under which an overpayment is considered uncollectible. Authority for write-off is contained under section 25 of the Financial Administration Act. There is a graduated scheme for authorizing write-off where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the Delegated Authorities Manual.

Erroneous Award

30. The Minister may continue the payment of an IRB, in whole or in part, to a person who is not entitled to it, or not entitled to a portion of it, if:
    a. the amount paid to the person to which the person was not entitled is the result of an administrative error, or a delay or an oversight on the part of an officer or employee of the federal public administration, and the amount paid so far has been remitted under the *Veterans Well-being Act*;
    b. no part of the amount paid to the person to which the person was not entitled was the result of a misrepresentation or of concealment of a material fact on the part of the person;
    c. the cancellation or reduction of the benefit or allowance would cause undue hardship to the person; and
    d. the benefit or allowance had been paid to the person for five years or more.

Career Impact Allowance (CIA) Supplement

31. An overpayment may occur in cases where a Veteran transitioned to the IRB on April 1, 2019; had the CIA Supplement payable on March 31, 2019; but did not have IRB payable for a given month(s). If IRB subsequently becomes payable to the Veteran in the same month(s) that the CIA Supplement Protected Amount was paid (for example, when a cancellation of the IRB is removed on review) then an adjustment to the IRB payment will be required so that the Veteran does not receive the CIA Supplement twice for the month(s) in question. See sections 21 and 28 of the Income Replacement Benefit Transition Policy.

References

Criminal Code

Debt Write-off Regulations, 1994

Financial Administration Act, sections 25 and 155

Pension Act

Veterans Well-being Act, sections 18, 19, 19.1, 22, 23, 24, 25, 26, 26.1, 83 and 88

Veterans Well-being Regulations, section 68

Veterans Burial Regulations, 2005