

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW. (026H), Washington, DC 20420, (202) 461-7623.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only in the matter at issue, but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the Internet at <http://www4.va.gov/ogc/precedentopinions.asp>.

VAOPGCPREC 5-2010

Questions Presented:

Does 38 U.S.C. 3677(c)(7), which provides that "[n]o course of training will be considered bona fide if given to an eligible veteran or person who is already qualified by training and experience for the job" preclude approval of an on-the-job training (OJT) program for employees of State approving agencies (SAA) who are identified by contract as professional staff members responsible for approving programs of education or training?

Held:

Section 3677(c)(7) precludes approval of an OJT program for SAA employees who are identified by contract as professional staff members responsible for approving programs of education or training because these employees are already qualified by training and experience for the job. Because we have determined that all professional staff members responsible for approving programs of education or training are already qualified by training and experience for the job and, therefore, are not eligible for participation in an OJT program, it is not necessary to address the additional questions presented in B1 and B2 of your request.

Effective Date: September 10, 2010

VAOPGCPREC 6-2010

Questions Presented:

a. How does the June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" affect Department of Veterans Affairs (VA) benefit payments?

b. Does the Presidential Memorandum override in any way the procedural protections that are provided for in VA law and regulations, particularly the notice to claimants and beneficiaries and the opportunity for them to be heard that is afforded in connection with adjudicative actions denying their claims or reducing or discontinuing their current awards?

c. Does the Computer Matching and Privacy Protection Act of 1988 apply to the database matching requirements of the Presidential memorandum?

Held:

a. The June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" requires Federal agencies, including the Department of Veterans Affairs (VA), to review pre-payment and pre-award

procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs before the release of Federal funds. The Presidential Memorandum relates only to the procedures VA must follow before making benefit payments or awards, not the statutory or regulatory criteria for determining eligibility for, or entitlement to, any benefit.

b. VA would treat the information obtained from the database review pursuant to the Presidential Memorandum in the same manner as information obtained from other sources. For a claimant denied an award or payment as a result of information disclosed in a database review, VA must summarize the information obtained through the database review in its decision notification and any statement of the case. In the case of information obtained from the database review that would result in the reduction or discontinuance of, or otherwise adversely affect, a current award of compensation, pension, or dependency and indemnity compensation, with certain exceptions, VA must, before issuing a decision, advise the beneficiary of the information received, the proposed effect that the information would have on the beneficiary's VA benefits, and the beneficiary's opportunity to submit evidence or have a hearing. Among the exceptions is that VA will send written notice to the beneficiary at the same time it takes an adverse action if the evidence reasonably indicates that a beneficiary is deceased.

c. The Computer Matching and Privacy Protection Act of 1988 applies to the database matching requirements of the Presidential Memorandum to the extent the databases that make up the Do Not Pay List are used to verify eligibility for, or entitlement to, VA benefits by virtue of a computerized comparison of two automated systems of records.

Effective Date: September 12, 2010.

Dated: January 19, 2011.

By Direction of the Secretary.

Will A. Gunn,

General Counsel, Department of Veterans Affairs.

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