



VHA OFFICE OF FINANCE

Financial Management & Accounting Systems

ALERT

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FICA Refund for Disbursement Agreement Payments

1. **Purpose:** This Alert communicates guidance for requesting the employer share of the Federal Insurance Contributions Act tax (FICA) paid on behalf of VA to Medical/Dental Residents covered by disbursement agreements with educational institutions prior to April 2005.
2. **Background:** Since the early 1990s, disbursement agreements have been the predominant and preferred means of paying resident stipends and fringe benefits. A disbursement agreement is a payroll mechanism by which VA allows a “disbursing agent” to centrally administer either salary payments and fringe benefits (full disbursement agreements), or fringe benefits alone (partial disbursement agreements) for medical and dental residents assigned to a VA facility. The “disbursing agent” may be the sponsoring institution for the residency training programs itself or an entity delegated by the sponsoring institution(s) to handle stipend and benefit disbursements (e.g., a graduate medical education consortium). In accordance with VHA Handbook 1400.05, Disbursement Agreements, VA Medical Centers pay the sponsoring institutions the salary earned for the time the residents rotate in the VA facility, including FICA.

In Internal Revenue Manual 2010-25, dated March 2, 2010, the IRS made an administrative determination that Medical/Dental residents would be classified as students, and would be exempt from FICA taxes for tax periods ending before April 2005, when new IRS regulations went into effect. In 2011, the Supreme Court in 562 U.S. _ 2011, *Mayo Foundation for Medical Education and Research, et al., Petitioners v. United States*, ruled in favor of the IRS, and held Medical/Dental Residents working full-time at the medical/dental school are not considered students and are not exempt from FICA payroll taxes.

Educational institutions, as employers, were to file a refund claim for FICA tax paid prior to April 2005. IRS refunded the FICA payment for both the employer and employee share. The FICA refunds of the employer share will include the VA share of the FICA payment for the disbursement agreements, since VA made the payment to the institution and not to the IRS.

These FICA tax payments to VA constitute a refund of a prior year payment as a result of the IRS decision. VA can accept the funds and they must be deposited as an appropriation refund to the appropriation from which the payment was originally made, which would be Medical Services 36_0160. An appropriation retains its fiscal year identity for five years after

it expires. After five years the appropriation is closed and is not available to record collections. In accordance with VA Financial Policy Volume II Appropriations, Funds and Related Information, Chapter 7, Various Appropriations Law Related Topics, per 31 U.S.C. 1552, authorized collections relating to a closed account, which is currently FY 2007 and older, will be deposited to Treasury's Miscellaneous Receipts account 3200.

- 3. Guidance.** In accordance with VA Financial Policy and Procedures, Volume XII Debt Management, Chapter 7 Vendor Debts, VA is authorized and will take prompt collection action to recover monies owed to the Department from the sponsoring institutions, as prescribed by 31 U.S.C. 3711(a)(1) and 31 C.F.R. 901.
- 4. Action.**
 - A. Each medical facility will contact affiliated institutions covered under each disbursement agreements for tax periods ending before April 2005 to determine if they have received a refund of the FICA tax, and, if so, how much of the refund should be returned to VA.
 - B. Once the amount is determined, the VA facility will establish an accounts receivable and issue a bill of collection to the institution.
 - C. When the refunds have been recovered, the refund will be deposited to the Treasury's miscellaneous receipts account 3200.
- 5. Questions.** Questions regarding the contents of this Alert should be sent to "VHA CFO Accounting Policy (10A3A)" mailbox.