

Date: April 12, 2023

From: Under Secretary for Health (10)

Subj: Implementation of Section 902 of the PACT Act Buy-Out of Service Contracts
(VIEWS 9742736)

To: Veterans Integrated Service Network (VISN) Directors (10N1-23)
Medical Center Directors (00)
VISN Human Resources Officers

1. Section 902 of Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PL 117-168), which authorizes VA to buy-out service contracts for certain health care professionals in exchange for employment at one of 17 rural or highly rural VA medical centers and affiliated community based outpatient clinics. The program will be administered through Workforce Management & Consulting (106A). The Contract Buy-Out Program (CBOP) directly aligns with Under Secretary for Health's strategic objective to Hire Faster/More Competitively.
2. This VHA Under Secretary for Health Memorandum establishes requirements for the buy-out of service contracts for any covered health care professional to whom the Secretary of the Department of Veterans Affairs (VA) has offered employment with VA. The Secretary may buy-out the non-Department service contract of such candidate in exchange for such candidate agreeing to be employed at a rural or highly rural facility of the Department for a period of obligated service of at least 4 years. Funding is the responsibility of the VISN within the current approved allocation.
3. Implementation requirements including Definitions; Key Duties; Eligibility; Availability of Contract Buy-Out; Request for CBO Program Participation; Authorization for Selected Participants; Obligated Service; Failure to Complete Terms of Participation/Liability; and Cancellation, Waiver, or Suspension of Obligation are in the Attachment of this memorandum.
4. A VHA directive is in development. This memorandum will serve as VHA Central Office policy until the VHA directive is approved and published.
5. For questions, please contact the Chief Officer, Workforce Management & Consulting (106A) at VAContractBuyOutProgram@va.gov.



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SECTION 902 OF THE PACT ACT BUY-OUT OF SERVICE CONTRACTS IMPLEMENTATION REQUIREMENTS

1. DEFINITIONS

a. *Acceptance Agreement* means a signed legal document between VA and a candidate of the Contract Buy-Out Program (CBOP) that specifies the obligations of the VA and the candidate upon acceptance to the CBOP. An acceptance agreement must be consistent with Section 902 for CBOP agreements and must include:

(1) A mobility agreement (to include rural/highly rural duty location of appointment/assignment).

(2) Acknowledgement of monetary balance amount contractually owed to current employment contract with health care system, hospital, or private practice.

(3) Agreement to perform the full clinical scope of practice and full term of obligated service.

(4) Agreement to maintain employment eligibility requirements commensurate with Department of Veterans Affairs criteria for the duration of the CBOP service obligation. Disqualification of employment at any point during the CBOP service obligation may constitute a breach of contract and be subject to restitution and/or punitive action.

b. *Covered Health Care Professional* means a Physician, Certified Registered Nurse Anesthetist, Physician Assistant, or Nurse Practitioner offered employment with the Department regardless of the authority under which such employment is offered.

c. *Mobility Agreement* means a signed legal document between VA and a candidate of the CBOP in which the candidate agrees to accept assignment at a designated rural/highly rural VA facility where the obligated service requirement will be fulfilled. Any failure to accept a geographic reassignment may subject the candidate to separation from federal service and recoupment of any incentives or contract buy-out. A mobility agreement must be included in the candidate's acceptance agreement.

d. *Obligated Service* means the period during which the CBOP candidate must be employed by VA in a full-time clinical occupation.

e. *Rural/Highly Rural* refers to the rural-urban commuting area coding system of the Department of Agriculture. There are 17 VA medical centers and several associated community based outpatient clinics identified as rural/highly rural for the CBOP:

(402) HCS TOGUS, ME

(405) MROC WHITE RIVER JCT, VT

(528N) MC BATH, NY

(529) MC BUTLER, PA

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(540) MC CLARKSBURG, WV

(557) MC DUBLIN, GA

(538) MC CHILLICOTHE, OH

(610) HCS MARION, IN

(585) MC IRON MOUNTAIN, MI

(676) MC TOMAH, WI

(657PA) MC POPLAR BLUFF, MO

(623) MC MUSKOGEE, OK

(519) MC BIG SPRING, TX

(436) HCS FT HARRISON, MT

(666) HCS SHERIDAN, WY

(653) HCS ROSEBURG, OR

(568) HCS FORT MEADE, SD

f. *Secretary* means the Secretary of Veterans Affairs or designee.

g. *Service Contract* refers to the contractual obligation tied to the non-Department individual's employment with their non-VHA health care system, hospital, or private practice.

h. *State* means one of the several states, Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

i. *Under Secretary for Health* means the Under Secretary for Health of the Department of Veterans Affairs or designee.

j. *VA* means the Department of Veterans Affairs.

k. *VA Employee* means an individual employed directly by VA (i.e., not on a fee basis or contract).

l. *VA Health Care Facility* means a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program, and any of a variety of community-based clinics (including community-based outpatient clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.

2. KEY DUTIES

a. **Chief Officer, Workforce Management and Consulting.** Chief Officer, Workforce Management and Consulting is responsible for developing and amending this directive (when warranted) and ensuring the operational and transactional administration of the program.

b. **VISN Director.** The VISN Director is responsible for monitoring compliance and reporting utilization of this program at its participating rural or highly rural facilities.

c. **VA Medical Center Director.** The VA medical center (VAMC) Director is responsible for:

- i. Implementing the contents of this policy at and for their medical center and affiliate community based outpatient clinics (CBOC).
- ii. Acquiring a copy of the candidate's employment contract (or other employment verification source document) from the non-government employer and documentation of the contingent balance of the CBO amount for VHA to pay.
- iii. Establishing local procedures to ensure accurate and expeditious payment of CBO within 90 days after the candidate enters on duty (EOD) with VA.

3. ELIGIBILITY

a. To be eligible for the CBO Program, a candidate must –

(1) Be eligible for permanent full-time employment to Veterans Health Administration at the time of appointment.

(2) Possess an active, current, full, and unrestricted license and appropriate credential(s) for clinical practice in the United States (and territories) as a Physician, Certified Registered Nurse Anesthetist, Physician Assistant, or Nurse Practitioner.

(3) Be a citizen of the United States.

(4) Sign a Memorandum of Agreement to participate in the CBO Program, as well as a mobility agreement and a tentative job offer.

(5) Remain a VA employee for the duration of the CBO Program service agreement period.

b. Any candidate who, at the time of signing the Memorandum of Agreement to participate in the CBO Program, owes a service obligation to multiple entities to perform patient care related services may be eligible to receive a CBO under the Department of Veterans Affairs CBO Program.

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c. A candidate may receive other incentives, such as recruitment and relocation incentives, under VA Handbook 5007, Part XI, Chapter 2 in addition to the CBO Program award. Service obligation periods may be served concurrently.

4. AVAILABILITY OF CBO AWARDS

a. General. Payment of any amount for buy-out of a service contract for a covered health care professional shall be made directly to the candidate or entity with which the covered health care professional has a service obligation.

b. Total Amount Limit paid by the Department shall not exceed \$40,000,000.00 per fiscal year. Payment to an individual candidate or the entity with which they had a service obligation contract may not exceed \$3,000,000.00.

c. A covered health care professional receiving a CBO shall agree to be employed with the Department no less than 4 years at a designated rural or highly rural facility of the Department.

5. REQUEST FOR CBO PROGRAM PARTICIPATION

The Job Opportunity Announcement (JOA) or other valid public advertisement for a vacancy for which the facility wishes to offer the CBOP must include a statement that indicates the candidate may be authorized to participate in the CBOP as an offered recruitment incentive. A candidate for the CBOP must meet all employment eligibility requirements and be tentatively selected for the authorized vacancy. After tentative selection, the candidate must provide proof of the employment contract, or other source documents, used to verify eligibility for the CBOP and be determined authorized by the WMC Workforce Recruitment and Retention Service (WRRS). The candidate will receive notice of authorization/acceptance before the final job offer is tendered by the VHA facility.

6. AUTHORIZATION FOR SELECTED PARTICIPANTS

a. General. In deciding which CBOP participants to authorize, VA will consider candidates licensed or registered in one of the targeted occupations (i.e., Physician, Certified Registered Nurse Anesthetist, Physician Assistant, and Nurse Practitioner).

b. Notification of approval. VA will notify the candidate in writing that their participation is accepted and authorized. A candidate becomes a participant in the program upon receipt of such approval by VA.

7. OBLIGATED SERVICE

a. General. Each candidate is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the candidate's licensed/credentialed specialty in, and assignment at, a rural or highly rural facility as determined by the Secretary.

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b. Beginning of service.

(1) Date of employment. A candidate's obligated service will begin on the first day of VA employment in a clinical occupation for which the candidate is licensed/credentialed. VA will actively assist, monitor, and expedite the hiring and onboarding of candidates.

(2) Notification. VA will confirm duty location and service obligation period to the candidate, at the time of selection.

c. Duration of service - A covered health care professional shall serve as a full-time patient care provider in the Veterans Health Administration for 4 years from the first day of employment.

d. Location for service. A candidate authorized to receive CBO will be assigned to one of the 17 designated rural/highly rural VA facilities, identified in Section 1(g), to carry out their service obligation according to the candidate's Memorandum of Agreement.

e. Service in a non-pay status will not count toward satisfying the service obligation. Any time in a non-pay status will postpone the service obligation to VA and will extend the period of obligated service by an equal amount of time.

f. Creditability of advanced clinical training. No period of advanced clinical training will be authorized and credited toward satisfying the period of obligated service incurred under the CBO Program.

8. FAILURE TO COMPLETE TERMS OF PARTICIPATION/LIABILITY

In General. If a covered health care professional fails, for any reason, to complete the period of obligated service of the program, the United States shall be entitled to recover from the individual an amount equal to:

a. the total amount paid under Paragraph 4(b) to buy out the non-Department service contract for the individual; multiplied by

b. a fraction---

(1) the numerator of which is the total number of months in the period of obligated service of the individual minus the number of months served by the individual; and

(2) the denominator of which is the total number of months in the period of obligated service of the individual.

NOTE: Exception. Liability shall not arise under paragraph 7(c) in the case of a candidate covered by that paragraph if the candidate does not obtain, or fails to maintain, status as an employee of the Department due to staffing changes approved by the Under Secretary for Health.

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c. Taxable Benefit. A contract buy out for a covered health care professional under paragraph 2 shall be considered a taxable benefit or event for the covered health care professional. Facilities may offer recruitment or other incentives designed to offset the tax liability associated with the CBOP.

9. BANKRUPTCY

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the CBO.

10. CANCELLATION, WAIVER, OR SUSPENSION OF OBLIGATION

a. General. Any obligation of a participant for service or payment will be cancelled upon the death of the participant.

b. Waivers or suspensions.

(1) A participant may seek a waiver or suspension of the obligated service or payment obligation incurred under this program by submitting a written request to VA setting forth the basis, circumstances, and causes which support the requested action. Requests for waivers or suspensions must be submitted to VA no later than 90 days after the date VA notifies the participant that they are in breach of their acceptance agreement. A participant seeking a waiver or suspension must comply with requests for additional information from VA no later than 30 days after the date of any such request.

(a) Waivers. A waiver is a permanent release by VA of the obligation either to repay any CBO funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of CBO funds may be considered taxable income.

(b) Suspensions. VA may approve an initial request for a suspension for a period of up to 1 year. A suspension may be extended for 1 additional year, after which time the participant will be in breach of their acceptance agreement. If a suspension is approved, VA will temporarily delay the enforcement of acceptance agreement requirements.

(2) The Secretary may waive or suspend any service or payment obligation - up to \$99,999.99 - incurred by a participant whenever compliance by the participant

(a) is impossible, due to circumstances beyond the control of the participant or

(b) whenever the Secretary concludes that a waiver or suspension of compliance would be in the best interest of the Department of Veterans Affairs.

c. Compliance by a participant with a service or payment obligation will be considered impossible due to circumstances beyond the control of the participant if the Secretary determines, based on such information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in

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permanent inability to perform the service or other activities which would be necessary to comply with the obligation.

d. Waivers or suspensions of service or payment obligations, when not related to paragraph (c) of this section, and when considered in the best interest of the Department of Veterans Affairs, will be determined by the Secretary on an individual basis.

e. Eligibility to reapply for award. Any previous participant of any federally sponsored CBO program who breached their acceptance agreement or similar agreement in such CBO program is not eligible to apply for a CBO. This includes participants who previously applied for, and received, a waiver under this section.

f. Participants who have been found to have received CBOP payout through fraudulent or misrepresented actions from the participant or any party having an interest in the payout will be liable for the total amount of payment. Compromise, Waiver or Termination of any debt created in cases of fraud or misrepresentation can only be adjudicated by Department of Justice per 31 C.F.R. § 900.3(a) Antitrust, fraud, and tax and interagency claims excluded.

g. Requested waivers of such cases will be deferred pending appropriate disposition of the matter per 38 CFR § 1.962 – Waiver of Overpayments.

For debts created due to breach of service agreement submitted for Waiver or Compromise should refer to VA Financial Policy Volumes below:

Volume XII, Chapter 11 - Committee on Waivers and Compromises (COWC)

Volume XII, Chapter 11A - Waiver Requests and Processing (COWC)

Volume XII, Chapter 11B - Compromise of Debt (COWC)

Per Appendix B, Volume XII, Chapter 11, for waivers and compromises on debts created via breach of recruitment or relocation incentive service agreement is under the jurisdiction of the Assistant Secretary for Human Resources and Administration as the waiver authority up to \$100,000.

Per Appendix A of Volume XII, Chapter 11 for debts over \$100,000 Ass. Sec. for HRA should send recommendations to DOJ through OGC.

Authority and 38 C.F.R. Reference	Dollar Amount/ Type of Debt	Action	Exceptions
DOJ §§ 1.953, 1.957(1)(2)(ii)(D) and 1.962(b)	Over \$100,000 and suspected found in amounts generally not less than \$2,500 that are not fully resolved to VA	Waive/ Compromise referral through the Office of General Counsel (OGC)	Employee, home loan, medical copayments and pharmacy copayments

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	Inspector General (IG)		
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If participant remains employed by VHA after breach of the service agreement, waiver requests should follow requirements listed in VHA Financial Policy Volume XII, Chapter 3 – Employee Debt. ([Volume XII, Chapter 3 – Employee Debt \(va.gov\)](#))

Any question(s) regarding debt requirements can be directed to VHAFinancial.Policy@va.gov.

h. Finality of decisions. Decisions to approve or disapprove waiver requests are final and binding determinations. Such determinations are not subject to reconsideration or appeal.