

January 24, 2002

**DELEGATION OF WAIVER AUTHORITY TO VHA FISCAL OFFICERS FOR DEBTS
RESULTING FROM FAILURE TO MAKE COPAYMENTS**

1. PURPOSE: This Veterans Health Administration (VHA) Directive defines the procedure that delegates waiver authority to VHA Fiscal Officers for medical care and prescription copayment debts and procedures.

2. BACKGROUND: On September 1, 1992, General Counsel issued Advisory Opinion 31-92, confirming a veteran's right to request a waiver for a debt resulting from failure to pay a copayment required by Title 38 United States Code (U.S.C.) 1722A (medication copayments). This Opinion requires Department of Veterans Affairs (VA) to inform veterans of their right to request waiver of these debts and to implement a process for reviewing these requests.

a. The Secretary of Veterans Affairs determined that the process was to be implemented by VHA in reviewing requests for medication copayment waivers.

b. VHA medical facilities were mandated to implement this waiver process effective February 18, 1994.

c. On December 19, 1994, VA General Counsel issued Advisory Opinion 59-94, confirming the veteran's right to request a waiver for a debt resulting from failure to pay copayments required in connection with receipt of VHA medical center, nursing home, or outpatient care.

d. The Secretary of Veterans Affairs has delegated authority to waive copayment debts, both medication and those debts arising in connection with receipt of VHA medical center, nursing home, or outpatient care to VHA Fiscal Officers, or designees. *NOTE: Mandated procedures have been developed to assist Fiscal Officers, and their designees, in processing requests for waiver. These procedures are in both written and flow chart format and can be found in Attachments A and B.*

3. POLICY: It is VHA policy that each facility Director must ensure that the Fiscal Officer implements policy with Title 38 Code of Federal Regulations (CFR), 1.965, in which waivers and copayments are sent to the Fiscal Officer, or designee.

4. ACTION

a. **The Veteran**

(1) **Requesting a Waiver.** It is the responsibility of the veteran to request a waiver in writing and by completing VA Form 5655, Financial Status Report, (see Att. C). The request must specify each copayment for which a waiver is being requested. There is no limit on the amount that the veteran can request to be waived.

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(2) **Appeal of the Denial of Waiver.** The veteran can appeal the denial of waiver decision to the Board of Veterans Appeals following the procedures set forth in 38 CFR, Part 20.

(3) **Representation.** An accredited representative of a veterans service organization recognized by the Secretary of Veterans Affairs may represent the veteran, without charge. The veteran may employ an attorney to assist, (for example, an attorney in private practice or a legal aid attorney). The services of an attorney representing the veteran in adjudicatory proceedings before VA are subject to a fee limitation as set forth in Title 38 United States Code (U.S.C.) 5904. If the veteran desires representation and has not already designated a representative, let VA know and VA will send the veteran the necessary forms. If an attorney or accredited agent represents the veteran before VA, a copy of any agreement between the veteran and the attorney, or accredited agent, about the payment of the attorney's or agent fees must be filed at the following address: Counsel to the Chairman (01C3), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

b. The Fiscal Officer

(1) The Fiscal Officer, or designee, is responsible for reviewing each request for waiver. The Fiscal Officer may waive copayment debts when it is determined that collection action is against "Equity and Good Conscience." Fiscal Officers must apply the standards of equity and good conscience as set forth in Title 38 Code of Federal Regulations (CFR) 1.965, which mandates the use of VA Form 1837, Decision On Waiver of Indebtedness, (see Att. D).

NOTE: These waiver requests are not to be processed by the established Committees on Waivers and Compromise of the Veterans Benefits Administration.

(2) If a waiver request is denied, the Fiscal Officer must comply with the provisions set forth in the statement of waiver. The second, and each subsequent notification of copayment indebtedness sent by the Fiscal Officer, or designee, to a veteran must include both following statement:

"Waiver of Copayment Charges: You may request a waiver of your copayment charges. You may also request an oral hearing on the waiver request. Under certain circumstances, we can grant a request to waive all or a portion of these charges. A waiver means that all or part of the charges may be forgiven. Your right to request a waiver only lasts for 180 calendar days. For charges incurred prior to the first statement on which this notice appears, the 180-day limit applies from the date of the statement. For charges incurred after that date the limit runs from the date of the statement on which the charge first appears. Your waiver request must be writing and any request for an oral hearing must be included in the written request. A waiver is precluded if any indication of fraud, misrepresentation or bad faith is found with any part of the waiver request. When considering a waiver request, the VA can apply your current and anticipated income in the determination rather than just the prior year income."

5. REFERENCES

- a. Public Law 101-503.

- b. Public Law 102-568.
- c. General Counsel Advisory Opinion 31-92.
- d. General Counsel Advisory Opinion 59-94.
- e. Title 38 CFR, Part 20.

6. FOLLOW-UP RESPONSIBILITY: The Associate Chief Financial Officer for Revenue (174) is responsible for the contents of this Directive.

7. RESCISSIONS: This VHA Directive expires January 31, 2007.

Thomas L. Garthwaite, M.D.
Under Secretary for Health

Attachments

DISTRIBUTION: CO: E-mailed 1/29/2002
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 1/29/200

ATTACHMENT A

INSTRUCTIONS FOR PROCESSING WAIVER REQUESTS

1. **All Requests for Waivers.** All requests for waivers must be reviewed initially to determine if the debt in question is over 180 days old, (see subpar. 4b(2) of the directive). If the debt is over 180 days old the veteran, or the veteran's representative, must be notified, in writing, that the request is denied based on failure to file in a timely manner.
2. **Requests for Waivers Received in Person.** The clerk receiving the request must print a brief profile (from the Accounts Receivable (AR) clerk's menu in the Veterans Health Information Systems and Technology Architecture (VistA)). The veteran is to be asked to write, or print, a brief statement requesting a waiver and to sign this statement. If the veteran, or the veteran's representative, is unable to offer a statement, the clerk receiving the request (in person) must counsel the veteran on how the waiver process works (who, what, where, when, and why), and ask the veteran to complete a VA Form 5655, Financial Status Report.
3. **Requests for Waiver Received by Telephone.** The clerk receiving the request for waiver must access the AR comment log in VistA, and enter the date and time the waiver request is received, along with a brief explanation of the reason for the request.
 - a. The clerk receiving the request must inform the veteran, or the veteran's representative, that a VA Form 5655, and written request for waiver will be sent to them. The veteran, or the veteran's representative, must also be counseled on how the waiver process works.
 - b. The clerk receiving the request will print a brief profile (from AR clerk menu in VistA), type a waiver request statement, e.g. "I hereby request a waiver from my indebtedness to the government for copayment charges incurred in conjunction with care provided to me," along with a signature block on the profile and mail it to the veteran. A VA Form 5655 must also be mailed with the profile.
4. Upon receipt of any request for waiver, the clerk receiving the request must enter the AR menu and place a suspension on all active first party debts that are not more than 180 days old.
5. The clerk must enter the AR menu's debtor comment log and make a comment that the veteran has requested a waiver.
6. The clerk must enter the Integrated Billing (IB) menu bill comment log (*NOTE: This comment log is separate from the debtor comment log*), enter a comment regarding the waiver request, and establish a follow-up date of "T + 25", at the appropriate prompt.
7. Once a follow-up date has been established, VistA automatically generates a follow-up report.
8. Utilizing the daily-automated follow-up report, the clerk must enter the AR menu, Transaction Profile, and enter the bill number(s) listed in the comment section of the follow-up report.

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9. The clerk must review all comments on each bill to determine if any additional comments have been added. If additional comments have been added and apply to any or all of the bills being considered for waiver, the clerk must determine if the waiver process can proceed. If, based on the additional comments, the waiver process cannot proceed, the clerk must determine what is needed to proceed with the waiver process, and then attempt to get the needed information. If the waiver process can proceed, the clerk accesses VistA's Patient Information Management System (PIMS) package and reviews either the means test or copayment test menu option information.

10. If additional comments have not been added, the clerk must determine if the veteran, or the veteran's representative, submitted a VA Form 5655, within the established timeframe of 20 days. The clerk must check all pending correspondence for the VA Form 5655 before proceeding. *NOTE: While a VA Form 5655 is not required to proceed with a waiver, it can help the deciding official in making a determination.* If no VA Form 5655 is found and the waiver request was made by telephone with no subsequent written request for waiver received, the clerk must enter the AR menu and reestablish all suspended debts. The veteran, or the veteran's representative, must be notified that all debts have been reestablished, and that this decision was based on the fact that no written request for waiver has been received.

11. In either of the examples noted in paragraphs 9 and 10 where the waiver process can proceed, the clerk prints off a copy of the means test, or copayment test documentation, to support the waiver recommendation.

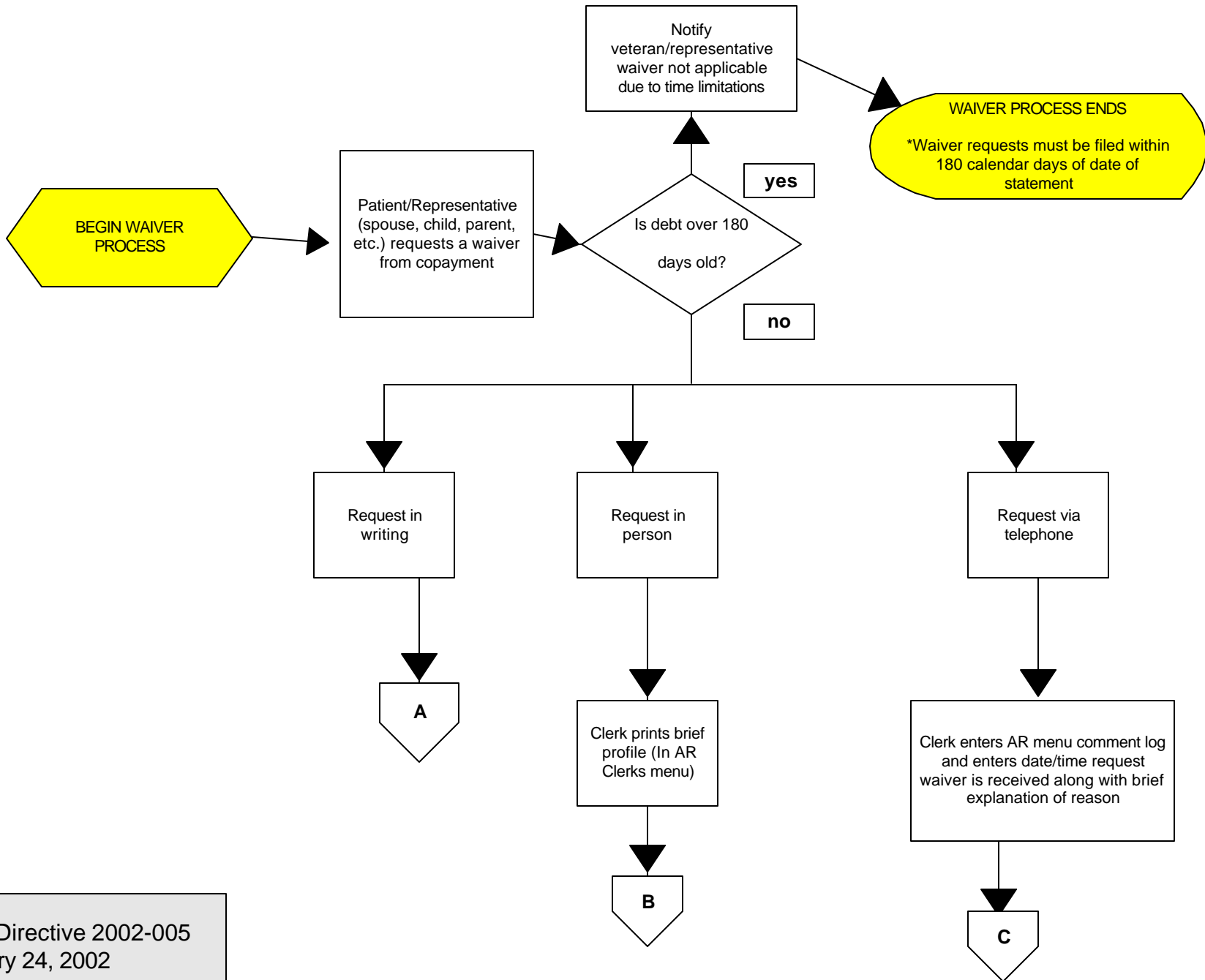
12. The clerk must evaluate the VistA information against the VA Form 5655 information (if one is available) to determine if the information received is valid, or appears fraudulent. In the event of possible fraudulent information, the following steps will be taken:

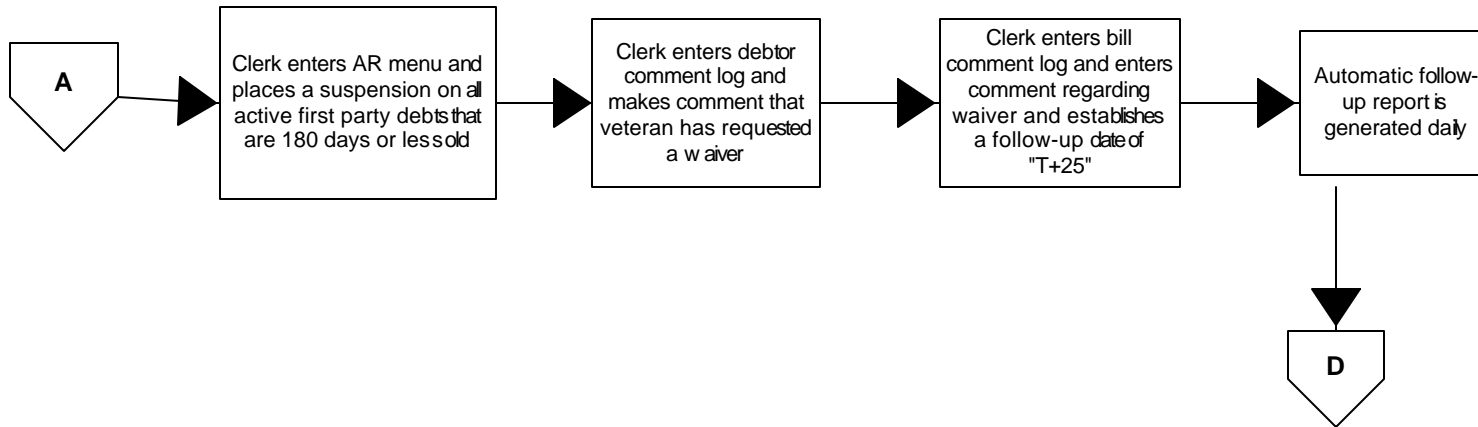
- a. The clerk will prepare VA Form 1837, Decision on Waiver Indebtedness.
- b. The clerk must follow locally established procedures for referring VA Form 1837 to the appropriate agency or authority.
- c. The clerk must enter the IB menu bill comment log and enter an appropriate comment regarding the referral of the case along with the date of "T" the information is forwarded.
- d. The clerk must establish a follow-up date of "T+30" at the appropriate prompt.
- e. **Upon Receipt of a Decision by the Appropriate Agency or Authority.** If the waiver request is deemed to be valid, the clerk continues with the waiver process. If the waiver request is deemed to be fraudulent, the clerk must enter the AR menu and reestablish all debts, and follow any and all other guidance received from the deciding agency or authority.

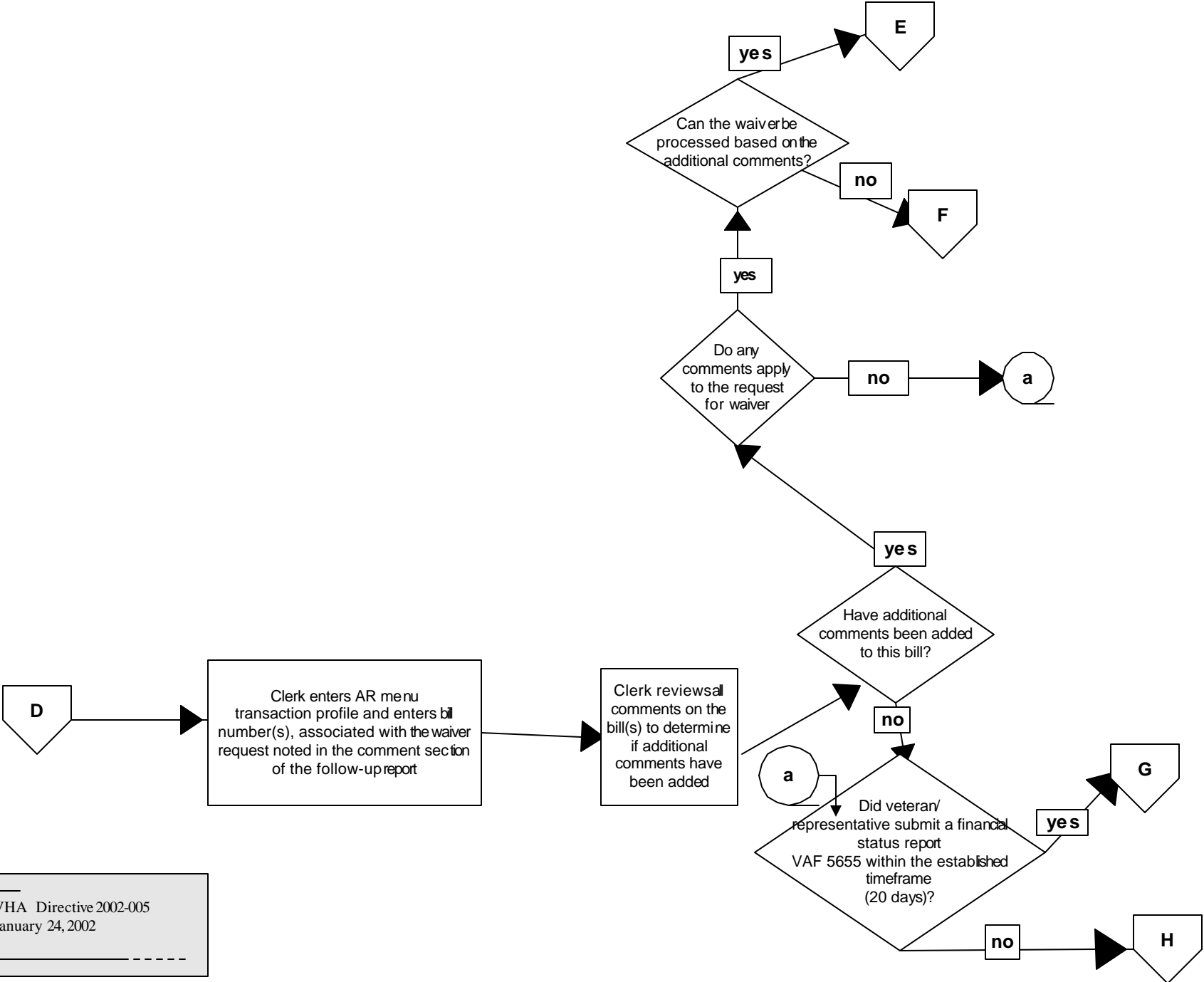
13. In the case of information that appears to be valid, the clerk must prepare VA Form 1837, and forward the form and all back-up documentation to the Fiscal Officer, or designee.

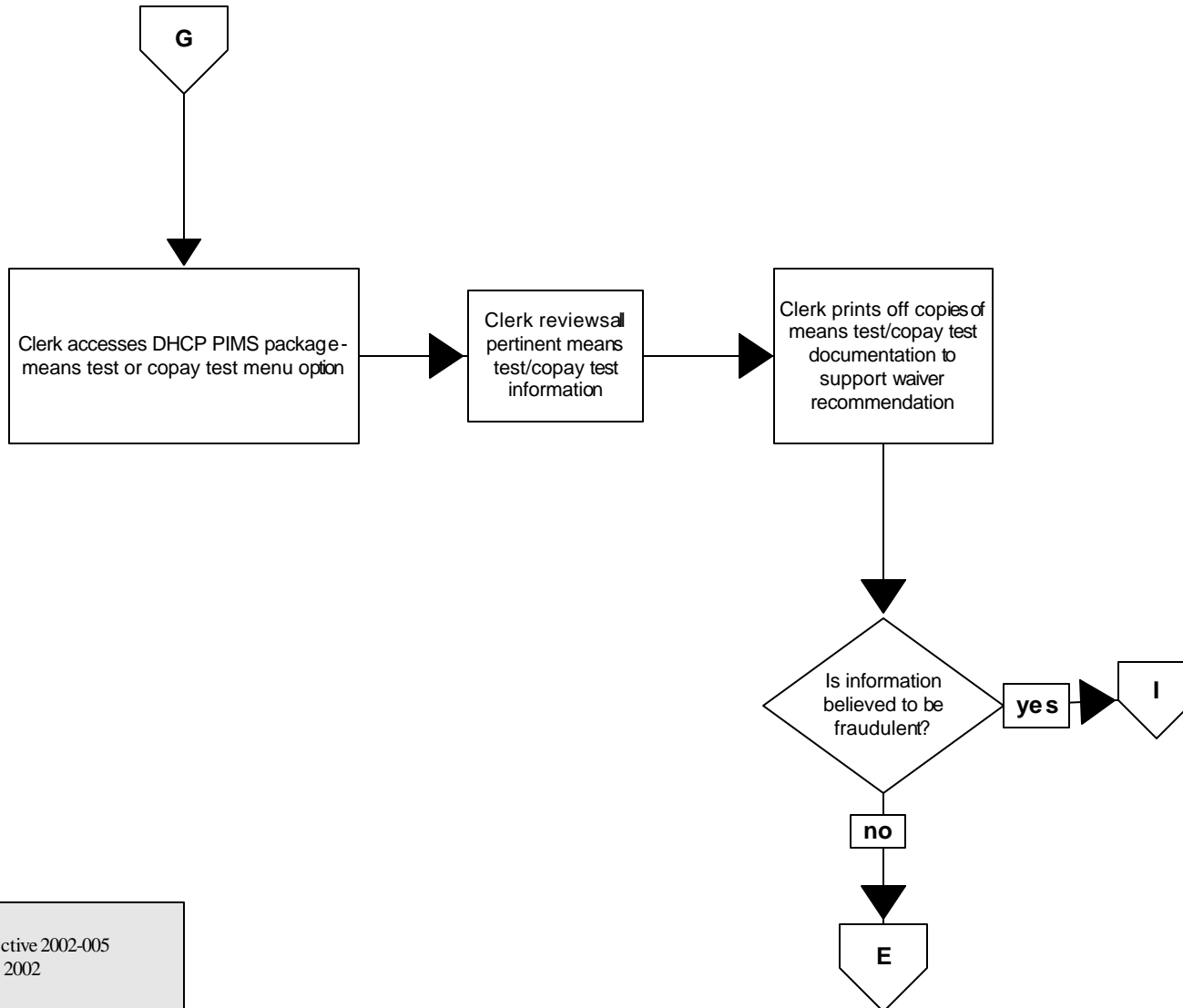
14. The clerk must enter the IB menu bill comment log and enter the comment “waiver referred to Fiscal Officer” along with the date this action is taken. The clerk then establishes a follow-up date of “T+10,” at the appropriate prompt.
15. The Fiscal Officer, or designee, must review the waiver and determine appropriate action to be taken.
16. The Fiscal Officer, or designee, must return the waiver request with decision back to the clerk.
17. If the waiver is not approved, the clerk will enter the AR menu and reestablish all debts. The clerk will then notify the veteran, or the veteran’s representative, of the decision and provide them with information regarding the right to appeal the decision. At this point, the waiver process ends.
18. If the waiver is approved, the clerk will enter the AR menu option.
19. The clerk must then enter the waive accounts receivable menu option.
20. If the waiver was only partially approved, the clerk must select the partial waiver option.
21. The clerk must enter the bill number(s) for payments to be waived and follow the prompts provided in the VistA package.
22. The clerk must reestablish all debts not waived, notify the veteran, or the veteran’s representative, of the decision, and provide them with information regarding the right to appeal the decision. At this point, the waiver process ends.
23. If the waiver was approved in full, the clerk selects the full waiver menu option.
24. The clerk must enter the bill number(s) for all bills to be waived and follow the prompts provided in the VistA Package.
25. The clerk must notify the veteran, or the veteran’s representative, in writing, of the decision to waive the debt. The waiver process is completed.

ATTACHMENT B

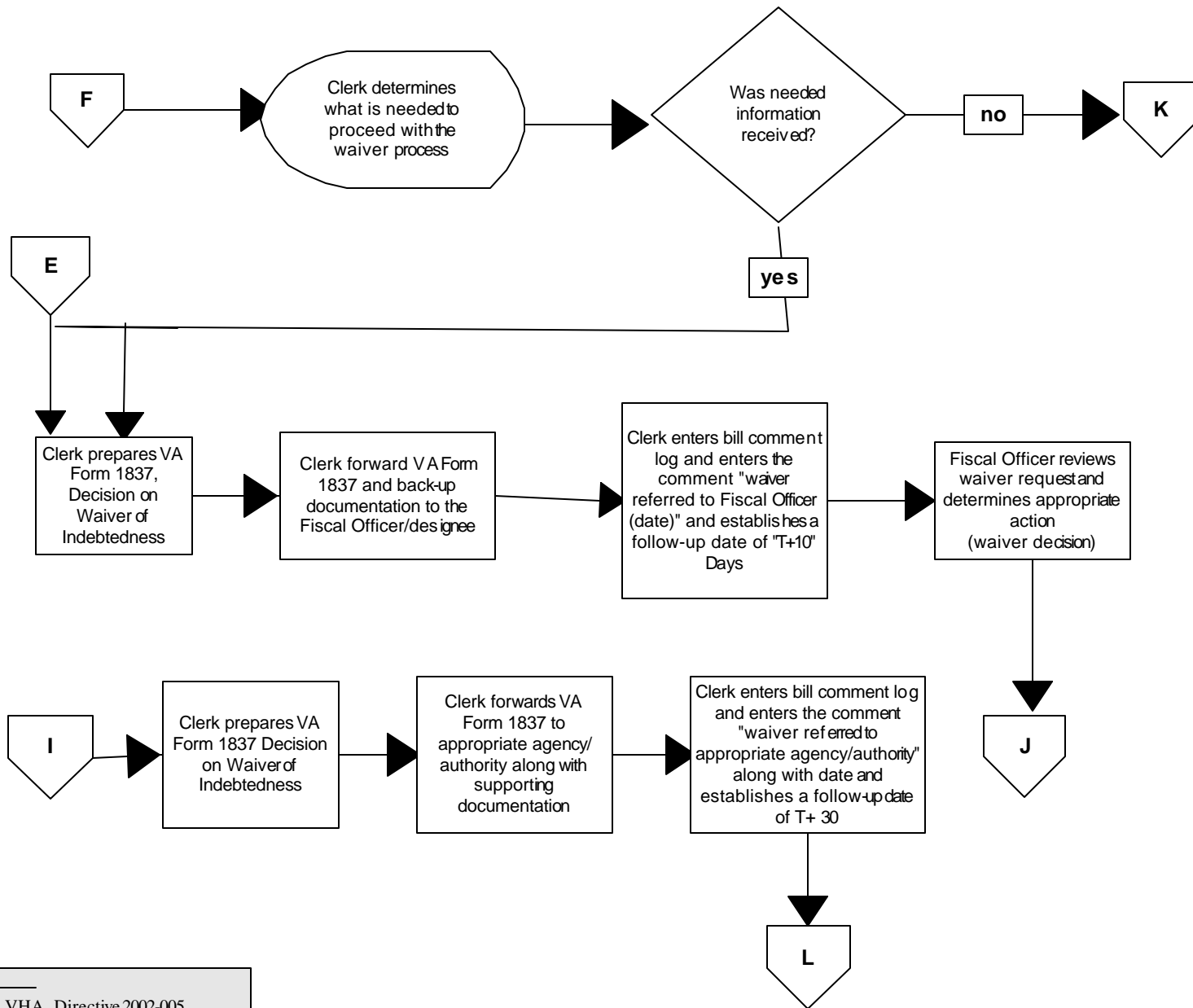


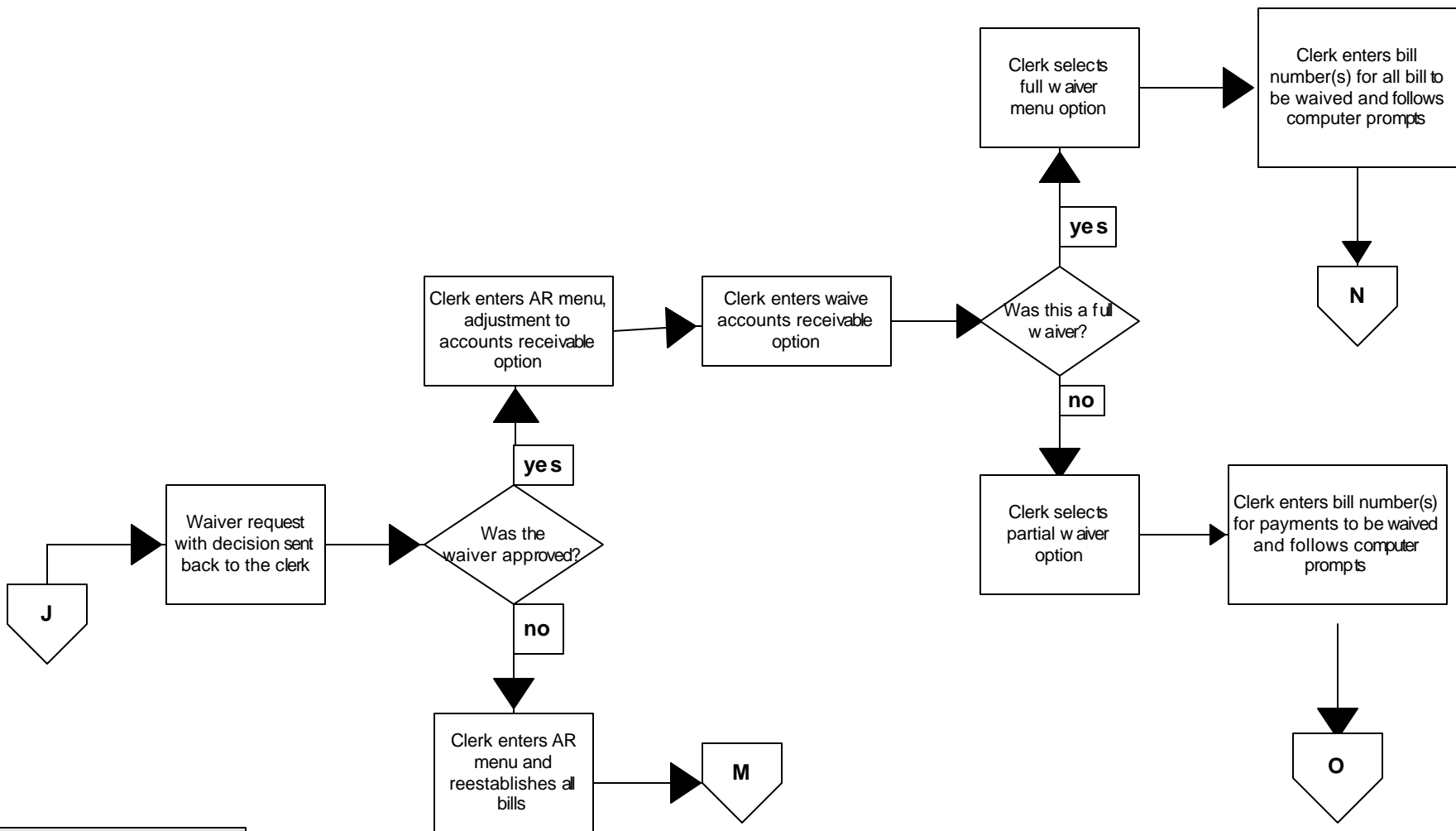




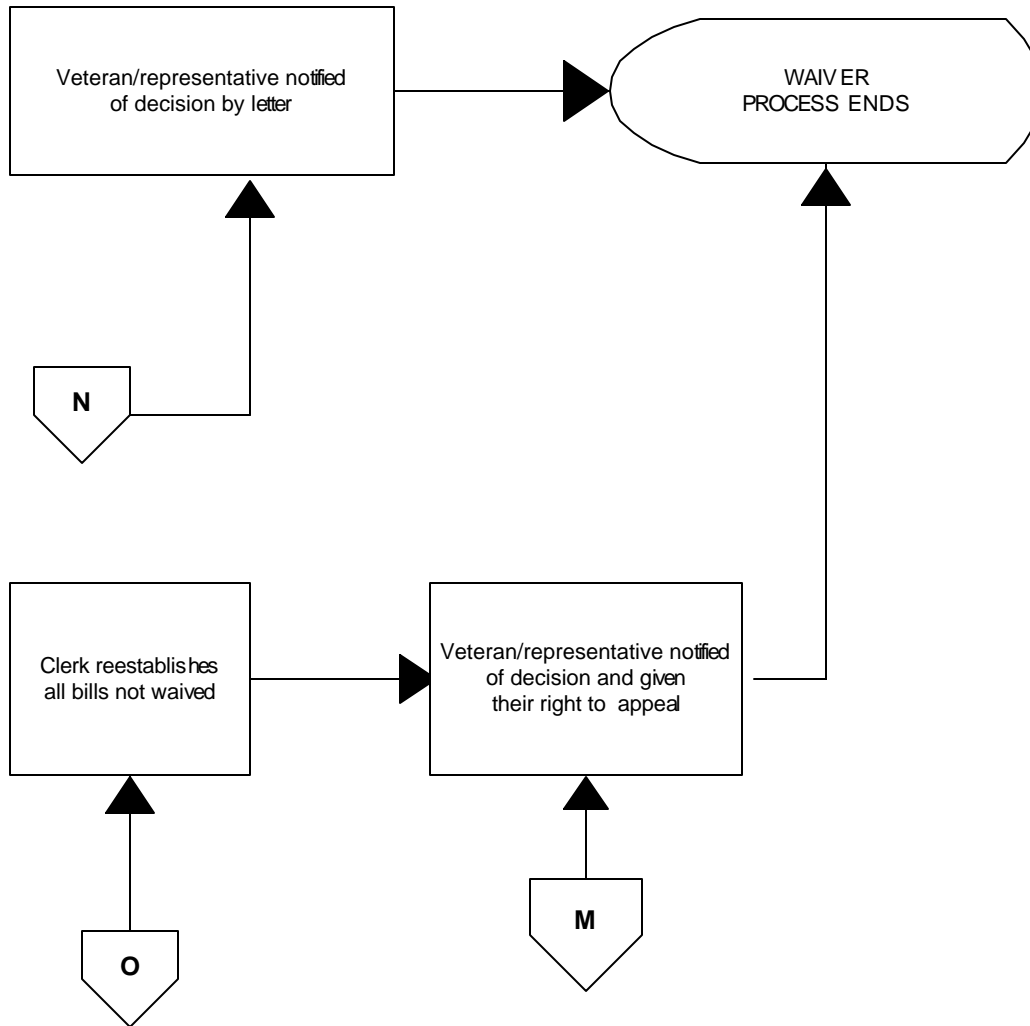


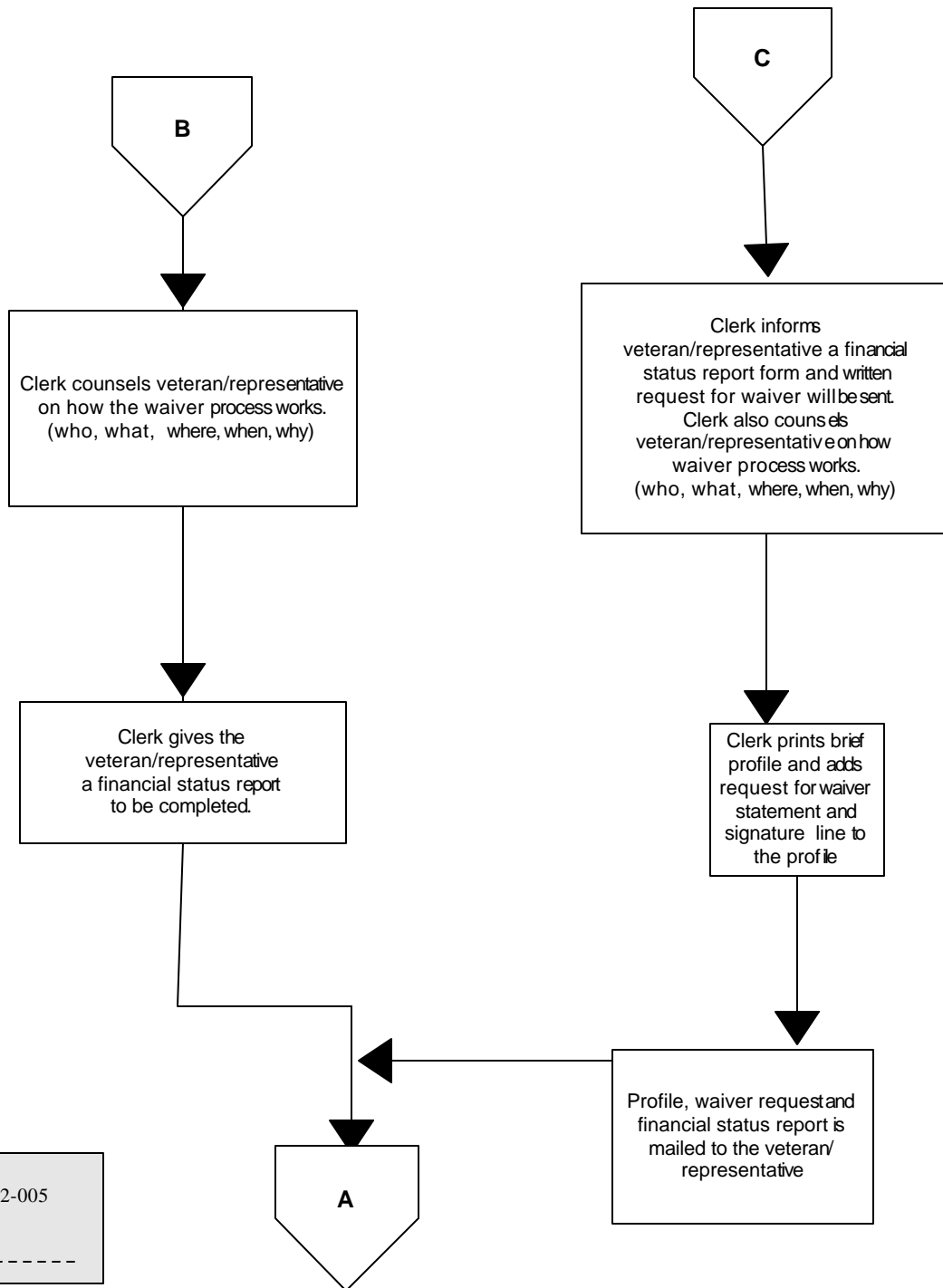
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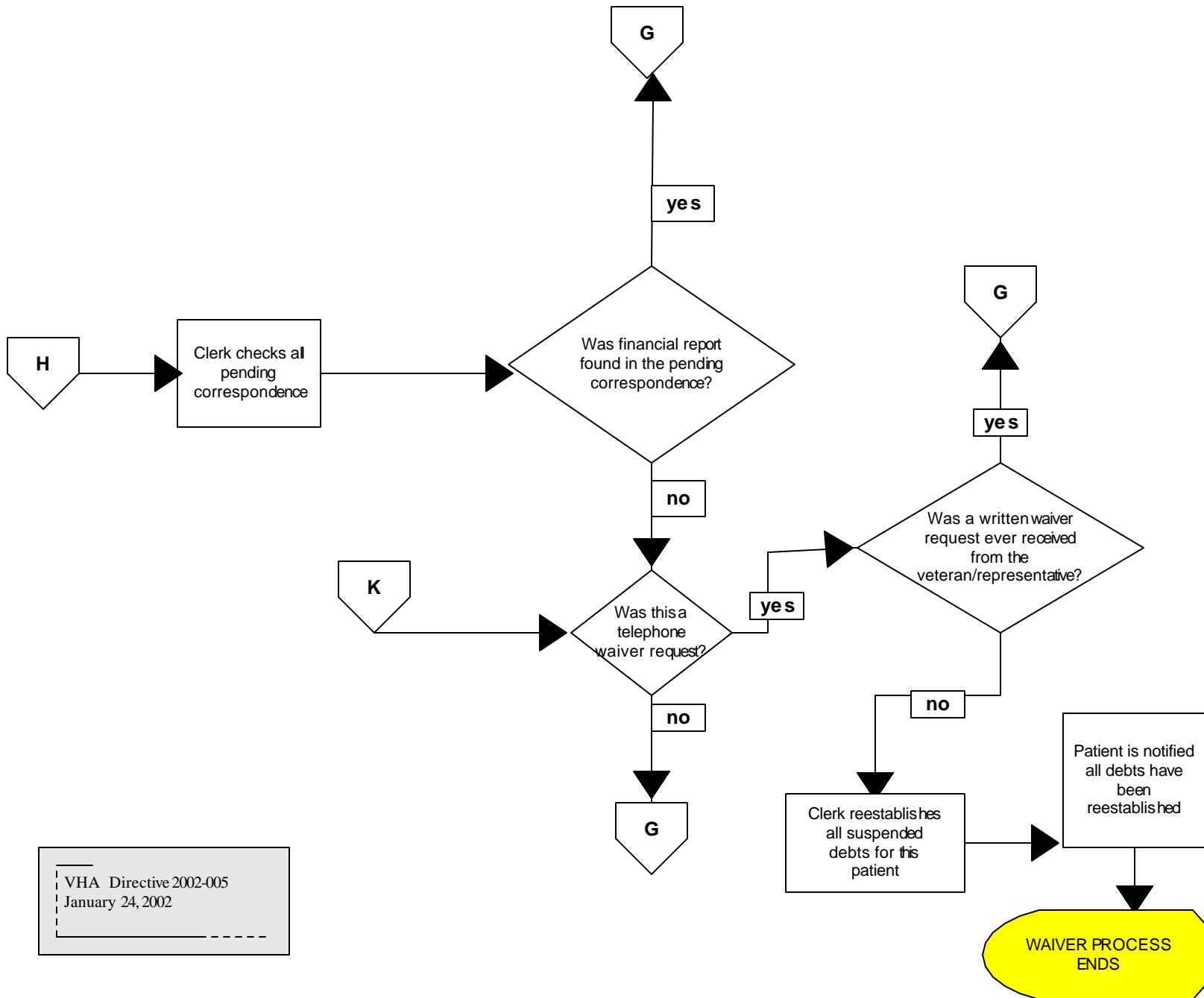




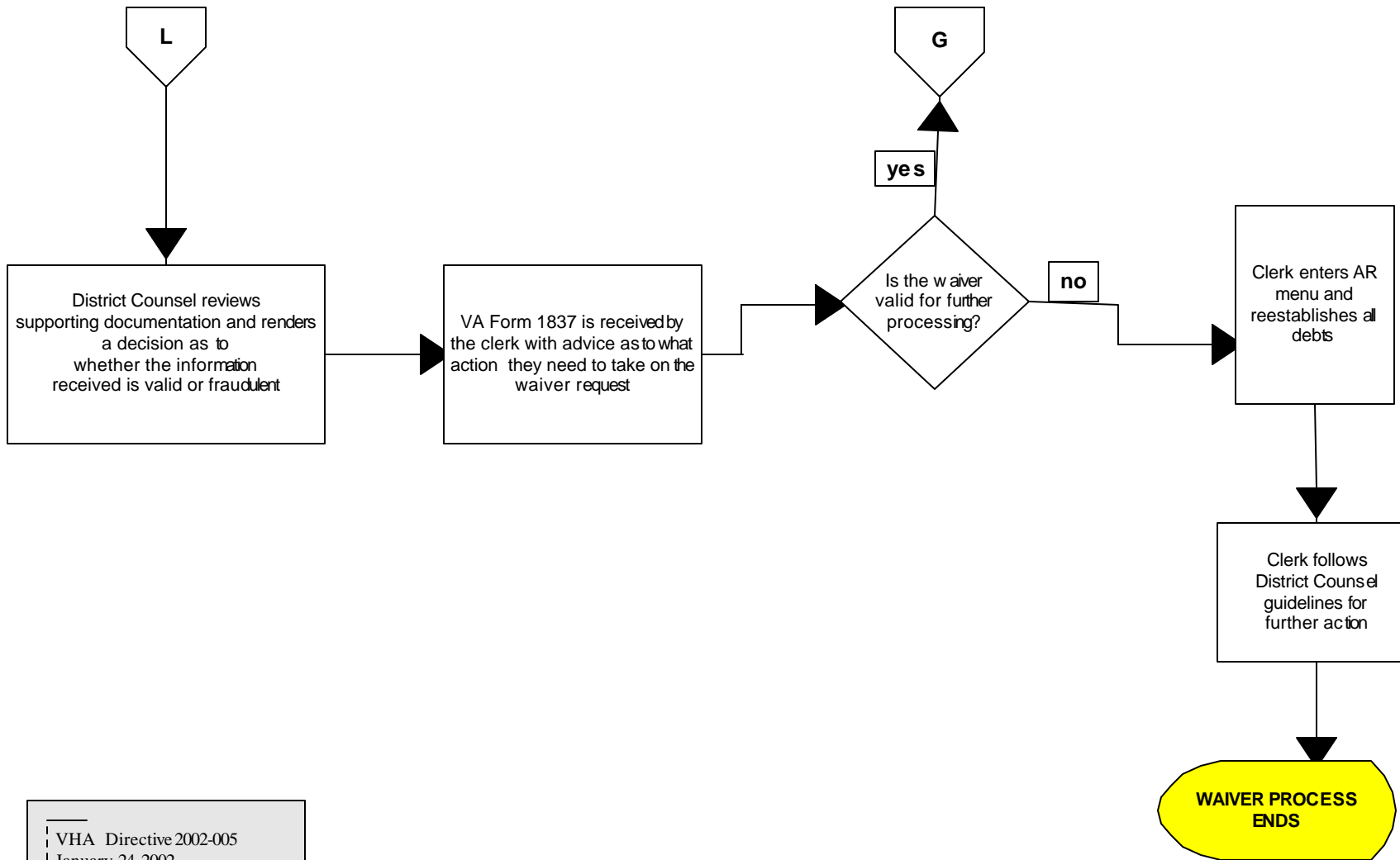
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NOTE: District Counsel may advise to go for additional information or request that legal documents (i.e., certificate of indebtedness), be prepared to start enforced collection. Refer to MP- 4, Part VII "Referrals to D.C."



FINANCIAL STATUS REPORT	1. SOCIAL SECURITY NO.	2. FILE NO.
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(Type or print all entries. If more space is needed for any item, continue under Section VII, Additional Data, Item 36 or attach separate sheet)

PRIVACY ACT INFORMATION: The information you furnish on this form is almost always used to determine if you are eligible for waiver of a debt, for the acceptance of a compromise offer or for a payment plan. The responses you submit are confidential and protected from unauthorized disclosure by 38 U.S.C. 5701. The information may be disclosed outside the Department of Veterans Affairs (VA) only when authorized by the Privacy Act of 1974, as amended. The routine uses for which VA may disclose the information can be found in VA systems of records, including 58VA21/22, Compensation, Pension, Education and Rehabilitation Records-VA, and 88VA244, Accounts Receivable Records-VA. VA systems of records and alterations to the systems are published in the Federal Register. Any information provided by you, including your Social Security Number, may be used in computer matching programs conducted in connection with any proceeding for the collection of an amount owed by virtue of your participation in any benefit program administered by VA.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.

SECTION I - PERSONAL DATA

4. FIRST-MIDDLE-LAST NAME OF PERSON		5. ADDRESS <i>(Number and street or rural route, City or P.O. Box, State, and ZIP Code)</i>	
6. TELEPHONE NO. <i>(Include Area Code)</i>	7. DATE OF BIRTH	8. MARITAL STATUS <input type="checkbox"/> MARRIED <input type="checkbox"/> NOT MARRIED	
9. NAME OF SPOUSE		10. AGE(S) OF OTHER DEPENDENTS	

COMPLETE RECORD OF EMPLOYMENT FOR YOURSELF AND SPOUSE DURING PAST 2 YEARS

KIND OF JOB	DATES <i>(Month, year)</i>		NAME AND ADDRESS OF EMPLOYER
	FROM	TO	
11. YOUR EMPLOYMENT EXPERIENCE			
		PRESENT TIME	
12. YOUR SPOUSE'S EMPLOYMENT			
		PRESENT TIME	

SECTION II - INCOME

SECTION III - EXPENSES

AVERAGE MONTHLY INCOME			AVERAGE MONTHLY EXPENSES	AMOUNT
	SELF	SPOUSE		
13. MONTHLY GROSS SALARY <i>(Before payroll deductions)</i>	\$	\$	18. RENT OR MORTGAGE PAYMENT	\$
14. DEDUCTIONS			19. FOOD	
A. FEDERAL, STATE AND LOCAL INCOME TAXES			20. UTILITIES AND HEAT	
B. RETIREMENT			21. OTHER LIVING EXPENSES	
C. SOCIAL SECURITY				
D. OTHER <i>(Specify)</i>				
E. TOTAL DEDUCTIONS <i>(Items 14A through 14D)</i>				
15. NET TAKE HOME PAY <i>(Subtract Item 14E from Item 13)</i>			22. MONTHLY PAYMENTS ON INSTALLMENT CONTRACTS AND OTHER DEBTS	
16. PENSION, COMPENSATION, OR OTHER INCOME <i>(Specify)</i>			23. TOTAL MONTHLY EXPENSES	
17. TOTAL MONTHLY NET INCOME <i>(Item 15 plus Item 16)</i>	\$	\$		

SECTION IV - DISCRETIONARY INCOME

24A. NET MONTHLY INCOME LESS EXPENSES <i>(Item 17 less Item 23)</i> \$	24B. AMOUNT YOU CAN PAY ON A MONTHLY BASIS TOWARD YOUR DEBT \$
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SECTION V - ASSETS

25. CASH IN BANK <i>(Checking and savings accounts, building and loan accounts, etc.)</i>			\$	29. U.S. SAVINGS BONDS <i>(Current Value)</i>			\$
26. CASH ON HAND				30. STOCKS AND OTHER BONDS <i>(Current Value)</i>			
27. AUTOMOBILES <i>(Resale value)</i>				31. REAL ESTATE OWNED <i>(Resale value)</i>			
MAKE	YEAR	MODEL		32. OTHER ASSETS <i>(Specify below)</i>			
28. TRAILERS, BOATS, CAMPERS <i>(Resale value)</i>			\$	33. TOTAL ASSETS ▶			\$

SECTION VI - INSTALLMENT CONTRACTS AND OTHER DEBTS

NOTE: Show below ALL debts which you are required to pay in regular monthly installments, such as a car, television, washing machine, payments to dealers, banks, finance companies, repayment of money borrowed for any purpose, doctor bills, hospital bills, etc. **DO NOT INCLUDE LIVING EXPENSES.**

NAME AND ADDRESS OF CREDITOR (A)		DATE AND PURPOSE OF DEBT (B)	ORIGINAL AMOUNT OF DEBT (C)	UNPAID BALANCE (D)	AMOUNT DUE MONTHLY (E)	AMOUNT PAST DUE <i>(If any)</i> (F)
34A.			\$	\$	\$	\$
34B.						
34C.						
34D.						
34E.						
34F.						
34G.						
34H.						
34I. TOTAL ▶			\$	\$	\$	\$

NOTE: If repayment of a debt is not on a monthly basis, write "0" in column E and describe arrangements to repay in Item 36.

SECTION VII - ADDITIONAL DATA

35A. HAVE YOU EVER BEEN ADJUDICATED BANKRUPT? IF SO AND VA OR A MORTGAGE COMPANY WAS INVOLVED, PLEASE SEND ALL PERTINENT DOCUMENTATION
 YES NO *(If "Yes," complete Items 35B through 35D)*

35B. DATE DISCHARGED FROM BANKRUPTCY	35C. LOCATION OF COURT	35D. DOCKET NO., IF KNOWN
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36. USE THIS SPACE AND ADDITIONAL SHEETS, IF NECESSARY, TO SUPPLY ANY PERTINENT INFORMATION AND TO CONTINUE YOUR ANSWER TO PREVIOUS ITEM NUMBER(S) TO WHICH YOUR COMMENTS APPLY

SECTION VIII - CERTIFICATIONS

37A. YOUR SIGNATURE	37B. DATE SIGNED	38A. SIGNATURE OF SPOUSE	38B. DATE SIGNED
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PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

