

Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or is involved in a violation of law wherein there is a possibility of self-incrimination.

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AUTHORITY: 38 U.S.C. 501(a), and as noted in specific sections.

DEPARTMENT OF VETERANS AFFAIRS OFFICIAL SEAL AND DISTINGUISHING FLAG

§ 1.9 Description, use, and display of VA seal and flag.

(a) *General.* This section describes the official seal and distinguishing flag of the of the Department of Veterans Af-

fairs, and prescribes the rules for their custody and use.

(b) *Definitions.* (1) *VA* means all organizational units of the Department of Veterans Affairs.

(2) *Embossed seal* means an image of the official seal made on paper or other medium by using an embosser with a negative and positive die to create a raised impression.

(3) *Official seal* means the original(s) of the VA seal showing the exact form, content, and colors thereof.

(4) *Replica* means a copy of the official seal displaying the identical form, content, and colors thereof.

(5) *Reproduction* means a copy of the official seal displaying the identical form and content, reproduced in only one color.

(6) *Secretary* means the Secretary of Veterans Affairs.

(7) *Deputy Secretary* means the Deputy Secretary of Veterans Affairs.

(c) *Custody of official seal and distinguishing flags.* The Secretary or designee shall:

(1) Have custody of:

(i) The official seal and prototypes thereof, and masters, molds, dies, and other means of producing replicas, reproductions, and embossing seals and

(ii) Production, inventory, and loan records relating to items specified in paragraph (c)(1)(i) of this section, and

(2) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.

(d) *Official Seal*—(1) *Description of official seal.* The Department of Veterans Affairs prescribes as its official seal, of which judicial notice shall be taken pursuant to 38 U.S.C. 302, the imprint illustrated below:



(i) The official seal includes an American eagle clutching a cord in its talons. The cord binds a 13-star U.S. flag and a 50-star U.S. flag. In the field over the eagle is a pentagon formation of stars, with one point down. The words Department of Veterans Affairs and United States of America surround the eagle, stars, and flags. A rope motif makes up the outermost ring of the seal.

(ii) The eagle represents the eternal vigilance of all our nation's veterans. The stars represent the five branches of military service. The crossed flags represent our nation's history. The gold cord that binds the two flags, which is shown clutched in the eagle's talons is symbolic of those who have fallen in the defense of liberty. Each of the various individual items placed together in the seal is a salute to the past, present, and future.

(iii) The colors used in the configuration are gold, brown, blue, white, silver, yellow, black, and red.

(iv) The colors are derived from the American flag and from nature. By invoking this symbolism, the color scheme represents the Nation's commitment to its veterans.

(2) *Use of the official seal, replicas, reproductions, and embossing seals.* (i) The Secretary or designees are authorized to affix replicas, reproductions, and embossed seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(ii) Replicas may be used only for:

(A) Display in or adjacent to VA facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.

(B) Offices of senior officials.

(C) Official VA distinguishing flags, adopted and utilized pursuant to paragraph (e)(2) of this section.

(D) Official awards, certificates, medals, and plaques.

(E) Motion picture film, video tape, and other audiovisual media prepared by or for VA and attributed thereto.

(F) Official prestige publications which represent the achievements or mission of VA.

(G) For other similar official purposes.

(H) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iii) Reproductions may be used only on:

(A) VA letterhead stationery.

(B) Official VA identification cards and security credentials.

(C) Business cards for VA employees.

(D) Official VA signs.

(E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.

(F) Official awards, certificates, and medals.

(G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.

(H) For other similar official purposes.

(I) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iv) Use of the official seal and embossed seals:

(A) Embossed seals may be used only on VA legal documents, including interagency or intergovernmental agreements with States, foreign patent applications, and similar official documents.

(B) The official seal may be used only for those purposes related to the conduct of Departmental affairs in furtherance of the VA mission.

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(e) *Distinguishing flag.* (1) Description of distinguishing flag.

(i) The base or field of the flag shall be blue and a replica of the official seal shall appear on both sides thereof.

(ii) A Class 1 flag shall be of nylon banner, measure 4'4" on the hoist by 5'6" on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½" wide.

(iii) A Class 2 flag shall be of nylon banner, measure 3' on the hoist by 5' on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½" wide.

(iv) Each flag shall be manufactured in accordance with Department of Veterans Affairs Specification X-497G. The replica of the official seal shall be screen printed or embroidered on both sides.

(2) Use of distinguishing flag. (i) VA distinguishing flags may be used only:

(A) In the offices of the Secretary, Deputy Secretary, Assistant Secretaries, Deputy Assistant Secretaries and heads of field locations designated below:

(1) Regional Offices.

(2) Medical Centers and Outpatient Clinics.

(3) Domiciliaries.

(4) Marketing Centers and Supply Depots.

(5) Data Processing Centers.

(6) National Cemetery Offices.

(7) Other locations as designated by the Deputy Assistant Secretary for Administration.

(B) At official VA ceremonies.

(C) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-VA facilities in connection with events or displays sponsored by VA, and public appearances of VA officials.

(D) On or in front of VA installation buildings.

(E) Other such official VA purposes or purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Deputy Assistant Secretary for Administration.

(f) *Unauthorized uses of the seal and flag.* (1) The official seal, replicas, reproductions, embossed seals, and the distinguished flag shall not be used, ex-

cept as authorized by the Secretary or Deputy Secretary, in connection with:

(i) Contractor-operated facilities.

(ii) Souvenir or novelty items.

(iii) Toys or commercial gifts or premiums.

(iv) Letterhead design, except on official Departmental stationery.

(v) Matchbook covers, calendars and similar items.

(vi) Civilian clothing or equipment.

(vii) Any article which may disparage the seal or flag or reflect unfavorably upon VA.

(viii) Any manner which implies Departmental endorsement of commercial products or services, or of the commercial user's policies or activities.

(2) Penalties for unauthorized use. Any person who uses the distinguishing flag, or the official seal, replicas, reproductions or embossed seals in a manner inconsistent with this section shall be subject to the penalty provisions of 18 U.S.C. 506, 701, or 1017, providing penalties for their wrongful use, as applicable.

(Authority: 38 U.S.C. 302, 38 U.S.C. 501)

[55 FR 49518, Nov. 29, 1990]

THE UNITED STATES FLAG FOR BURIAL PURPOSES

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.

(a) *Eligibility for burial flags*—(1) *Persons eligible.* (i) A veteran of any war, of Mexican border service, or of service after January 31, 1955, discharged or released from active duty under conditions other than dishonorable. (For the purpose of this section, the term *Mexican border service* means active military, naval, or air service during the period beginning on January 1, 1911, and ending on April 5, 1917, in Mexico, on the borders thereof, or in the waters adjacent thereto.)

(ii) A peacetime veteran discharged or released, before June 27, 1950, from the active military, naval, or air service, under conditions other than dishonorable, after serving at least one enlistment, or for a disability incurred or aggravated in line of duty.

(iii) Any person who has died while in military or naval service of the United

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States after May 27, 1941. This subdivision authorizes and requires the furnishing of a flag only where the military or naval service does not furnish a flag immediately. The only cases wherein a flag is not supplied immediately are those of persons whose remains are interred outside the continental limits of the United States, or whose remains are not recovered or are recovered and not identified.

(iv) Any person who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President of the United States, dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who dies after separation from such service under conditions other than dishonorable, on or after April 25, 1951.

(Authority: 38 U.S.C. 107(a))

(v) Any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and who:

(A) Completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;

(B) Was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or

(C) Died while a member of the Selected Reserve.

(Authority: 38 U.S.C. 2301(f)(1))

(b) *Disposition of burial flags.* (1) When a flag is actually used to drape the casket of a deceased veteran, it must be delivered to the next of kin following

interment. Where the flag is not claimed by the next of kin it may be given upon request to a close friend or associate of the deceased veteran. Such action will constitute final and conclusive determination of rights under this section. (38 U.S.C. 2301)

(2) The phrase *next of kin* for the purpose of disposing of the flag used for burial purposes is defined as follows, with preference to entitlement in the order listed:

(i) Widow or widower.

(ii) Children, according to age (minor child may be issued a flag on application signed by guardian).

(iii) Parents, including adoptive, stepparents, and foster parents.

(iv) Brothers or sisters, including brothers or sisters of the halfblood.

(v) Uncles or aunts.

(vi) Nephews or nieces.

(vii) Others—cousins, grandparents, etc. (but not in-laws).

(3) The phrase *close friend or associate* for the purpose of disposing of the burial flag means any person who because of his or her relationship with the deceased veteran arranged for the burial or assisted in the burial arrangements. In the absence of a person falling in either of these categories, any person who establishes by evidence that he or she was a close friend or associate of the veteran may be furnished the burial flag. Where more than one request for the burial flag is received and each is accompanied by satisfactory evidence of relationship or association, the head of the field facility having jurisdiction of the burial flag quota will determine which applicant is the one most equitably entitled to the burial flag.

(Authority: 72 Stat. 1114, 1169, as amended; 38 U.S.C. 501, 2301)

[13 FR 6999, Nov. 27, 1948, as amended at 20 FR 8350, Nov. 8, 1955; 24 FR 10106, Dec. 15, 1959; 31 FR 4959, Mar. 26, 1966; 42 FR 27245, May 27, 1977; 66 FR 27598, May 18, 2001]

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QUARTERS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES OVERSEAS

§ 1.11 Quarters for Department of Veterans Affairs employees in Government-owned or -rented buildings overseas.

Pursuant to the provisions of 5 U.S.C. 5912, a U.S. citizen employee of the Department of Veterans Affairs permanently stationed in a foreign country may be furnished, without cost to him or her, living quarters, including heat, fuel, and light, in a Government-owned or -rented building. When in the interest of the service and when administratively feasible, an agreement may be entered into by the Under Secretary for Benefits or designee with another Federal agency, which is authorized to furnish quarters, to provide such quarters for Department of Veterans Affairs employees under the provisions of 31 U.S.C. 686. Quarters provided will be in lieu of any living quarters allowance to which the employee may otherwise be entitled.

(Authority: 72 Stat. 1114; 38 U.S.C. 501)

[33 FR 362, Jan. 10, 1968]

PROGRAM EVALUATION

§ 1.15 Standards for program evaluation.

(a) The Department of Veterans Affairs will evaluate all programs authorized under title 38 U.S.C. These evaluations will be conducted so as to determine each program's effectiveness in achieving its stated goals and in achieving such goals in relation to their cost. In addition, these evaluations will determine each program's impact on related programs and its structure and mechanism for delivery of services. All programs will be evaluated on a continuing basis and all evaluations will be conducted by Department of Veterans Affairs staff assigned to an organizational entity other than those responsible for program administration. These evaluations will be conducted with sufficient frequency to allow for an assessment of the continued effectiveness of the programs.

(b) The program evaluation will be designed to determine if the existing program supports the intent of the law.

A program evaluation must identify goals and objectives that support this intent, contain a method to measure fulfillment of the objectives, ascertain the degree to which goals and objectives are met, and report the findings and conclusions to Congress, as well as make them available to the public.

(c) The goals must be clear, specific, and measurable. To be clear they must be readily understood, free from doubt or confusion, and specific goals must be explicitly set forth. They must be measurable by objective means. These means can include use of existing record systems, observations, and information from other sources.

(d) All program evaluations require a detailed evaluation plan. The evaluation plan must clearly state the objectives of the program evaluation, the methodology to be used, resources to be committed, and a timetable of major phases.

(e) Each program evaluation must be objective. It must report the accomplishments as well as the shortcomings of the program in an unbiased way. The program evaluation must have findings that give decision-makers information which is of a level of detail and importance to enable decisions to be made affecting either direction or operation. The information in the program evaluation must be timely, and must contain information of sufficient currency that decisions based on the data in the evaluation can be made with a high degree of confidence in the data.

(f) Each program evaluation requires a systematic research design to collect the data necessary to measure the objectives. This research design should conform to the following:

(1) *Rationale.* The research design for each evaluation should contain a specific rationale and should be structured to determine possible cause and effect relationships.

(2) *Relevancy.* It must deal with issues currently existing within the program, within the Department, and within the environment in which the program operates.

(3) *Validity.* The degree of statistical validity should be assessed within the research design. Alternatives include an assessment of cost of data collection

vs. results necessary to support decisions.

(4) *Reliability.* Use of the same research design by others should yield the same findings.

(g) The final program evaluation report will be reviewed for comments and concurrence by relevant organizations within the Department of Veterans Affairs, but in no case should this review unreasonably delay the results of the evaluation. Where disagreement exists, the dissenting organization's position should be summarized for a decision by the Secretary.

(h) The final program evaluation report will be forwarded, with approved recommendations, to the concerned organization. An action plan to accomplish the approved recommendations will be forwarded for evaluation by the evaluating entity.

(i) Program evaluation results should be integrated to the maximum extent possible into Department of Veterans Affairs plans and budget submissions to ensure continuity with other Department of Veterans Affairs management processes.

(Authority: 38 U.S.C. 527)

[47 FR 53735, Nov. 29, 1982, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.17 Evaluation of studies relating to health effects of radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to ionizing radiation in the "Notices" section of the FEDERAL REGISTER.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or

medical studies and after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d)(1) of this section, that a significant statistical association exists between any disease and exposure to ionizing radiation, § 3.311 of this chapter shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a *significant statistical association* shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between exposure to ionizing radiation and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Has adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and

(iii) Has satisfactorily accounted for known confounding factors.

(3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d)(2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroup analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an association between exposure to ionizing radiation and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have

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particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a *significant statistical association* may be deemed to exist between exposure to ionizing radiation and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

(Authority: 38 U.S.C. 501; Pub. L. 98-542, as amended by Pub. L. 102-4)

[54 FR 40391, Oct. 2, 1989; 54 FR 46187, Nov. 1, 1989; 75 FR 17859, Apr. 8, 2010]

§ 1.18 Guidelines for establishing presumptions of service connection for former prisoners of war.

(a) *Purpose.* The Secretary of Veterans Affairs will establish presumptions of service connection for former prisoners of war when necessary to prevent denials of benefits in significant numbers of meritorious claims.

(b) *Standard.* The Secretary may establish a presumption of service connection for a disease when the Secretary finds that there is at least limited/suggestive evidence that an increased risk of such disease is associated with service involving detention or internment as a prisoner of war and an association between such detention or internment and the disease is biologically plausible.

(1) *Definition.* The phrase "limited/suggestive evidence" refers to evidence of a sound scientific or medical nature that is reasonably suggestive of an association between prisoner-of-war experience and the disease, even though the evidence may be limited because matters such as chance, bias, and confounding could not be ruled out with confidence or because the relatively small size of the affected population restricts the data available for study.

(2) *Examples.* "Limited/suggestive evidence" may be found where one high-quality study detects a statistically significant association between the prisoner-of-war experience and disease, even though other studies may be inconclusive. It also may be satisfied where several smaller studies detect an association that is consistent in magnitude and direction. These examples are not exhaustive.

(c) *Duration of detention or internment.* In establishing a presumption of service connection under paragraph (b) of this section, the Secretary may, based on sound scientific or medical evidence, specify a minimum duration of detention or internment necessary for application of the presumption.

(d) *Association.* The requirement in paragraph (b) of this section that an increased risk of disease be "associated" with prisoner-of-war service may be satisfied by evidence that demonstrates either a statistical association or a causal association.

(e) *Evidence.* In making determinations under paragraph (b) of this section, the Secretary will consider, to the extent feasible:

(1) Evidence regarding the increased incidence of disease in former prisoners of war;

(2) Evidence regarding the health effects of circumstances or hardships similar to those experienced by prisoners of war (such as malnutrition, torture, physical abuse, or psychological stress);

(3) Evidence regarding the duration of exposure to circumstances or hardships experienced by prisoners of war that is associated with particular health effects; and

(4) Any other sound scientific or medical evidence the Secretary considers relevant.

(f) *Evaluation of studies.* In evaluating any study for the purposes of this section, the Secretary will consider:

(1) The degree to which the study's findings are statistically significant;

(2) The degree to which any conclusions drawn from the study data have withstood peer review;

(3) Whether the methodology used to obtain the data can be replicated;

(4) The degree to which the data may be affected by chance, bias, or confounding factors; and

(5) The degree to which the data may be relevant to the experience of prisoners of war in view of similarities or differences in the circumstances of the study population.

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(g) *Contracts for Scientific Review and Analysis.* To assist in making determinations under this section, the Secretary may contract with an appropriate expert body to review and summarize the scientific evidence, and assess the strength thereof, concerning the association between detention or internment as a prisoner of war and the occurrence of any disease, or for any other purpose relevant to the Secretary's determinations.

(Authority: 38 U.S.C. 501(a), 1110)

[69 FR 60089, Oct. 7, 2004]

REFERRALS OF INFORMATION REGARDING CRIMINAL VIOLATIONS

§ 1.200 Purpose.

This subpart establishes a duty upon and sets forth the mechanism for VA employees to report information about actual or possible criminal violations to appropriate law enforcement entities.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

[68 FR 17550, Apr. 10, 2003]

§ 1.201 Employee's duty to report.

All VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official, or directly to the Office of Inspector General.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

[68 FR 17550, Apr. 10, 2003]

§ 1.203 Information to be reported to VA Police.

Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, will be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information will be reported to Federal,

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state or local law enforcement officials, as appropriate.

(Authority: 38 U.S.C. 902)

[68 FR 17550, Apr. 10, 2003]

§ 1.204 Information to be reported to the Office of Inspector General.

Criminal matters involving felonies will also be immediately referred to the Office of Inspector General, Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to the OIG. Examples of felonies include but are not limited to, theft of Government property over \$1000, false claims, false statements, drug offenses, crimes involving information technology systems and serious crimes against the person, *i.e.*, homicides, armed robbery, rape, aggravated assault and serious physical abuse of a VA patient.

(Authority: 5 U.S.C. App. 3)

[68 FR 17550, Apr. 10, 2003]

§ 1.205 Notification to the Attorney General or United States Attorney's Office.

VA police and/or the OIG, whichever has primary responsibility within VA for investigation of the offense in question, will be responsible for notifying the appropriate United States Attorney's Office, pursuant to 28 U.S.C. 535.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

[68 FR 17550, Apr. 10, 2003]

SECURITY AND LAW ENFORCEMENT AT DEPARTMENT OF VETERANS AFFAIRS FACILITIES

§ 1.218 Security and law enforcement at VA facilities.

(a) *Authority and rules of conduct.* Pursuant to 38 U.S.C. 901, the following rules and regulations apply at all property under the charge and control of VA (and not under the charge and control of the General Services Administration) and to all persons entering in or on such property. The head of the facility is charged with the responsibility for the enforcement of these rules and regulations and shall cause

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these rules and regulations to be posted in a conspicuous place on the property.

(1) *Closing property to public.* The head of the facility, or designee, shall establish visiting hours for the convenience of the public and shall establish specific hours for the transaction of business with the public. The property shall be closed to the public during other than the hours so established. In emergency situations, the property shall be closed to the public when reasonably necessary to ensure the orderly conduct of Government business. The decision to close a property during an emergency shall be made by the head of the facility or designee. The head of the facility or designee shall have authority to designate areas within a facility as closed to the public.

(2) *Recording presence.* Admission to property during periods when such property is closed to the public will be limited to persons authorized by the head of the facility or designee. Such persons may be required to sign a register and/or display identification documents when requested to do so by VA police, or other authorized individual. No person, without authorization, shall enter upon or remain on such property while the property is closed. Failure to leave such premises by unauthorized persons shall constitute an offense under this paragraph.

(3) *Preservation of property.* The improper disposal of rubbish on property; the spitting on the property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from a building; the climbing upon the roof or any part of the building, without permission; or the willful destruction, damage, or removal of Government property or any part thereof, without authorization, is prohibited. The destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited.

(4) *Conformity with signs and emergency conditions.* The head of the facility, or designee, shall have authority to post signs of a prohibitory and directory nature. Persons, in and on property, shall comply with such signs of a prohibitory or directory nature, and

during emergencies, with the direction of police authorities and other authorized officials. Tampering with, destruction, marring, or removal of such posted signs is prohibited.

(5) *Disturbances.* Conduct on property which creates loud or unusual noise; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; which prevents one from obtaining medical or other services provided on the property in a timely manner; or the use of loud, abusive, or otherwise improper language; or unwarranted loitering, sleeping, or assembly is prohibited. In addition to measures designed to secure voluntary terminations of violations of this paragraph the head of the facility or designee may cause the issuance of orders for persons who are creating a disturbance to depart the property. Failure to leave the premises when so ordered constitutes a further disturbance within the meaning of this rule, and the offender is subject to arrest and removal from the premises.

(6) *Gambling.* Participating in games for money or for tangible or intangible things, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited.

(7) *Alcoholic beverages and narcotics.* Operating a motor vehicle on property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering property under the influence of any narcotic drug, hallucinogen, marijuana, barbiturate, amphetamine, or alcoholic beverage (unless prescribed by a physician) is prohibited. The use on property of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The introduction or possession of alcoholic beverages or any narcotic drug, hallucinogen, marijuana, barbiturate, and amphetamine on property is prohibited, except for liquor or drugs prescribed for use by medical authority for medical purposes. Provided such

possession is consistent with the laws of the State in which the facility is located, liquor may be used and maintained in quarters assigned to employees as their normal abode, and away from the abode with the written consent of the head of the facility which specifies a special occasion for use and limits the area and period for the authorized use.

(8) *Soliciting, vending, and debt collection.* Soliciting alms and contributions, commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on property is prohibited. This rule does not apply to (i) national or local drives for funds for welfare, health, or other purposes as authorized under Executive Order 12353, Charitable Fund Raising (March 23, 1982), as amended by Executive Order 12404 (February 10, 1983), and regulations issued by the Office of Personnel Management implementing these Executive Orders; (ii) concessions or personal notices posted by employees on authorized bulletin boards; and (iii) solicitation of labor organization membership or dues under 5 U.S.C. chapter 71.

(9) *Distribution of handbills.* The distributing of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere on property is prohibited, except as authorized by the head of the facility or designee or when such distributions or displays are conducted as part of authorized Government activities.

(10) *Photographs for news, advertising, or commercial purposes.* Photographs for advertising or commercial purposes may be taken only with the written consent of the head of the facility or designee. Photographs for news purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or designee.

(11) *Dogs and other animals.* Dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or designee.

(12) *Vehicular and pedestrian traffic.* Drivers of all vehicles in or on property shall drive in a careful and safe manner

at all times and shall comply with the signals and directions of police and all posted traffic signs. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited; parking in unauthorized locations or in locations reserved for other persons or contrary to the direction of posted signs is prohibited. Creating excessive noise on hospital or cemetery premises by muffler cut out, the excessive use of a horn, or other means is prohibited. Operation of a vehicle in a reckless or unsafe manner, drag racing, bumping, overriding curbs, or leaving the roadway is prohibited.

(13) *Weapons and explosives.* No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(14) *Demonstrations.* (i) All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited. Jogging, bicycling, sledding and other forms of physical recreation on cemetery grounds is prohibited.

(ii) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to, picketing, or similar conduct on VA property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on VA property unless approved by the head of the facility or designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities, *i.e.*, those involving commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United States, or any private group, association, or enterprise.

(15) *Key security.* The head of the facility of designee, will determine which employees, by virtue of their duties, shall have access to keys or barrier-

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card keys which operate locks to rooms or areas on the property. The unauthorized possession, manufacture, and/or use of such keys or barrier cards is prohibited. The surreptitious opening or attempted opening of locks or card-operated barrier mechanisms is prohibited.

(16) *Sexual misconduct.* Any act of sexual gratification on VA property involving two or more persons, who do not reside in quarters on the property, is prohibited. Acts of prostitution or solicitation for acts of prostitution on VA property is prohibited. For the purposes of this paragraph, an act of prostitution is defined as the performance or the offer or agreement to perform any sexual act for money or payment.

(b) *Schedule of offenses and penalties.* Conduct in violation of the rules and regulations set forth in paragraph (a) of this section subjects an offender to arrest and removal from the premises. Whomever shall be found guilty of violating these rules and regulations while on any property under the charge and control of VA is subject to a fine as stated in the schedule set forth herein or, if appropriate, the payment of fixed sum in lieu of appearance (forfeiture of collateral) as may be provided for in rules of the United States District Court. Violations included in the schedule of offenses and penalties may also subject an offender to a term of imprisonment of not more than six months, as may be determined appropriate by a magistrate or judge of the United States District Court:

(1) Improper disposal of rubbish on property, \$200.

(2) Spitting on property, \$25.

(3) Throwing of articles from a building or the unauthorized climbing upon any part of a building, \$50.

(4) Willful destruction, damage, or removal of Government property without authorization, \$500.

(5) Defacement, destruction, mutilation or injury to, or removal, or disturbance of, gravemarker or headstone, \$500.

(6) Failure to comply with signs of a directive and restrictive nature posted for safety purposes, \$50.

(7) Tampering with, removal, marring, or destruction of posted signs, \$150.

(8) Entry into areas posted as closed to the public or others (trespass), \$50.

(9) Unauthorized demonstration or service in a national cemetery or on other VA property, \$250.

(10) Creating a disturbance during a burial ceremony, \$250.

(11) Disorderly conduct which creates loud, boisterous, and unusual noise, or which obstructs the normal use of entrances, exits, foyers, offices, corridors, elevators, and stairways or which tends to impede or prevent the normal operation of a service or operation of the facility, \$250.

(12) Failure to depart premises by unauthorized persons, \$50.

(13) Unauthorized loitering, sleeping or assembly on property, \$50.

(14) Gambling-participating in games of chance for monetary gain or personal property; the operation of gambling devices, a pool or lottery; or the taking or giving of bets, \$200.

(15) Operation of a vehicle under the influence of alcoholic beverages or non-prescribed narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, \$500.

(16) Entering premises under the influence of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines, \$200.

(17) Unauthorized use on property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, \$300.

(18) Unauthorized introduction on VA controlled property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or the unauthorized giving of same to a patient or beneficiary, \$500.

(19) Unauthorized solicitation of alms and contributions on premises, \$50.

(20) Commercial soliciting or vending, or the collection of private debts on property, \$50.

(21) Distribution of pamphlets, handbills, and flyers, \$25.

(22) Display of placards or posting of material on property, \$25.

(23) Unauthorized photography on premises, \$50.

(24) Failure to comply with traffic directions of VA police, \$25.

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(25) Parking in spaces posted as reserved for physically disabled persons, \$50.

(26) Parking in no-parking areas, lanes, or crosswalks so posted or marked by yellow borders or yellow stripes, \$25.

(27) Parking in emergency vehicle spaces, areas and lanes bordered in red or posted as EMERGENCY VEHICLES ONLY or FIRE LANE, or parking within 15 feet of a fire hydrant, \$50.

(28) Parking within an intersection or blocking a posted vehicle entrance or posted exit lane, \$25.

(29) Parking in spaces posted as reserved or in excess of a posted time limit, \$15.

(30) Failing to come to a complete stop at a STOP sign, \$25.

(31) Failing to yield to a pedestrian in a marked and posted crosswalk, \$25.

(32) Driving in the wrong direction on a posted one-way street, \$25.

(33) Operation of a vehicle in a reckless or unsafe manner, too fast for conditions, drag racing, overriding curbs, or leaving the roadway, \$100.

(34) Exceeding posted speed limits:

(i) By up to 10 mph, \$25.

(ii) By up to 20 mph, \$50.

(iii) By over 20 mph, \$100.

(35) Creating excessive noise in a hospital or cemetery zone by muffler cut out, excessive use of a horn, or other means, \$50.

(36) Failure to yield right of way to other vehicles, \$50.

(37) Possession of firearms, carried either openly or concealed, whether loaded or unloaded (except by Federal or State law enforcement officers on official business, \$500.

(38) Introduction or possession of explosives, or explosive devices which fire a projectile, ammunition, or combustibles, \$500.

(39) Possession of knives which exceed a blade length of 3 inches; switchblade knives; any of the variety of hatchets, clubs and hand-held weapons; or brass knuckles, \$300.

(40) The unauthorized possession of any of the variety of incapacitating liquid or gas-emitting weapons, \$200.

(41) Unauthorized possession, manufacture, or use of keys or barrier card-type keys to rooms or areas on the property, \$200.

(42) The surreptitious opening, or attempted opening, of locks or card-operated barrier mechanisms on property, \$500.

(43) Soliciting for, or the act of, prostitution, \$250.

(44) Any unlawful sexual activity, \$250.

(45) Jogging, bicycling, sledding or any recreational physical activity conducted on cemetery grounds, \$50.

(c) *Enforcement procedures.* (1) VA administration directors will issue policies and operating procedures governing the proper exercise of arrest and other law enforcement actions, and limiting the carrying and use of weapons by VA police officers. VA police officers found qualified under respective VA administration directives and duly appointed heads of facilities for the purposes of 38 U.S.C. 902(b)(1), will enforce these rules and regulations and other Federal laws on VA property in accordance with the policies and operating procedures issued by respective VA administration directors and under the direction of the head of the facility.

(2) VA administration directors will prescribe training for VA police officers of the scope and duration necessary to assure the proper exercise of the law enforcement and arrest authority vested in them and to assure their abilities in the safe handling of situations involving patients and the public in general. VA police officers will successfully complete prescribed training in law enforcement procedures and the safe handling of patients as a condition of their retention of statutory law enforcement and arrest authority.

(3) Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.

(Authority: 38 U.S.C. 901)

[50 FR 29226, July 18, 1985]

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§ 1.220 On-site activities by pharmaceutical company representatives at VA medical facilities.

(a) *Scope.* This rule governs on-site, in-person promotional activities, including educational activities, by pharmaceutical company representatives at VA medical facilities. It does not apply to the distribution of information and materials through other means.

(b) *Definitions.* For the purposes of this section:

Criteria-for-use means clinical criteria developed by the Department of Veterans Affairs (VA) at a National level that describe how certain drugs may be used. VA's criteria-for-use are available to the public at www.pbm.va.gov. Exceptions may be applied at the local level for operational reasons.

Drug or drugs means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(4) Articles intended for use as a component of any article specified in paragraphs (1), (2), or (3) of this definition.

Drug-related supplies means supplies related to the use of a drug, such as test strips or testing devices, inhalers, spacers, insulin syringes, and tablet splitters.

New molecular entity refers to a drug product containing an active ingredient that has never before received U.S. Food and Drug Administration approval.

Non-promotable drugs are drugs designated by VA as non-promotable on <http://www.pbm.va.gov>. A list of the drugs or drug-related supplies classified by VA as non-promotable may be requested by contacting the VA medical facility's Chief of Pharmacy Services.

Non-VANF drugs or drug-related supplies means drugs or drug-related supplies that do not appear on the VANF.

Pharmaceutical company representative means any individual employed by or contracted to represent a pharmaceutical manufacturer or retailer.

VA medical facility means any property under the charge and control of VA used to provide medical benefits, including Community-Based Out-patient Clinics and similar facilities.

VA National Formulary (VANF) drugs and/or drug-related supplies means any drug or drug-related supply that appears on the VA National Formulary (VANF). The VANF is available at www.pbm.va.gov, or may be requested by contacting the VA medical facility's Chief of Pharmacy Services.

Veterans Integrated Service Network (VISN) means one of the networks of VA medical facilities located in a particular region as designated by VA.

(c) *Promotion of drugs and drug-related supplies.* Notwithstanding § 1.218(a)(8), VA will allow promotion of VANF drugs and drug-related supplies, and non-VANF drugs and drug-related supplies with criteria-for-use, on-site and in-person at VA medical facilities if all of the following are true:

(1) Drugs or drug-related supplies are discussed, displayed and represented accurately;

(2) The promotion has significant educational value and does not inappropriately divert VA staff from other activities that VA staff would otherwise perform during duty hours, including patient care and other educational activities; and

(3) The drug or drug-related supply has not been classified by VA as non-promotable.

(d) *Promotion of non-VANF drugs and drug-related supplies without criteria-for-use.* Non-VANF drugs and drug-related supplies without criteria-for-use may be promoted only if the requirements of paragraphs (c)(1) through (3) of this section are met and the promotion is specifically permitted by the VISN Pharmacist Executive, or Chief of Pharmacy Services, or designee.

(e) *Promotion of a new molecular entity.* A new molecular entity may be promoted only if the requirements of paragraphs (c)(1) through (3) of this section

are met and the promotion is specifically permitted by the VISN Pharmacist Executive, or Chief of Pharmacy Services, or designee. Such permission will be automatically revoked if the new molecular entity is subsequently designated non-promotable. Such permission must be reconsidered if the new molecular entity is denied VANF status.

(f) *Educational programs and associated materials.* For purposes of this section, an educational program is a pre-scheduled event or meeting during which a pharmaceutical company representative provides information about a drug or drug-related supply. All educational programs and associated materials must receive prior approval from the person at the VA medical facility to whom such approval authority has been delegated under local policy, usually the Chief of Pharmacy Services. All materials associated with a proposed educational program must be provided at least 60 days before the proposed date of the educational program or distribution of associated materials, unless VA agrees in an individual case to a different date, so that a determination of their suitability can be made. The approval authority will deem suitable any educational program and associated materials if it is part of a risk evaluation and mitigation strategy or other duty imposed by the Food and Drug Administration. Otherwise, educational programs and associated materials will be deemed suitable if the approval authority determines that they conform to the following requirements:

(1) Industry sponsorship must be disclosed in the introductory remarks and in the announcement brochure. Sponsorship includes any contribution, whether in the form of staple goods, personnel, or financing, intended to support the educational program.

(2) If industry-sponsored and non-sponsored sources of data or other analytical information exist for FDA-approved uses of a particular drug, a direct comparison between the two sources must be disclosed in the introductory remarks and in the announcement brochure.

(3) The educational program does not solicit protected health information or

patient participation in pharmaceutical company-sponsored programs, except as may be required by Federal laws and regulations such as an educational program that is part of a risk evaluation and mitigation strategy required by the Food and Drug Administration.

(4) Patient educational materials must not contain the name or logo of the pharmaceutical manufacturer or be used for promotion of a specific medication, unless the VA Pharmacy Benefits Management Service determines that the logo or name is inconspicuous and legal requirements (e.g., trademark requirements) make their removal impractical. However, this requirement does not apply to labeling required by the Food and Drug Administration.

(5) Educational programs and associated materials regarding a drug, drug-related supply, or a new therapeutic indication for a drug that is already on the VANF but has not yet been reviewed by VA, must be submitted by the pharmaceutical company or pharmaceutical company representative to the VA medical facility's Chief of Pharmacy Services or designee.

(6) Educational programs and associated materials focusing primarily on non-VANF drugs or drug-related supplies without criteria-for-use are permitted only if those drugs or drug-related supplies may be promoted under paragraph (d) of this section.

(g) *Providing gifts, drugs or other promotional items to VA employees or facilities.*

(1) *General.* No pharmaceutical company representative may give, and no VA employee may receive, any item (including but not limited to promotional materials, continuing education materials, textbooks, entertainment, and gratuities) that exceeds the value permissible for acceptance under government ethical rules (5 CFR 2635.204(a)). However, such items may be donated to a medical center library or individual department for use by all employees, in accordance with medical center policy. Gifts in support of VA staff official travel may be accepted by the Department subject to advance legal review in accordance with 31

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U.S.C. 1353, 41 CFR part 304, and VA policy regarding such gifts.

(2) *Samples of drugs and drug-related supplies.* Pharmaceutical company representatives must submit samples of drugs and drug-related supplies for approval to the person at the medical facility to whom such responsibility is delegated under local policy, usually the Director. All usage information pertaining to these drugs or drug-related supplies must be forwarded to the VISN Pharmacist Executive or VISN Formulary Committee. All samples of drugs or drug-related supplies must be delivered to the Office of the Chief of Pharmacy Services for proper storage, documentation and dispensing. Drug or drug-related supply samples may not be provided to VA staff for their personal use.

(3) *Donations of food.* Pharmaceutical company representatives may not provide food items of any type or any value to VA staff (including volunteers and without compensation employees) or bring food items into VA medical facilities for use by non-VA staff (e.g., employees of affiliates).

(h) *Conduct of pharmaceutical company representatives.* In addition to the other provisions in this section, pharmaceutical company representatives must conform to the following:

(1) *Contacts must be by appointment only.* In order to minimize the potential for disruption of patient care activities, a pharmaceutical company representative must schedule an appointment before each visit. Access to VA medical facilities by a pharmaceutical company representative without an appointment is not permitted under any circumstances. VA medical facilities may develop a list of individuals or departments that may not be called-on by pharmaceutical company representatives. A pharmaceutical company representative must not attempt to make appointments with, or leave any materials for, individuals or departments on the list. The list may be obtained at the VA medical facility office of the Chief of Pharmacy Services. A pharmaceutical company representative visiting a VA medical facility for a scheduled appointment may not leave promotional materials for, or initiate requests for meetings with,

other VA staff; however, pharmaceutical company representatives may respond to requests initiated by VA staff during the visit.

(2) *Paging VA employees.* A pharmaceutical company representative may not use the public address (paging) system to locate any VA employee. Contacts using the electronic paging system (beepers) are permissible only if specifically requested by the VA employee.

(3) *Marketing to students.* Pharmaceutical company representatives are prohibited from marketing to medical, pharmacy, nursing and other health profession students, including residents. Exceptions may be permitted when approved by, and conducted in the presence of, the staff member providing clinical supervision.

(4) *Attendance at conferences.* A pharmaceutical company representative may not attend a medical center conference where information regarding individual patients is discussed or presented.

(5) *Patient care areas.* Pharmaceutical company representatives generally may not wait for scheduled appointments or make presentations in patient-care areas, but may briefly travel through them, when necessary, to meet in a staff member's office. Patient-care areas include, but are not limited to:

- (i) Patient rooms and ward areas where patients may be encountered;
- (ii) Clinic examination rooms;
- (iii) Nurses stations;
- (iv) Intensive care units;
- (v) Operating room suites;
- (vi) Urgent care centers;
- (vii) Emergency rooms (but not staff offices that may be located in them); or
- (viii) Ambulatory treatment centers.

(6) *Distribution of materials.* Pharmaceutical company representatives may only distribute materials on-site at the time and location of a scheduled appointment or educational program. In no circumstances may materials be left in patient care areas.

(i) *Non-compliance.*

(1) *General.* The visiting privileges of a pharmaceutical company representative or multiple representatives may be limited, suspended, or revoked by the written order of the Director of the VA medical center of jurisdiction if the

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Director determines the pharmaceutical company representative(s) failed to comply with the requirements of this section.

(2) *Notice of interim action.* The Director will notify the pharmaceutical company representative of the non-compliance and of the Director's interim action under paragraph (i)(4) of this section. The Director will also notify the supervisor of the pharmaceutical company representative(s) if there have been multiple instances of misconduct. The notice will offer 30 days to provide a response; however, the interim action will be enforced effective the date of the notice.

(3) *Final written order.* At the end of the 30-day period for a response, or after the Director receives a timely response, the Director will issue to the pharmaceutical company representative and supervisor a final written order either confirming the action taken as indicated in the notice, or specifying another action to be taken under paragraph (i)(4) of this section. The written order may also state that the Director has determined that no further action is required. Any final written order issued by the Director shall include a summary of the circumstances of the violation, a listing of the specific provisions of this section that the pharmaceutical company representative(s) violated, and the bases for the Director's determination regarding the appropriate action. Notice concerning a final written order suspending or permanently revoking the visiting privileges of multiple pharmaceutical company representatives shall include specific notice concerning the right to review of the Director's order by the Under Secretary for Health.

(4) *Actions.* Actions that may be imposed under this section include limitation, suspension, or permanent revocation of visiting privileges at one or more VA medical facilities. In determining the appropriate action, the Director shall consider the requirements of this section, the circumstances of the improper conduct, any prior acts of misconduct by the same pharmaceutical company representative, any response submitted by the pharmaceutical company representative or

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their supervisor under paragraph (i)(2) of this section, and any prior written orders issued or other actions taken with respect to similar acts of misconduct.

(5) *Review.* The pharmaceutical company may request the Under Secretary's review within 30 days of the date of the Director's final written order by submitting a written request to the Director. The Director shall forward the initial notice, any response, the final written order, and the request for review to the Under Secretary for a final VA decision. VA will enforce the Director's final written order while it is under review by the Under Secretary. The Director will provide the individual who made the request written notice of the Under Secretary's decision.

(Authority: 38 U.S.C. 501)

[77 FR 13007, Mar. 5, 2012]

PARKING FEES AT VA MEDICAL FACILITIES

§ 1.300 Purpose.

Sections 1.300 through 1.303 prescribe policies and procedures for establishing parking fees for the use of Department of Veterans Affairs controlled parking spaces at VA medical facilities.

(Authority: 38 U.S.C. 501, 8109)

[53 FR 25490, July 7, 1988]

§ 1.301 Definitions.

As used in §§1.300 through 1.303 of this title:

(a) *Secretary* means the Secretary of Veterans Affairs.

(b) *Eligible person* means any individual to whom the Secretary is authorized to furnish medical examination or treatment.

(c) *Garage* means a structure or part of a structure in which vehicles may be parked.

(d) *Medical facility* means any facility or part thereof which is under the jurisdiction of the Secretary for the provision of health-care services, including any necessary buildings and structures, garage or parking facility.

(e) *Parking facilities* includes all surface and garage parking spaces at a VA medical facility.

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(f) *Volunteer worker* means an individual who performs services, without compensation, under the auspices of VA Voluntary Service (VAVS) at a VA medical facility, for the benefit of veterans receiving care at that medical facility.

(Authority: 38 U.S.C. 8109)

[53 FR 25490, July 7, 1988]

§ 1.302 Applicability and scope.

(a) The provisions of §§1.300 through 1.303 apply to VA medical facility parking facilities in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, and to such parking facilities for the use of VA medical facilities jointly shared by VA and another Federal agency when the facility is operated by the VA. Sections 1.300 through 1.303 apply to all users of those parking facilities. Fees shall be assessed and collected at medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding \$500,000 (or, in the case of acquisition by lease, \$100,000 per year). The Secretary, in the exercise of official discretion, may also determine that parking fees shall be charged at any other VA medical facility.

(b) All fees established shall be reasonable under the circumstances and shall cover all parking facilities used in connection with such VA medical facility.

(Authority: 38 U.S.C. 8109)

[53 FR 25490, July 7, 1988]

§ 1.303 Policy.

(a) *General.* Parking spaces at VA medical facilities shall only be provided under the following conditions:

(1) VA and its employees shall not be liable for any damages to vehicles (or their contents) parked in VA parking facilities, unless such damages are directly caused by such employees acting in the course of their VA employment.

(2) Parking facilities at VA medical facilities shall only be made available at each medical facility for such periods and under such terms as prescribed by the facility director, consistent with §§1.300 through 1.303.

(3) VA will limit parking facilities at VA medical facilities to the minimum

necessary, and administer those parking facilities in full compliance with ridesharing regulations and Federal laws.

(b) *Fees.* (1) As provided in §1.302, VA will assess VA employees, contractor employees, tenant employees, visitors, and other individuals having business at a VA medical facility where VA parking facilities are available, a parking fee for the use of that parking facility. All parking fees shall be set at a rate which shall be equivalent to one-half of the appropriate fair rental value (*i.e.*, monthly, weekly, daily, hourly) for the use of equivalent commercial space in the vicinity of the medical facility, subject to the terms and conditions stated in paragraph (a) of this section. Fair rental value shall include an allowance for the costs of management of the parking facilities. The Secretary will determine the fair market rental value through use of generally accepted appraisal techniques. If the appraisal establishes that there is no comparable commercial rate because of the absence of commercial parking facilities within a two-mile radius of the medical facility, then the rate established shall be not less than the lowest rate charged for parking at the VA medical facility with the lowest established parking fees. Rates established shall be reviewed biannually by the Secretary to reflect any increase or decrease in value as determined by appraisal updating.

(2) No parking fees shall be established or collected for parking facilities used by or for vehicles of the following:

(i) Volunteer workers in connection with such workers performing services for the benefit of veterans receiving care at the medical facility;

(ii) A veteran or an eligible person in connection with such veteran or eligible person receiving examination or treatment;

(iii) An individual transporting a veteran or eligible person seeking examination or treatment; and

(iv) Federal Government employees using Government owned or leased or private vehicles for official business.

(Authority: 38 U.S.C. 8109)

[53 FR 25490, July 7, 1988]

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RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS (VA) RECORDS RELATING TO DRUG ABUSE, ALCOHOLISM OR ALCOHOL ABUSE, INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV), OR SICKLE CELL ANEMIA

NOTE: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. §552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. §552a (The Privacy Act of 1974).

The provisions of §§1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. §7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§1751-1754).

AUTHORITY: 38 U.S.C. 1751-1754 and 7331-7334.

SOURCE: 60 FR 63929, Dec. 13, 1995, unless otherwise noted.

§ 1.460 Definitions.

For purposes of §§1.460 through 1.499 of this part, the following definitions apply:

Agreement. The term "agreement" means a document that a VA health care facility develops in collaboration with an Organ Procurement Organization, eye bank or tissue bank with written, detailed responsibilities and obligations of the parties with regard to identifying potential donors and facilitating the donation process.

Alcohol abuse. The term "alcohol abuse" means the use of an alcoholic

beverage which impairs the physical, mental, emotional, or social well-being of the user.

Contractor. The term "contractor" means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

Deceased. The term "deceased" means death established by either neurological criteria (brain death) or cardiopulmonary criteria (cardiac death). Brain death is the irreversible cessation of all brain function. Cardiac death is the irreversible cessation of circulatory and respiratory function. In both cases, "irreversible" means that function will not resume spontaneously and will not be restarted artificially.

Decision-making capacity. The term "decision-making capacity" has the same meaning set forth in 38 CFR 17.32(a).

Diagnosis. The term "diagnosis" means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

Disclose or disclosure. The term "disclose" or "disclosure" means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Drug abuse. The term “drug abuse” means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Eye bank and tissue bank. The term “eye bank and tissue bank” means an “establishment” as defined in 21 CFR 1271.3, pursuant to section 361 of the Public Health Service Act (42 U.S.C. 264) that has a valid, current registration with the Federal Food and Drug Administration (FDA) as required under 21 CFR part 1271.

Individual. The term “individual” means a veteran, as defined in 38 U.S.C. 101(2), or a dependent of a veteran, as defined in 38 U.S.C. 101(3) and (4)(A).

Infection with the human immunodeficiency virus (HIV). The term “infection with the human immunodeficiency virus (HIV)” means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

Informant. The term “informant” means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

Near death. The term “near death” means that in the clinical judgment of the patient’s health care provider based on defined clinical triggers, the patient’s death is imminent.

Organ Procurement Organization. The term “Organ Procurement Organization” (OPO) means an organization that performs or coordinates the procurement, preservation, and transportation of organs and maintains a system of locating prospective recipients for available organs.

Patient. The term “patient” means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism

or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual’s eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term “patient” for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

Patient identifying information. The term “patient identifying information” means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a treatment program, if that number does not consist of, or contain numbers (such as social security, or driver’s license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the treatment program.

Person. The term “person” means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Practitioner. The term “practitioner” has the same meaning set forth in 38 CFR 17.32(a).

Procurement organization. The term “procurement organization” means an organ procurement organization, eye bank, and/or tissue bank as defined in this section.

Records. The term “records” means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA,

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for the purpose of seeking or performing VA program or activity functions relating to drug abuse, alcoholism, tests for or infection with the human immunodeficiency virus, or sickle cell anemia regarding an identifiable patient. A program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia includes evaluation, treatment, education, training, rehabilitation, research, or referral for one of these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other diagnosis, or other information which identifies, or could reasonably be expected to identify, a patient as having a drug or alcohol abuse condition, infection with the human immunodeficiency virus, or sickle cell anemia (e.g., alcoholic psychosis, drug dependence), but only if such diagnosis or information is received, obtained or maintained for the purpose of seeking or performing one of the above program or activity functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or other information is not received, obtained or maintained for the purpose of seeking or performing a function or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia for the patient in question. Whenever such diagnosis or other information, not originally received or obtained for the purpose of obtaining or providing one of the above program or activity functions, is subsequently used in connection with such program or activity functions, those original entries become a “record” and §§1.460 through 1.499 of this part thereafter apply to those entries. Segregability: these regulations do not apply to records or information contained therein, the disclosure of which (the circumstances surrounding the disclosure having been considered) could not reasonably be expected to disclose the fact that a patient has been connected with a VA program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(1) The following are examples of instances whereby records or information

related to alcoholism or drug abuse are covered by the provisions of §§1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses with the physician his use and abuse of alcohol. The physician offers VA alcohol rehabilitation treatment which is declined by the patient.

(2) The following are examples of instances whereby records or information related to alcoholism or drug abuse are not covered by the provisions of §§1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification, treated and released with no counseling or treatment for the underlying condition of alcoholism.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient's medical record is documented to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the

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underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Surrogate. The term “surrogate” has the same meaning set forth in 38 CFR 17.32(a).

Third party payer. The term “third party payer” means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient’s eligibility for Federal, State, or local governmental benefits.

Treatment. The term “treatment” means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term “undercover agent” means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

VHA health care facility. The term “VHA health care facility” means a VA medical center, VA emergency room, VA nursing home or other facility as defined in 38 U.S.C. 1701(3).

(Authority: 38 U.S.C. 7332, 7334)

[60 FR 63929, Dec. 13, 1995, as amended at 72 FR 48241, Aug. 23, 2007; 73 FR 65260, Nov. 3, 2008; 76 FR 6696, Feb. 8, 2011]

§ 1.461 Applicability.

(a) *General*—(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly

available information, or through verification of such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation and research program or activity purposes.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research program or activity purposes.

(b) *Period covered as affecting applicability.* The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) *Exceptions*—(1) *Department of Veterans Affairs and Armed Forces.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits, evaluations,

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healthcare inspections, or non-patient investigations, or between such components and the Armed Forces. Information obtained by VA components under these circumstances may be disclosed outside of VA to prosecute or investigate a non-patient only in accordance with § 1.495 of this part. Similarly, the restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information to the Department of Justice or U.S. Attorneys who are providing support in civil litigation or possible litigation involving VA.

(2) *Contractor.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) *Crimes on VA premises or against VA personnel.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which:

(i) Are directly related to a patient's commission of a crime on the premises of the facility or against personnel of VA or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) *Undercover agents and informants.*

(i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient

unless authorized pursuant to the provisions of § 1.494 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) *Applicability to recipients of information—*(1) *Restriction on use of information.* In the absence of a proper § 1.494 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from VA, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) *Restrictions on disclosures—third-party payers and others.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

(Authority: 38 U.S.C. 7332(e) and 7334)

[60 FR 63929, Dec. 13, 1995, as amended at 76 FR 65135, Oct. 20, 2011]

§ 1.462 Confidentiality restrictions.

(a) *General.* The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by

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any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in §§1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by §§1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) *Acknowledging the presence of patients: responding to requests.* (1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient's written consent is obtained in accordance with §1.475 of this part or if an authorizing court order is entered in accordance with §§1.490 through 1.499 of this part. Acknowledgment of the presence of an identified patient in a facility is permitted if the acknowledgment does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

(Authority: 38 U.S.C. 7334)

§ 1.463 Criminal penalty for violations.

Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§1.460 through 1.499 of this part

shall be fined not more than \$5,000 in the case of a first offense, and not more than \$20,000 for a subsequent offense.

(Authority: 38 U.S.C. 7332(g))

§ 1.464 Minor patients.

(a) *Definition of minor.* As used in §§1.460 through 1.499 of this part the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under §1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide non-emergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under §1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

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(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) *Minor applicant for service lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

(Authority: 38 U.S.C. 7334)

§ 1.465 Incompetent and deceased patients.

(a) *Incompetent patients other than minors.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) *Deceased patients*—(1) *Vital statistics.* Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or

alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) *Information related to sickle cell anemia.* Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

(Authority: 38 U.S.C. 7332(b)(3))

§ 1.466 Security for records.

(a) Written records which are subject to §§ 1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§ 1.460 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.467 Restrictions on the use of identification cards and public signs.

(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any

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VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.

(Authority: 38 U.S.C. 7334)

§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by the provisions of §§ 1.460 through 1.499 of this part and by administrative action taken under Sec. 303(a) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR Part 2a); or Sec. 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These “research privilege” statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* Sections 1.460 through 1.499 of this part restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under §§ 1.490 through 1.499 of

this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with §§ 1.490 through 1.499 of this part authorizes a VA facility to disclose certain information about its patients, the facility may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

(Authority: 38 U.S.C. 7334)

§ 1.469 Patient access and restrictions on use.

(a) *Patient access not prohibited.* Sections 1.460 through 1.499 of this part do not prohibit a facility from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that VA maintains about the patient, subject to the provisions of the Privacy Act (5 U.S.C. 552a(d)(1)) and 38 CFR 1.577. If the patient is accompanied, giving access to the patient and the accompanying person will require a written consent by the patient which is provided in accordance with § 1.475 of this part.

(b) *Restrictions on use of information.* Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

(Authority: 38 U.S.C. 7334)

§§ 1.470–1.474 [Reserved]

DISCLOSURES WITH PATIENT’S CONSENT

§ 1.475 Form of written consent.

(a) *Required elements.* A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

(1) The name of the facility permitted to make the disclosure (such a

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designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the facility which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by responsible personnel of VA to be materially false.

(c) *Notification of deficient consent.* Other than the patient, no person or entity may be advised that a special consent is required in order to disclose information relating to an individual participating in a drug abuse, alcoholism or alcohol abuse, HIV, or sickle cell anemia program or activity. Where a person or entity presents VA with an insufficient written consent for infor-

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mation protected by 38 U.S.C. 7332, VA must, in the process of obtaining a legally sufficient consent, correspond only with the patient whose records are involved, or the legal guardian of an incompetent patient or next of kin of a deceased patient, and not with any other person.

(d) It is not necessary to use any particular form to establish a consent referred to in paragraph (a) of this section, however, VA Form 10-5345, titled Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, may be used for such purpose.

(Authority: 38 U.S.C. 7332(a)(2) and (b)(1))

§ 1.476 Prohibition on redisclosure.

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient's written consent must be accompanied by a written statement similar to the following:

This information has been disclosed to you from records protected by Federal confidentiality rules (38 CFR Part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR Part 1. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient or patient with sickle cell anemia or HIV infection.

(Authority: 38 U.S.C. 7334)

§ 1.477 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

(Authority: 38 U.S.C. 7332(b)(1))

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§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the human immunodeficiency virus.

(a) *Definitions.* For purposes of this section:

(1) *Central registry* means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

(2) *Detoxification treatment* means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

(3) *Maintenance treatment* means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(4) *Member program* means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:

(i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not re-disclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system which have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the

requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given, including parole.

(Authority: 38 U.S.C. 7334)

§§ 1.480–1.483 [Reserved]

**DISCLOSURES WITHOUT PATIENT
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§ 1.484 Disclosure of medical information to the surrogate of a patient who lacks decision-making capacity.

A VA medical practitioner may disclose the content of any record of the identity, diagnosis, prognosis, or treatment of a patient that is maintained in connection with the performance of any VA program or activity relating to drug abuse, alcoholism or alcohol abuse, infection with the human im-

munodeficiency virus, or sickle cell anemia to a surrogate of the patient who is the subject of such record if:

(a) The patient lacks decision-making capacity; and

(b) The practitioner deems the content of the given record necessary for the surrogate to make an informed decision regarding the patient's treatment.

(Authority: 38 U.S.C. 7331, 7332)

[76 FR 6696, Feb. 8, 2011]

§ 1.485 Medical emergencies.

(a) *General rule.* Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§ 1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:

(1) The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure;

(4) The nature of the emergency (or error, if the report was to FDA);

(5) The information disclosed; and

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(6) The authority for making the disclosure (§ 1.485 of this part).

(Authority: 38 U.S.C. 7332(b)(2)(A))

§ 1.485a Eye, organ and tissue donation.

A VHA health care facility may disclose the individually-identified medical record information of an individual covered by §§ 1.460 through 1.499 of this part to an authorized representative of a procurement organization for the purpose of facilitating determination of whether the individual is a suitable potential organ, eye, or tissue donor if:

(a) The individual is currently an inpatient in a VHA health care facility;

(b) The individual is, in the clinical judgment of the individual's primary health care provider, near death or deceased;

(c) The VHA health care facility has a signed agreement with the procurement organization in accordance with the applicable requirements of the United States Department of Health and Human Services (HHS); and

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with the Food and Drug Administration (FDA) that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

[72 FR 48242, Aug. 23, 2007, as amended at 73 FR 65260, Nov. 3, 2008]

§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.

(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or

State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.

(b) A person to whom a record is disclosed under this section may not re-disclose or use such record for a purpose other than that for which the disclosure was made.

(Authority: 38 U.S.C. 7332(b)(2)(C))

§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.

(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counseling or of testing to determine whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of

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this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

(Authority: 38 U.S.C. 7332(b))

§ 1.488 Research activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584 and the following paragraphs, patient medical record information covered by §§1.460 through 1.499 of this part may be disclosed for the purpose of conducting scientific research.

(a) Information in individually identifiable form may be disclosed from records covered by §§1.460 through 1.499 of this part for the purpose of conducting scientific research if the Under Secretary for Health or designee makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research.

(2) Has a research protocol under which the information:

(i) Will be maintained in accordance with the security requirements of §1.466 of this part (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(3) Has furnished a written statement that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.

(b) A person conducting research may disclose information obtained under paragraph (a) of this section only back to VA and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

(Authority: 38 U.S.C. 7332(b)(2)(B))

§ 1.489 Audit and evaluation activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584, and the following paragraphs, patient medical

records covered by §§1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.

(a) *Records not copied.* If patient records covered by §§1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and:

(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or

(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.

(b) *Copying of records.* Records containing patient identifying information may be copied by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in §1.466 of this part (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section.

(2) The VA medical facility director determines to be qualified to conduct the audit or evaluation activities.

(c) *Congressional oversight.* Records subject to §§1.460 through 1.499 of this part upon written request may be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) *Limitation on disclosure and use.* Records containing patient identifying information disclosed under this section may be disclosed only back to VA and used only to carry out an audit or evaluation purpose, or, to investigate or prosecute criminal or other activities as authorized by a court order entered under §1.494 of this part.

(Authority: 38 U.S.C. 7332(b)(2)(B))

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COURT ORDERS AUTHORIZING DISCLOSURES AND USE

§ 1.490 Legal effect of order.

The records to which §§1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction to produce records subject to §§1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.

(Authority: 38 U.S.C. 7332(b)(2)(D))

§ 1.491 Confidential communications.

(a) A court order under §§1.490 through 1.499 of this part may authorize disclosure of confidential communications made by a patient to a treatment program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

(Authority: 38 U.S.C. 7334)

§ 1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under §§1.460 through 1.499 of this part may not authorize qualified personnel, who have received patient identifying information from VA without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under §1.495 of this part may authorize disclosure and use of records to investigate or prosecute VA personnel.

(Authority: 38 U.S.C. 7334)

§ 1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records covered by §§1.460 through 1.499 of this part for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of §1.475 of this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and VA facility from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(Authority: 38 U.S.C. 7334)

§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this

part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 1.495 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including, but not limited to, homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

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(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

(Authority: 38 U.S.C. 7332(c))

§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The

application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, § 1.493(d) and (e) of this part.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) *Notice.* The VA facility director must be given adequate notice of the

application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any pro-

ceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§§ 1.497–1.499 [Reserved]

RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS CLAIMANT RECORDS

NOTE: Sections 1.500 through 1.527 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs records other than claimant records, see §§ 1.550 through 1.558. Sections 1.500 through 1.526 implement the provisions of 38 U.S.C. 5701, 5702.

[32 FR 10848, July 25, 1967]

AUTHORITY: Sections 1.500 to 1.527 issued under 72 Stat. 1114, 1236, as amended; 38 U.S.C. 501, 5701.

§ 1.500 General.

(a) Files, records, reports, and other papers and documents pertaining to any claim filed with the Department of Veterans Affairs, whether pending or adjudicated, and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Department of Veterans Affairs, will be deemed confidential and privileged, and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in §§ 1.501 through 1.526.

(b) A claimant may not have access to or custody of official Department of Veterans Affairs records concerning himself or herself nor may a claimant inspect records concerning himself or herself. Disclosure of information from Department of Veterans Affairs records to a claimant or his or her duly authorized agent or representative may be made, however, under the provisions of §§ 1.501 through 1.526.

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(c) Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §§ 1.501 through 1.526 unless the regulations in this part currently contain such designations. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Assistance Officer in the nearest VA regional office, or to the VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m., Monday through Friday, for VA Central Office and most field facilities. Any legal question arising in a field facility concerning the release of information will be referred to the appropriate Regional Counsel for disposition as contemplated by § 13.401 of this chapter. In central office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate administration or staff office head.

(d) Upon denial of a request under paragraph (c) of this section, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial and advise him or her that he or she may appeal the denial. The requester will also be furnished the title and address of the Department of Veterans Affairs official to whom the appeal should be addressed. (See § 1.527.) In each instance of denial of a request, the denial will be made a matter of record and the record will contain a citation to the specific provision of Department of Veterans Affairs regulations upon which the denial is based.

[24 FR 8174, Oct. 8, 1959, as amended at 32 FR 10848, July 25, 1967; 38 FR 15601, June 14, 1973]

§ 1.501 Release of information by the Secretary.

The Secretary of Veterans Affairs or the Deputy Secretary may release information, statistics, or reports to in-

dividuals or organizations when in the Secretary's or Deputy Secretary's judgment such release would serve a useful purpose.

[32 FR 10848, July 25, 1967, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.502 Disclosure of the amount of monetary benefits.

The monthly rate of pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance of any beneficiary shall be made known to any person who applies for such information.

[32 FR 10848, July 25, 1967]

§ 1.503 Disclosure of information to a veteran or his or her duly authorized representative as to matters concerning the veteran alone.

Information may be disclosed to a veteran or his or her duly authorized representative as to matters concerning himself or herself alone when such disclosure would not be injurious to the physical or mental health of the veteran. If the veteran be deceased, matters concerning him or her may be disclosed to his widow, children, or next of kin if such disclosure will not be injurious to the physical or mental health of the person in whose behalf information is sought or cause repugnance or resentment toward the decedent.

[13 FR 6999, Nov. 27, 1948]

§ 1.504 Disclosure of information to a widow, child, or other claimant.

Information may be disclosed to a widow, widower, child, or other dependent parent or other claimant, or the duly authorized representative of any of these persons as to matters concerning such person alone when such disclosure will not be injurious to the physical or mental health of the person to whom the inquiry relates. If the person concerning whom the information is sought is deceased, matters concerning such person may be disclosed to the next of kin if the disclosures will not be injurious to the physical or mental health of the person in whose behalf the information is sought or

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cause repugnance or resentment toward the decedent.

[13 FR 6999, Nov. 27, 1948, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.505 Genealogy.

Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Department of Veterans Affairs or in the case of inactive records may be released by the Archivist of the United States if in the Archivist's custody.

[13 FR 6999, Nov. 27, 1948]

§ 1.506 Disclosure of records to Federal Government departments, State unemployment compensation agencies, and the Office of Servicemembers' Group Life Insurance.

(a) All records or documents required for official purposes by any department or other agency of the U.S. Government or any state unemployment compensation agency acting in an official capacity for the Department of Veterans Affairs shall be furnished in response to an official request, written, or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

(b) The Under Secretary for Benefits, Director of Insurance Service, or designee of either in Central Office, is authorized to release information to OSGLI (Office of Servicemembers' Group Life Insurance) for the purpose of aiding in the settlement of a particular insurance case.

[33 FR 2994, Feb. 15, 1968]

§ 1.507 Disclosures to members of Congress.

Members of Congress shall be furnished in their official capacity in any case such information contained in the Department of Veterans Affairs files as

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may be requested for official use. However, in any unusual case, the request will be presented to the Secretary, Deputy Secretary, or staff or administration head for personal action. When the requested information is of a type which may not be furnished a claimant, the member of Congress shall be advised that the information is furnished to him or her confidentially in his official capacity and should be so treated by him or her. (See 38 U.S.C. 5701.) Information concerning the beneficiary designation of a United States Government Life Insurance or National Service Life Insurance policy is deemed confidential and privileged and during the insured's lifetime shall not be disclosed to anyone other than the insured or his or her duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

[32 FR 10848, July 25, 1967]

§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.

(a) Where incompetent claimants are charged with, or convicted of, offenses other than those growing out of their relationship with the Department of Veterans Affairs and in which it is desired to disclose information from the files and records of the Department of Veterans Affairs, the Regional Counsel, Under Secretary for Benefits, Veterans Benefits Administration, or the General Counsel if the General Counsel deems it necessary and proper, may disclose to the court having jurisdiction so much of the information from the files and records of the Department of Veterans Affairs relating to the mental condition of such beneficiaries, the same to be available as evidence, as may be necessary to show the mental condition of the accused and the time of its onset. This provision, however, does not alter the general procedure for handling offenses growing out of relations with the Department of Veterans Affairs.

(b) When desired by a U.S. district court, the Regional Counsel or the General Counsel may supply information as to whether any person charged with crime served in the military or naval service of the United States and

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whether the Department of Veterans Affairs has a file on such person. If the file is desired either by the court or by the prosecution or defense, it may be produced only in accord with §§ 1.501 through 1.526.

[21 FR 10375, Dec. 28, 1956, as amended at 32 FR 10848, July 25, 1967; 54 FR 34980, Aug. 23, 1989]

§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.

The Under Secretary for Benefits, Veterans Benefits Administration, Regional Counsels, and facility heads are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

[32 FR 10848, July 25, 1967]

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.

Copies of records from the files of the Department of Veterans Affairs will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his or her duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his or her duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by

an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Regional Counsel whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Secretary of Veterans Affairs, or the head of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Department of Veterans Affairs may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Department of Veterans Affairs.

[32 FR 10848, July 25, 1967]

§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.

(a)(1) Where a suit (or legal proceeding) has been threatened or instituted against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his or her duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in Central Office, or the Regional Counsel for the field facility, who shall determine the action to be taken with respect thereto. Where

the records have been sent to the Department of Justice in connection with any such suit (or legal proceeding), the request will be referred to the Department of Justice, Washington, DC, through the office of the General Counsel, for attention. Where the records have been sent to an Assistant U.S. Attorney, the request will be referred by the appropriate Regional Counsel to the Assistant U.S. Attorney. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit (or legal proceeding), whether in a Federal court or any other, such copies shall be disclosed as provided in paragraphs (b) and (c) of this section where the request is accompanied by court process, or paragraph (e) of this section where the request is not accompanied by court process. A court process, such as a court order or subpoena duces tecum should be addressed to either the Secretary of Veterans Affairs or to the head of the field facility at which the records desired are located. The determination as to the action to be taken upon any request for the disclosure of claimant records received in this class of cases shall be made by the component having jurisdiction over the subject matter in Central Office, or the division having jurisdiction over the subject matter in the field facility, except in those cases in which representatives of the component or division have determined that the records desired are to be used adversely to the claimant, in which event the process will be referred to the General Counsel in Central Office or to the Regional Counsel for the field facility for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed, or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be disclosed except through the Regional Counsel having jurisdiction, who will limit the disclosure of information to that which would be available under discovery proceedings, if the matter were in litigation. Any other information may be disclosed only after concurrence in such disclosure is provided by the General Counsel.

(b) *Disclosures in response to Federal court process*—(1) *Court order*. Except for

drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a Federal court order is the process necessary for the disclosure of such records. Upon receipt of a Federal court order directing disclosure of claimant records, such records will be disclosed. Disclosure of records protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph (g) of this section.

(2) *Subpoena*. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for the disclosure of such records and such records will not be disclosed, unless the claimant is deceased, or either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a Federal court subpoena, such records will be disclosed. Additionally, where the subpoena is accompanied by authorization from the claimant, disclosure will be made. Regarding the disclosure of medical records pertaining to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) A disclosure of records in response to the receipt of a Federal court process will be made to those individuals designated in the process to receive such records, or to the court from which the process issued. Where original records are produced, they must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if offered and received in evidence, permission should

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be obtained to substitute a copy so that the original may remain intact in the record. Where a court process is issued by or on behalf of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by § 1.526(i) and any other costs incident to producing the records.

(c) *Disclosures in response to state or local court process*—(1) *State or local court order*. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a State or local court order is the process necessary for disclosure of such records. Upon receipt of a State or local court order directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3) of this section. Disclosure of records protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph (g) of this section.

(2) *State or local court subpoena*. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for disclosure of such records and such records will not be disclosed unless the claimant is deceased, or, either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a State or local court subpoena directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3), of this section. Regarding the disclosure of 7332 records, a subpoena is insufficient for such disclosure. Specific provisions for the disclo-

sure of these records are set forth in paragraph (g) of this section.

(3) Where the disclosure provisions of paragraph (c) (1) or (2) of this section apply, disclosure will be made as follows:

(i) When the process presented is accompanied by authority from the claimant; or,

(ii) In the absence of claimant disclosure authority, the Regional Counsel having jurisdiction must determine whether the disclosure of the records is necessary to prevent the perpetration of fraud or other injustice in the matter in question. To make such a determination, the Regional Counsel may require such additional documentation, e.g., affidavit, letter of explanation, or such other documentation which would detail the need for such disclosure, set forth the character of the pending suit, and the purpose for which the documents or records sought are to be used as evidence. The claimant's record may also be considered in the making of such determination. Where a court process is received, and the Regional Counsel finds that additional documentation will be needed to make the foregoing determination, the Regional Counsel, or other employee having reasonable knowledge of the requirements of this regulation, shall contact the person causing the issuance of such court process, and advise that person of the need for additional documentation. Where a court appearance is appropriate, and the Regional Counsel has found that there is an insufficient basis upon which to warrant a disclosure of the requested information, the Regional Counsel, or other employee having reasonable knowledge of the requirement of this regulation and having consulted with the Regional Counsel, shall appear in court and advise the court that VA records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and to further advise the court of such regulatory requirements and how they have not been satisfied. Where indicated, the Regional Counsel will take appropriate action to have the matter of disclosure of the affected records removed to Federal court.

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(4) Any disclosure of records in response to the receipt of State or local court process will be made to those individuals designated in the process to receive such records, or to the court from which such process issued. Payment of the fees as prescribed by § 1.526(i), as well as any other cost incident to producing the records, must first be deposited with the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if there is an offer and admission of any record or document contained therein, permission should be obtained to substitute a copy so that the original may remain intact in the record.

(d) Notice requirements where disclosures are made pursuant to court process. Whenever a disclosure of Privacy Act protected records is made in response to the process of a Federal, State, or local court, the custodian of the records disclosed will make reasonable efforts to notify the subject of such records that such subject's records were disclosed to another person under compulsory legal process. Such notice should be accomplished when the process compelling disclosure becomes a matter of public record. Generally, a notice sent to the last known address of the subject would be sufficient to comply with this requirement.

(e) Disclosures in response to requests when not accompanied by court process. Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a court process, will be handled by the component or division having jurisdiction over the subject matter. If the request can be complied with under § 1.503 or § 1.504, and under the Privacy Act (to the extent that such records are protected by the Privacy Act), the records requested will be disclosed upon receipt of the required fee. If, however, the records cannot be furnished under such authority, the applicant will be advised of the procedure to obtain copies of records as set forth in paragraphs (b) and (c) of this section.

(f) Suits by or against the Secretary under 38 U.S.C. 3720. Records pertaining to the loan guaranteed, insured, or made by the Department of Veterans Affairs may be made available by the General Counsel or the Regional Counsel subject to the usual rules of evidence, and where authorized under the Privacy Act, after clearance with the Department of Justice or U.S. Attorney if appropriate.

(g) Disclosure of drug abuse, alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment or related records under court process. Disclosure of these types of records, which are protected from unauthorized disclosure under 38 U.S.C. 7332, may be made only in response to an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. The court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. As to a Federal court order satisfying the requirements of this paragraph, the records will be disclosed as provided in such order. As to a State or local court order satisfying the requirements of this subsection, the disclosure of the records involved is conditioned upon satisfying the provisions set forth in paragraph (c)(3) of this section. If the aforementioned section is satisfied, and a disclosure of records is to be forthcoming, the records will be disclosed as provided in the court order.

(Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 38 U.S.C. 5701 and 38 U.S.C. 7332)

[56 FR 15833, Apr. 18, 1991]

§ 1.512 Disclosure of loan guaranty information.

(a) The disclosure of records or information contained in loan guaranty files is governed by the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the confidentiality provisions of 38 U.S.C. 5701, and the provisions of 38 CFR 1.500–1.584. In

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addition, the release of names and addresses and the release of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems provided that the individual identifiers of the veteran-purchaser(s) or dependents are deleted prior to release of such documents. However, individual identifiers may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier.

(Authority: 38 U.S.C. 5701(a), (c))

(2) Individual identifiers of veteran purchasers or dependents may be disclosed when disclosure is made to the following:

- (i) The individual purchasing the property;
- (ii) The current owner of the property;
- (iii) The individual that requested the appraisal or report;
- (iv) A person or entity which is considering making a loan to an individual with respect to the property concerned; or
- (v) An attorney, real estate broker, or any other agent representing any of these persons.

(Authority: 38 U.S.C. 5701(c), (h)(2)(D))

(c)(1) The Secretary may release the name, address, or both, and may release other information relating to the identity of an applicant for or recipient of a Department of Veterans Affairs-guaranteed, insured, or direct loan, specially adapted housing grant, loan to finance acquisition of Department of Veterans Affairs-owned property, release of liability, or substitution of entitlement to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies

and governmental agencies for any of the purposes specified in paragraph (c)(2) of this section.

(2) A release may be made under paragraph (c)(1) of this section:

- (i) To enable such parties to provide the Department of Veterans Affairs with data which assists in determining the creditworthiness, credit capacity, income or financial resources of the applicant for or recipient of loan guaranty administered benefits, or verifying whether any such data previously received is accurate; or
- (ii) To enable the Secretary to offer for sale or other disposition any loan or installment sale contract.

(Authority: 38 U.S.C. 5701(h)(2)(A), (B), (C))

(d) Upon request, the Secretary may release information relating to the individual's loan transaction to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies where necessary in connection with a transfer of information on the status of a Department of Veterans Affairs loan account to persons or organizations proposing to extend credit or render services or other benefits to the borrower in order that the person or organization may determine whether to extend credit or render services or other benefits to the borrower. Such releases shall be made only if the person or organization seeking the information furnishes the individual's name, address or other information necessary to identify the individual.

(Authority: 38 U.S.C. 5701(e), (h)(2)(A) and (D))

(e) The Secretary shall maintain information in the loan guaranty file consisting of the date, notice and purpose of each disclosure, and the name and address of the person to whom the disclosure is made from the loan guaranty files.

(Authority: 38 U.S.C. 5701(h)(2)(D), 5 U.S.C. 552a(c))

[47 FR 11279, Mar. 16, 1982]

§ 1.513 Disclosure of information contained in Armed Forces service and related medical records in Department of Veterans Affairs custody.

(a) *Service records.* Information received by the Department of Veterans Affairs from the Departments of the Army, Navy, Air Force, and the Department of Transportation relative to the military or naval service of a claimant is furnished solely for the official use of the Department of Veterans Affairs but such information may be disclosed under the limitations contained in §§ 1.501 through 1.526.

(b) *Medical records.* Information contained in the medical records (including clinical records and social data) may be released under the following conditions:

(1) Complete transcript of résumé or medical records on request to:

- (i) The Department of the Army.
- (ii) The Department of the Navy (including naval aviation and United States Marine Corps).
- (iii) The Department of the Air Force.
- (iv) The Department of Transportation (Coast Guard).
- (v) Selective Service (in case of registrants only).
- (vi) Federal or State hospitals or penal institutions when the veteran is a patient or inmate therein.
- (vii) United States Public Health Service, or other governmental or contract agency in connection with research authorized by, or conducted for, the Department of Veterans Affairs.
- (viii) Registered civilian physicians, on the request of the individual or his or her legal representative, when required in connection with the treatment of the veteran. (The transcript or resume should be accompanied by the statement “it is expected that the information contained herein will be treated as confidential, as is customary in civilian professional medical practice.”)
- (ix) The veteran on request, except information contained in the medical record which would prove injurious to his or her physical or mental health.
- (x) The next of kin on request of the individual, or legal representative, when the information may not be disclosed to the veteran because it will

prove injurious to his or her physical or mental health, and it will not be injurious to the physical or mental health of the next of kin or cause repugnance or resentment toward the veteran; and directly to the next of kin, or legal representative, when the veteran has been declared to be insane or is dead.

(xi) Health and social agencies, on the authority of the veteran or his or her duly authorized representative.

(2) In addition to the authorizations in paragraph (b)(1) of this section, the Department of Justice, the Department of the Treasury, and the U.S. Postal Service may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

(3) Compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions will be effected in accordance with § 1.511.

[13 FR 7001, Nov. 27, 1948, as amended at 32 FR 10849, July 25, 1967; 60 FR 63938, Dec. 13, 1995]

§ 1.514 Disclosure to private physicians and hospitals other than Department of Veterans Affairs.

(a) When a beneficiary elects to obtain medical attention as a private patient from a private practitioner or in a medical center other than a Department of Veterans Affairs hospital, there may be disclosed to such private practitioner or head of such medical center (Federal, State, municipal, or private), such information as to the medical history, diagnosis, findings, or treatment as is requested, including the loan of original X-ray films, whether Department of Veterans Affairs clinical X-rays or service department entrance and separation X-rays, provided there is also submitted a written authorization from the beneficiary or his or her duly authorized representative. The information will be supplied without charge directly to the private physician or medical center head and not

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through the beneficiary or representative. In forwarding this information, it will be accompanied by the stipulations that it is released with consent of or on behalf of the patient and that the information will be treated as confidential, as is customary in civilian professional medical practice.

(b) Such information may be released without charge and without consent of the patient or his or her duly authorized representative when a request for such information is received from:

(1) The superintendent of a State hospital for psychotic patients, a commissioner or head of a State department of mental hygiene, or head of a State, county, or city health department; or

(2) Any fee basis physician or institution in connection with authorized treatment of the veteran as a Department of Veterans Affairs beneficiary; or

(3) Any physician or medical installation treating the veteran under emergency conditions.

[34 FR 13368, Aug. 19, 1969, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.514a Disclosure to private psychologists.

When a beneficiary elects to obtain therapy or analysis as a private patient from a private psychologist, such information in the medical record as may be pertinent may be released. Generally, only information developed and documented by Department of Veterans Affairs psychologists will be considered pertinent, although other information from the medical record may be released if it is determined to be pertinent and will serve a useful purpose to the private psychologist in rendering his or her services. Information will be released under this section upon receipt of the written authorization of the beneficiary or his or her duly authorized representative. Information will be forwarded to private psychologists directly, not through the beneficiary or representative, without charge and with the stipulation that it is released with consent of or on behalf of the patient and must be treated as confidential as is customary in regular professional practice.

[34 FR 13368, Aug. 19, 1969]

§ 1.514b Disclosures to procurement organizations.

A VHA health care facility may disclose the name and home address of an "individual" as defined in § 1.460 to an authorized representative of a "procurement organization" as also defined in § 1.460 for the purpose of facilitating a determination by the procurement organization of whether the individual is a suitable potential organ, eye, or tissue donor if:

(a) The individual is currently an inpatient in a VHA health care facility;

(b) The individual is, in the clinical judgment of the individual's primary health care provider, near death or is deceased as defined in § 1.460;

(c) The VHA health care facility has a signed agreement with the procurement organization in accordance with the applicable requirements of the United States Department of Health and Human Services (HHS); and

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with FDA that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

[72 FR 48242, Aug. 23, 2007, as amended at 73 FR 65260, Nov. 3, 2008]

§ 1.515 To commanding officers of State soldiers' homes.

When a request is received in a Department of Veterans Affairs regional office, center, or medical center from the commanding officer of a State soldiers' home for information other than information relative to the character of the discharge from a Department of Veterans Affairs center or medical center concerning a veteran formerly domiciled or hospitalized therein, the provisions of § 1.500 are applicable, and no

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disclosure will be made unless the request is accompanied by the authorization outlined in § 1.503. However, station heads, upon receipt of a request from the commanding officer of a State soldiers' home for the character of the discharge of a veteran from a period of hospital treatment or domiciliary care as a beneficiary of the Department of Veterans Affairs, will comply with the request, restricting the information disclosed solely to the character of the veteran's discharge from such treatment or care. Such information will be disclosed only upon receipt of a specific request therefor from the commanding officer of a State soldiers' home.

[30 FR 6435, May 8, 1965]

§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.

When an undertaker requests information believed to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's Government insurance policy, name and address of the next of kin, rank or grade of veteran and organization in which he or she served, character of the veteran's discharge, or date and place of birth of the veteran, and it appears that the undertaker is holding the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of a Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the policy or furnished information not specifically mentioned in this paragraph.

[46 FR 62059, Dec. 22, 1981]

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§ 1.517 Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Department of Veterans Affairs.

Requests from educational institutions and agencies cooperating with the Department of Veterans Affairs in the vocational rehabilitation and education of veterans for the use of vocational rehabilitation and education records for research studies will be forwarded to central office with the facility head's recommendation for review by the Under Secretary for Benefits. Where the request to conduct a research study is approved by the Under Secretary for Benefits, the facility head is authorized by this section to release information for such studies from vocational rehabilitation and education records as required: *Provided, however,* That any data or information obtained shall not be published without prior approval of the Under Secretary for Benefits and that data contained in published material shall not identify any individual veteran.

[30 FR 6435, May 8, 1965]

§ 1.518 Addresses of claimants.

(a) It is the general policy of the Department of Veterans Affairs to refuse to furnish addresses from its records to persons who desire such information for debt collection, canvassing, harassing or for propaganda purposes.

(b) The address of a Department of Veterans Affairs claimant as shown by Department of Veterans Affairs files may be furnished to:

(1) Duly constituted police or court officials upon official request and the submission of a certified copy either of the indictment returned against the claimant or of the warrant issued for his or her arrest.

(2) Police, other law enforcement agencies, or Federal, State, county, or city welfare agencies upon official written request showing that the purpose of the request is to locate a parent who has deserted his or her child or children and that other reasonable efforts to obtain an address have failed. The address will not be released when such disclosure would be prejudicial to the mental or physical health of the claimant. When an address is furnished

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it will be accompanied by the stipulation that it is furnished on a confidential basis and may not be disclosed to any other individual or agency.

(c) When an address is requested that may not be furnished under §§ 1.500 through 1.526, the person making the request will be informed that a letter, or in those cases involving judicial actions, the process or notice in judicial proceedings, enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the Department of Veterans Affairs. If a request indicates that judicial action is involved in which a process or notice in judicial proceedings is required to be forwarded, the Department of Veterans Affairs will inform the person who requests the forwarding of such a document that the envelope must bear sufficient postage to cover costs of mailing and certified or registered mailing fees, including cost of obtaining receipt for the certified or registered mail when transmission by this type special mail is desired. At the time the letter, process, or notice in judicial proceedings is forwarded, the facility's return address will be placed on the envelope. When the receipt for certified or registered mail or the undelivered envelope is returned to the Department of Veterans Affairs, the original sender will be notified thereof. However, the receipt or the envelope will be retained by the Department of Veterans Affairs. This provision will be applicable only when it does not interfere unduly with the functions of the Service or division concerned. In no event will letters be forwarded to aid in the collection of debts or for the purpose of canvassing, harassing, or propaganda. Neither will a letter be forwarded if the contents could be harmful to the physical or mental health of the recipient.

(d) Subject to the conditions set forth in § 1.922, the Department of Veterans Affairs may disclose to consumer reporting agencies information contained in a debtor's claims folder. Such information may include the debtor's name and/or address, Department of

Veterans Affairs file number, Social Security number, and date of birth.

(Authority: 38 U.S.C. 5701(g))

[33 FR 10516, July 24, 1968 and 35 FR 5176, Mar. 27, 1970, as amended at 46 FR 62059, Dec. 22, 1981]

§ 1.519 Lists of names and addresses.

(a) Any organization wanting a list of names and addresses of present or former personnel of the armed services and their dependents from the Department of Veterans Affairs must make written application to the Department of Veterans Affairs Controller, except lists of educationally disadvantaged veterans should be requested from the Director of the nearest regional office. The application must:

(1) Clearly identify the type or category of names and addresses sought;

(2) Furnish proof satisfactory to the Department of Veterans Affairs that the organization seeking the list is a "nonprofit organization." Normally, evidence establishing that the organization is exempt from taxation in accordance with the provisions of 26 U.S.C. 501 or is a governmental body or institution will be accepted as satisfying this criteria;

(3) Contain a statement clearly setting forth the purpose for which the list is sought, the programs and the resources the organization proposes to devote to this purpose, and establish how such purpose is "directly connected with the conduct of programs and the utilization of benefits" under title 38, U.S.C.; and

(4) Contain a certification that the organization, and all members thereof who will have access to the list, are aware of the penalty provisions of 38 U.S.C. 5701(f) and will not use the list for any purpose other than that stated in the application.

(b) If the Director of the regional office concerned finds that the organization requesting the list of names and addresses of educationally disadvantaged veterans is a nonprofit organization and operates an approved program of special secondary, remedial, preparatory or other educational or supplementary assistance to veterans as provided under subchapter V, title 38 U.S.C., then he or she may authorize

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the release of such names and addresses to the organization requesting them.

(c) The Associate Deputy Assistant Secretary for Information Resources Management, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations which have applied for such lists in accordance with paragraph (a) of this section if he or she finds that the purpose for which the organization desires the names and addresses is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Lists of names and addresses authorized to be released pursuant to this paragraph shall not duplicate lists released to other elements, segments, or chapters of the same organization.

(d) If the list requested is one that the Department of Veterans Affairs has previously compiled or created, in the same format, to carry out one or more of its basic program responsibilities and it is determined that it can be released, the list may be furnished without charge. For other types of lists, a charge will be made in accordance with the provisions of § 1.526.

(e) Upon denial of a request, the Department of Veterans Affairs Controller or Regional Office Director will inform the requester in writing of the denial and the reasons therefor and advise the organization that it may appeal the denial to the General Counsel. In each instance of a denial of a request, the denial and the reasons therefor will be made a matter of record.

(f) Section 5701(f), title 38 U.S.C., provides that any organization, or member thereof, which uses the names and addresses furnished it for any purpose other than one directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C., shall be fined not more than \$500 in the case of the first offense and not more than \$5,000 in the case of the subsequent offenses. Any instance in which there is evidence of a violation of these penal provisions will be reported in accordance with § 14.560.

(Approved by the Office of Management and Budget under control number 2900-0438)

[38 FR 15601, June 14, 1973, as amended at 46 FR 62059, Dec. 22, 1981; 49 FR 32848, Aug. 17, 1984; 56 FR 59218, Nov. 25, 1991]

§ 1.520 Confidentiality of social data.

Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient's self-revelations without reproaching the patient for his or her behavior or arousing natural curiosity or suspicion regarding any informant's statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.

[46 FR 62059, Dec. 22, 1981]

§ 1.521 Special restrictions concerning social security records.

Information received from the Social Security Administration may be filed in the veteran's claims folder without special provisions. Such information will be deemed privileged and may not be released by the Department of Veterans Affairs except that information concerning the amount of social security benefits paid to a claimant or the amount of social security tax contributions made by the claimant may be disclosed to the claimant or his or her duly authorized representative. Any request from outside the Department of Veterans Affairs for other social security information will be referred to the Social Security Administration for such action as they deem proper.

[27 FR 9599, Sept. 28, 1962]

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§ 1.522 Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.

Determination of the question when disclosure of information from the files, records, and reports will be prejudicial to the mental or physical health of the claimant, beneficiary, or other person in whose behalf information is sought, will be made by the Chief Medical Director; Chief of Staff of a hospital; or the Director of an outpatient clinic.

[33 FR 19009, Dec. 20, 1968]

§ 1.523 [Reserved]

§ 1.524 Persons authorized to represent claimants.

A duly authorized representative will be:

(a) Any person authorized in writing by the claimant to act for him or her,

(b) An attorney who has filed the declaration required by § 14.629(b)(1) of this chapter, or

(c) His or her legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his or her spouse, his or her children, or, if the claimant is unmarried, either of his or her parents shall be recognized as the fiduciary of the claimant.

[33 FR 6536, Apr. 30, 1968]

§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.

(a)(1) The accredited representatives of recognized organizations (§ 14.627 of this chapter) holding appropriate power of attorney and recognized attorneys (§ 14.629(b) of this chapter) with the written authorization of the claimant may, subject to the restrictions imposed by paragraph (a)(2) of this section, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him or her to the claimant or, if the claimant is incompetent, to his or her legally constituted fiduciary. Under the same restrictions,

it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his or her spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Department of Veterans Affairs of the claim of the claimant. The heads of field facilities and the directors of the services concerned in Central Office will each designate a responsible officer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term *claimant* as used in this paragraph includes insureds.

(2) In the case of a living veteran a representative acting under a power of attorney from any person not acting on behalf of the veteran will not be permitted to review the records of the veteran or be furnished any information therefrom to which the person is not entitled, *i.e.*, information not relating to such person alone. Powers of attorney submitted by the other person will be considered "Limited" and will be so noted when associated with the veteran's records. The provisions of this subparagraph are also applicable to recognized attorneys and the requisite declarations filed by them.

(3) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Department of Veterans Affairs the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative.

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(4) In any case where there is an unrevoked power of attorney or declaration of representation, no persons or organizations other than the one named in such document shall be afforded information from the file except under the conditions set forth in §14.629(b)(2) of this chapter. When any claimant has filed notice with the Department of Veterans Affairs that he or she does not want his or her file inspected, such file will not be made available for inspection.

(b)(1) Inspection of folders by accredited representatives or recognized attorneys holding a written authorization where such cases are being processed shall be in space assigned for such inspection. Otherwise station heads may permit inspection of folders at the desks of the accredited representatives, in the office(s) which they regularly occupy.

(2) An insured or after maturity of the insurance by death of the insured, the beneficiary, may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Department of Veterans Affairs, a specific authorization in writing for this purpose.

(3) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative, recognized attorney or accredited representative shall not release information as to the designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§1.500 through 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives or recognized attorneys holding a written authorization only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Department of Veterans Affairs personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Department of Veterans

Affairs personnel for adjudication purposes will not be inspected by anyone other than those employees of the Department of Veterans Affairs whose duties require same for the purpose of clinical diagnosis or medical treatment.

(5) Under no circumstances shall any paper be removed from a file, except by a Department of Veterans Affairs employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Regional Counsel, except that in insurance suits under 38 U.S.C. 1975, 1984, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Facility heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information therefrom will be brought to the immediate attention of the Secretary.

(d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization holding power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

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(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he or she may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.

[13 FR 7002, Nov. 27, 1948, as amended at 31 FR 3459, Mar. 5, 1966; 32 FR 10849, July 25, 1967; 33 FR 6536, Apr. 30, 1968]

§ 1.526 Copies of records and papers.

(a) Any person desiring a copy of any record or document in the custody of the Department of Veterans Affairs, which is subject to be furnished under §§1.501 through 1.526, must make written application for such copy to the Department of Veterans Affairs installation having custody of the subject matter desired, stating specifically: (1) The particular record or document the copy of which is desired and whether certified and validated, or uncertified, (2) the purpose for which such copy is desired to be used.

(b) The types of services provided by the Department of Veterans Affairs for which fees will be charged are identified in paragraph (i) of this section.

(c) This section applies to the services furnished in paragraph (b) of this section when rendered to members of the public by the Department of Veterans Affairs. It does not apply to such services when rendered to or for other agencies or branches of the Federal Government, or State and local governments when furnishing the service will help to accomplish an objective of the Department of Veterans Affairs, or when performed in connection with a special research study or compilation when the party requesting such services is charged an amount for the whole job.

(d) When copies of a record or document are furnished under §§1.506, 1.507, 1.510, and 1.514, such copies shall be supplied without charge. Moreover, free service may be provided, to the extent of one copy, to persons who have

been required to furnish original documents for retention by the Department of Veterans Affairs.

(e) The following are circumstances under which services may be provided free at the discretion of facility heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

(f) When information, statistics, or reports are released or furnished under §1.501 or §1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(g) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposit of \$1 or more over the lawful charge will be returned to the applicant. Excess deposits of less than \$1 will be returned upon request. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

(h) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in §1.513.

(i) *Fees to be charged*—(1) *Schedule of fees*:

Activity	Fees
(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½"×11"; 8½"×14"; 11"×14").	\$0.15 per page after first 100 one-sided pages.
(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iii) Duplication of documents by any type of reproduction process not covered by paragraphs (i)(1) (i) and (ii) of this section to produce a copy in a form reasonably usable by a requester.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output.	Actual cost to the Agency including computer and manual search costs, copying costs, labor, and material and overhead expenses.
(v) Attestation under the seal of the Agency	\$3.00 per document so certified.
(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes.	\$10.00 per request.
(vii) Providing files under court subpoena	Actual direct cost to the Agency.

(NOTE. If VA regularly contracts for duplicating services related to providing the requested records, such as the duplication of microfilm or architect's plans and drawings, the contractor fees may be included in the actual direct cost to the Agency)

(2) *Benefit records.* When VA benefit records are requested by a VA beneficiary or applicant for VA benefits, the duplication fee for one complete set of such records will be waived.

(Authority: 38 U.S.C. 5702(b))

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided in paragraph (i) of this section (or the order must include postage stamps or stamped return envelopes for the purpose).

(k) Those Department of Veterans Affairs installations not having copying equipment are authorized to arrange with the nearest Department of Veterans Affairs installation having such equipment to make the necessary authorized copies of records or documents.

(l) Administration, staff office, and field facility heads are authorized to designate employees to certify copies of records and papers furnished under the provisions of paragraph (a) of this section.

[19 FR 3224, June 2, 1954, as amended at 32 FR 10850, July 25, 1967; 33 FR 9342, June 26, 1968; 35 FR 20001, Dec. 31, 1970; 37 FR 2676, Feb. 4, 1972; 39 FR 3938, Jan. 31, 1974; 53 FR 10376, Mar. 31, 1988; 54 FR 34980, Aug. 23, 1989]

§ 1.527 Administrative review.

(a) Any person may, in the event of a denial of his or her request to inspect or obtain information from or copies of records within the purview of §§ 1.501 through 1.526, appeal such denial. Such appeal, stating the circumstances of the denial, should be addressed, as appropriate, to the field facility, administration, or staff office head.

(b) A denial action not reversed by a field facility, administration, or staff office head on appeal, will be referred through normal channels to the General Counsel.

(c) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

[32 FR 10850, July 25, 1967, as amended at 55 FR 21546, May 25, 1990]

PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

§ 1.550 Purpose.

(a) Sections 1.550 through 1.562 contain the rules followed by VA in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations should be read together with the FOIA, which provides the underlying legal basis for the regulations and other information regarding requests

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for records in the custody of a Federal agency. The regulations also should be read together with VA's FOIA Reference Guide, available on VA's FOIA home page (see §1.552(a) for the pertinent Internet address) and FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines, available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/foia_fee_schedule_1987.pdf.

(b) Requests for records about an individual protected by the Privacy Act, 5 U.S.C. 552a, including one's own records and records that pertain to an individual and that may be sensitive, will be processed under the FOIA and the Privacy Act. In addition to the following FOIA regulations, see §§1.575 through 1.584 for regulations applicable to Privacy Act records.

(c) Requests for records relating to a claim administered by VA pursuant to 38 U.S.C. 5701 will be processed under the FOIA and 38 U.S.C. 5701. In addition to the following FOIA regulations, see §§1.500 through 1.527 for regulations implementing 38 U.S.C. 5701.

(d) Requests for records relating to healthcare quality assurance reviews pursuant to 38 U.S.C. 5705 will be processed under the FOIA and 38 U.S.C. 5705. In addition to the following FOIA regulations, see 38 CFR 17.500 through 17.511 for regulations implementing 38 U.S.C. 5705.

(e) Requests for records relating to treatment for the conditions specified in 38 U.S.C. 7332, such as drug abuse, alcoholism or alcohol abuse, infection with the Human Immunodeficiency Virus (HIV), or sickle cell anemia, will be processed under the FOIA and 38 U.S.C. 7332. In addition to the following FOIA regulations, see §§1.460 through 1.499 of this part for regulations implementing 38 U.S.C. 7332.

Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501, 552, 552a, 5701, 5705, 7332.

[76 FR 51892, Aug. 19, 2011]

§ 1.551 Definitions.

As used in §§1.550 through 1.562, the following definitions apply:

Agency means any executive department, military department, govern-

ment corporation, government controlled corporation, or other establishment in the executive branch of the Federal government, or independent regulatory entity.

Appeal means a requester's written disagreement with an adverse determination under the FOIA.

Beneficiary means a veteran or other individual who has received benefits (including medical benefits) or has applied for benefits pursuant to title 38, United States Code.

Benefits records means an individual's records, which pertain to programs under any of the benefits laws administered by the Secretary of Veterans Affairs.

Business day means the time during which typical Federal government offices are open for normal business. It does not include Saturdays, Sundays, or Federal legal public holidays. The term "day" means business day unless otherwise specified.

Business information means confidential or privileged commercial or financial information obtained by VA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Component means each distinct VA entity, including Administrations, staff offices, services, or facilities.

Expedited processing means giving a FOIA request priority for processing ahead of other pending requests because VA has determined that the requester has shown an exceptional need or urgency for the records as provided in these regulations.

Fees. For fees and fee-related definitions, see §1.561.

FOIA Officer means the individual within a VA component whose responsibilities include addressing and granting or denying requests for records under the FOIA.

Perfected request means a written FOIA request that meets the requirements set forth in §1.554 of this part and for which there are no remaining issues about the payment of applicable fees or any other matter that requires resolution prior to processing.

Reading room means space made available, as needed, in VA components where records are available for review

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pursuant to 5 U.S.C. 552(a)(2). Ordinarily, the VA component providing a public reading room space will be the component that maintains the record.

Record means a document, a portion of a document, and information contained within a document, and can include information derived from a document or a database. Such documents may be maintained in paper, electronic, and other forms, but do not include objects, such as tissue slides, blood samples, or computer hardware.

Request means a written demand for records under the FOIA as described below. The term *request* includes any action emanating from the initial demand for records, including an appeal related to the initial demand.

Requester means, generally, any individual, partnership, corporation, association, or foreign or state or local government, which has made a demand to access an agency record.

Submitter means any person or entity (including corporations, state, local and tribal governments and foreign governments) from whom VA obtains trade secrets or confidential commercial or financial information either directly or indirectly.

VA means the Department of Veterans Affairs.

VA Central Office (VACO) means the headquarters of the Department of Veterans Affairs. The mailing address is 810 Vermont Avenue, NW., Washington, DC 20420.

Written or in writing means communications such as letters, photocopies of letters, electronic mail, and facsimiles (faxes), and does not include any form of oral communication.

[76 FR 51892, Aug. 19, 2011]

§ 1.552 General provisions.

(a) *Additional information.* The following Internet link will provide access to VA's information that is electronically available under the FOIA: <http://www.foia.va.gov/>.

(b) *Public Liaisons.* VA has made available FOIA Public Liaisons to assist in the resolution of disputes between the agency and the requester. Contact information for VA's FOIA Public Liaisons can be found on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(c) *FOIA Annual Report.* Under 5 U.S.C. 552(e), VA is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests and appeals. Copies of VA's annual FOIA report may be obtained from VA's Chief FOIA Officer or by visiting VA's FOIA Web site. See § 1.552(a) for the pertinent Internet address.

[76 FR 51893, Aug. 19, 2011]

§ 1.553 Public reading rooms and discretionary disclosures.

(a) VA maintains a public reading room electronically at its FOIA home page on the Internet, which contains the records that the FOIA requires to be regularly made available for public inspection and copying. See § 1.552(a) for the pertinent Internet address. Information routinely provided to the public (press releases, for example) may be provided without following these sections. In addition, as a matter of policy, VA may make discretionary releases of records or information exempt from disclosure under the FOIA when permitted to do so in accordance with current law and governmental policy. Each VA component is responsible for determining which of its records are required to be made available and for making its records available electronically.

(b) VA may process, in accordance with the FOIA, records that it makes publicly available. Information in a public reading room record will be redacted, for example, if its release would be a clearly unwarranted invasion of an individual's personal privacy.

(c) Some VA components may also maintain physical public reading rooms. Information regarding these components and their contact information is available on VA's FOIA home page on the Internet. See § 1.552(a) for the pertinent Internet address. If the requester does not have access to the Internet and wishes to obtain information regarding publicly available information or components that have a physical reading room, he or she may write VA's Chief FOIA Officer at the following address: Department of Veterans Affairs, FOIA Service (005R1C),

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810 Vermont Avenue, NW., Washington, DC 20420.

[76 FR 51893, Aug. 19, 2011]

§ 1.554 Requirements for making requests.

(a) *Requests by letter and facsimile (fax).* The FOIA request must be in writing. VA accepts facsimiles (faxes) as written FOIA requests. If the request concerns documents involving a personal privacy interest or documents protected by another confidentiality statute, the request must contain an image of the requester's handwritten signature. To make a request for VA records, write directly to the FOIA Officer for the VA component that maintains the records. If requesting records from a particular medical facility or regional office, for example, the request should be sent to the FOIA Office at the address listed for that component. If requesting records from a component within VA's Central Office, the request should be sent to the Central Office address of the FOIA Office listed for that component. A list of FOIA contacts is available on the Internet. A legible return address must be included with the FOIA request; the requester may wish to include other contact information as well, such as a telephone number and electronic mail (e-mail) address. If the requester is not sure where to send the request, he or she should seek assistance from the FOIA Contact for the office believed to manage the programs whose records are being requested or send the request to the Director, FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420, who will refer it for action to the FOIA contact at the appropriate component. For the quickest possible handling, the request letter and the envelope of any FOIA request should be marked "Freedom of Information Act Request." The requester may find it helpful to refer to VA's FOIA home page on the Internet when making the request; available reference material includes VA's FOIA Reference Guide and the text of the FOIA. See § 1.552(a) for the pertinent Internet address.

(b) *Requests by e-mail.* VA will accept an e-mail request. If the request concerns documents protected by another confidentiality statute, the e-mail

transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. In order to assure prompt processing, e-mail FOIA requests must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA requests. An e-mail FOIA request that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA request. Mailbox addresses designated to receive e-mail FOIA requests are available on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(c) *Making a request for another individual's records.* If the requester is making a request for records about another individual, it will be helpful under certain circumstances to provide proof that the requester is authorized to obtain the records, such as a legally sufficient prior written authorization for the release of information signed by that individual, proof that the individual is deceased (*e.g.*, a copy of a death certificate), or proof that the requester is the authorized representative of the individual or the individual's estate. This information will assist in determining whether and to what degree the records may be released.

(d) *Description of records sought.* (1) The requester must describe the records sought in enough detail to allow VA personnel to locate them with a reasonable amount of effort. To the extent possible, the requester should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the document. Generally, the more information the requester provides about the record sought, the more likely VA personnel will be able to locate any responsive records. Wide-ranging requests that lack specificity, or contain descriptions of very general subject matters, with no description of specific records, may be considered "not reasonably described" and thus not subject to further processing.

(2) Requests for voluminous amounts of records may be placed in a complex

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track of a multitrack processing system pursuant to § 1.556(b); such requests also may meet the criteria for “unusual circumstances,” which are processed in accordance with § 1.556(c) and may require more than twenty (20) business days to process despite the agency’s exercise of due diligence.

(3) If the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will tell the requester why the request is insufficient. The FOIA Officer will also provide an opportunity to discuss the request by documented telephonic communication or written correspondence in order to modify it to meet the requirements of this section.

(4) The time limit for VA to process the FOIA request will not start until the FOIA Officer determines that the requester has reasonably described the records sought in the FOIA request. If the FOIA Officer seeks additional clarification regarding the request and does not receive the requester’s written response within thirty (30) calendar days of the date of its communication with the requester, he or she will conclude that the requester is no longer interested in pursuing the request and will close VA’s files on the request.

(e) *Agreement to pay fees.* The time limit for processing the request will be tolled while any fee issue is unresolved. If the FOIA Officer anticipates that the fees for processing the request will exceed the amount that the requester has stated that he or she is willing to pay or will amount to more than \$25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify the requester. In such cases, the FOIA Officer may require the requester to agree in writing to pay the estimated fee. In addition, if the estimated fee amount exceeds \$250.00 or the requester previously has failed to pay a FOIA fee in a timely manner, the FOIA Officer may require the requester to pay the FOIA fee in advance, before beginning to process the FOIA request. If the FOIA Officer does not receive a written response within ten (10) business days of the date of the FOIA Officer’s communication with the requester, the FOIA Officer will conclude that the requester is no longer interested in pursuing the request and will

close the request. If the requester seeks a fee waiver under § 1.561, he or she nonetheless may state a willingness to pay a fee up to an identified amount in the event that the fee waiver is denied; this will allow the component to process the requester’s FOIA request while considering the fee waiver request. If the requester is required to pay a fee in advance, and pays the fee, and if VA later determines that the requester overpaid or is entitled to a full or partial fee waiver, a refund will be made. (For more information on the collection of fees under the FOIA, see § 1.561.)

(f) The requester must meet all of the requirements of this section in order for the request to be perfected.

[76 FR 51893, Aug. 19, 2011]

§ 1.555 Responsibility for responding to requests.

(a) *General.* Except as stated in paragraphs (c) and (d) of this section, the FOIA Officer of the component that first receives a request for records is responsible for either processing the request or referring it to the designated FOIA Officer for the appropriate component. Offices that are within the component responsible for processing the FOIA request shall provide the component FOIA Officer all documents responsive to the request that are in their possession as of the date the search for responsive records begins.

(b) *Authority to grant or deny requests.* Each component shall designate a FOIA Officer who is responsible for making determinations pursuant to the FOIA.

(c) *Consultations and referrals.* When a component FOIA Officer determines that the component maintains responsive records that either originated with another component or agency, or which contain information provided by, or of substantial interest to, another component or agency, then the FOIA Officer shall either:

(1) Respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved; or

(2) Refer the responsibility for responding to the request or portion of the request to the component best able to determine whether to disclose the

relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure assessment. The referring component shall document the referral and maintain a copy of the records that it refers.

(d) *Classified information.* The FOIA Officer will refer requests for records containing classified information to the component or agency that classified the information for processing.

(e) *Notice of referral.* Whenever a FOIA Officer refers all or part of a request and responsibility for processing the request to another component or agency, the FOIA Officer will notify the requester in writing of the referral and provide the requester the name and contact information of the entity to which the request has been referred, after consulting with the entity to which the request is to be referred to ensure that the request is being referred to the correct entity. If only part of the request was referred, the FOIA Officer will inform the requester and identify the referred part at the time of the referral or in the final response.

[76 FR 51894, Aug. 19, 2011]

§ 1.556 Timing of responses to requests.

(a) *General.* Components ordinarily shall respond to requests according to their order of receipt and within the time frames established under the FOIA. If a request for expedited processing is granted in accordance with paragraph (d) of this section, such request will be processed prior to requests in either of the tracks described in paragraph (b) of this section.

(b) *Multitrack processing.* (1) VA will use two processing tracks in addressing a request for records: Simple and complex, based upon the amount of work and/or time needed to process the request, including consideration of the number of pages involved.

(2) The FOIA Officer shall advise the requester of the track into which the request has been placed and of the criteria of the faster track. The FOIA Of-

ficer will provide requesters in the slower track the opportunity to limit the scope of their requests in order to qualify for processing in the faster track. The FOIA Officer may contact the requester either by telephone or in writing, whichever the FOIA Officer determines is most efficient and expeditious; telephonic communication will be documented.

(c) *Unusual circumstances.* (1) FOIA Officers may encounter “unusual circumstances,” where it is not possible to meet the statutory time limits for processing the request. In such cases, the FOIA Officer will extend the twenty (20)-business day time limit for ten (10) more business days and notify the requester in writing of the unusual circumstances and of the date by which it expects to complete processing of the request. Where the extension is for more than ten (10) business days, the FOIA Officer will provide the requester with an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period with the FOIA Officer for processing the request or a modified request. Unusual circumstances consist of the following:

(i) The need to search for and collect the requested records from field facilities or other components other than the office processing the request;

(ii) The need to search for, collect and examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation with two or more components or another agency having a substantial interest in the subject matter of a request.

(2) Where the FOIA Officer reasonably believes that certain requests from the same requester, or a group of requesters acting in concert, actually constitute the same request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, the FOIA Officer may aggregate those requests. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests will be processed out of the order in which they were received by the component responsible for processing the

FOIA request and given expedited treatment when VA determines that:

(i) The failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) There is an urgency to inform the public concerning actual or alleged Federal government activity, if the request is made by a person primarily engaged in disseminating information;

(iii) In the discretion of the FOIA Officer, the request warrants such treatment; or

(iv) There is widespread and exceptional interest in which possible questions exist about the government's integrity which affect public confidence.

(2) A requester who is seeking expedited processing must submit a statement, certified to be true to the best of the requester's knowledge and belief, providing a detailed basis for how there is a compelling need. VA may waive the requirement for certification of the statement of compelling need as a matter of administrative discretion.

(3) Within ten (10) calendar days of its receipt of a request for expedited processing, the FOIA Officer shall determine whether to grant the request and will provide the requester written notice of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall give the request priority and process it as soon as practicable. If the FOIA Officer denies the request for expedited processing, the requester may appeal the denial, which appeal shall be addressed expeditiously.

[76 FR 51894, Aug. 19, 2011]

§ 1.557 Responses to requests.

(a) *Acknowledgement of requests.* When a request for records is received by a component designated to receive requests, the component's FOIA Officer will assign a request number for future reference and send the requester a written acknowledgement of receipt.

(b) *Processing of requests.* Upon receipt of a perfected request by the appropriate component, the FOIA Officer will make a reasonable effort to search for records responsive to the request. The FOIA Officer ordinarily will include as responsive those records in its

possession and control as of the date the search for responsive records began. This includes searching for records in electronic form or format, unless to do so would interfere significantly with the agency's automated information systems. If fees for processing the request are due under § 1.561, the FOIA Officer shall inform the requester of the amount of the fee as provided in § 1.554(e) and § 1.561. When a request is granted in part, the FOIA Officer shall mark, redact, or annotate the records to be released to show the amount of information deleted and, where technically feasible, indicate the exemption at the place of redaction unless doing so would harm an interest protected by an applicable exemption. The FOIA Officer will provide the records in the form or format sought by the requester, if readily reproducible in that form or format.

(c) *Time limits for processing requests.* Ordinarily, a component will have twenty (20) business days from the date of VA's receipt of the request to make a determination whether to grant the request in its entirety, grant the request in part, or deny the request in its entirety. If the request must be referred to another component, the response time will begin on the date that the request was received by the appropriate component, but in any event not later than ten (10) business days after the referring office receives the FOIA request.

(d) *Adverse determinations of requests.* Whenever a component makes an adverse determination denying the request in any respect, the component FOIA Officer shall promptly notify the requester of the adverse determination in writing. Adverse determinations include the following: A determination to withhold a requested record in whole or in part; a determination that the requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been sought is not a record subject to the FOIA; a determination on any disputed fee matter, including the denial of a fee waiver; and a denial of a request for expedited treatment. The adverse determination notice must be

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signed by the component head or the component's FOIA Officer, and will include the following:

(1) The name and title or position of the person responsible for the adverse determination;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemptions applied by the FOIA Officer in denying the request;

(3) The amount of information withheld in number of pages or other reasonable form of estimation; an estimate is not necessary if the volume is indicated on redacted pages disclosed in part or if providing an estimate would harm an interest provided by an applicable exemption; and

(4) Notice that the requester may appeal the adverse determination and a description of the requirements for an appeal under § 1.559 of this part.

[76 FR 51894, Aug. 19, 2011]

§ 1.558 Business information.

(a) *General.* Business information received by VA from a submitter will be considered under the FOIA pursuant to this section and in accordance with the requirements set forth in § 1.557 of this part.

(b) *Designation of business information.* The submitter of business information may designate that specific records or portions of records submitted are business information, at the time of submission or within a reasonable time thereafter. The submitter must use good faith efforts in designating records that the submitter claims could be expected to cause substantial competitive harm and thus warrant protection under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). The submitter may mark the record submission as confidential or use the words "business information" or describe the specific records that contain business information. Such designation will be considered, but will not control, the FOIA Officer's decision on disclosing the material. A designation will remain in effect for a period of not more than 10 years after receipt by VA, unless the submitter provides acceptable justification for a longer period. The submitter may designate a shorter period by including an expiration date.

(c) *Notices to submitters.* (1) The FOIA Officer shall promptly notify the submitter in writing of a FOIA request seeking the submitter's business information whenever the FOIA Officer has reason to believe that the information may be protected under FOIA Exemption 4, 5 U.S.C. 552(b)(4), regarding business information. The written notice will provide the submitter an opportunity to object to disclosure of any specified portion of the records within the reasonable time period specified in the notice. The notice will either describe in detail the business information requested (*e.g.*, an entire contract identified by a unique number) or shall provide copies of the requested record(s) or record portions containing the business information. When notification of a voluminous number of submitters is required, the FOIA Officer may notify the submitters by posting or publishing the notice in a place reasonably likely to accomplish notification.

(2) If the FOIA Officer determines to release business information over the objection(s) of the submitter, the FOIA Officer will notify the submitter pursuant to paragraph (e) of this section.

(3) Whenever the FOIA Officer notifies the requester of a final decision, the FOIA Officer will also notify the submitter by separate correspondence. This notification may be contained in VA's FOIA decision.

(4) Exceptions to this notice provision are contained in paragraph (f) of this section.

(d) *Opportunity to object to disclosure.* When notification to a submitter is made pursuant to paragraph (c)(1) of this section, the submitter may object to the disclosure of any specified portion(s) of the record(s). The submitter's objection(s) must be in writing, addressed to the FOIA Officer, and must be received by the reasonable date specified in the FOIA Officer's notice in order for VA to consider such objections. If the submitter has any objection to disclosure of the record(s) requested, or any specified portion(s) thereof, the submitter must identify the specific record(s) or portion(s) of records for which objection(s) are made. The objection will specify in detail all grounds for withholding any

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record(s) or portion(s) of the record(s) upon which disclosure is opposed under any exemption of the FOIA. In particular, if the submitter is asserting that the record is protected under Exemption 4, 5 U.S.C. 552(b)(4), it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. The submitter must explain in detail how and why disclosure of the specified records would likely cause substantial competitive harm in the case of a required submission or state whether the records would customarily be disclosed by the submitter upon a request from the public in the case of a voluntary submission. The submitter's objections must be contained within a single written response; oral responses or subsequent, multiple responses generally will not be considered. If the submitter does not respond to the notice described in paragraph (c)(1) of this section within the specified time limit, the submitter will be considered to have no objection to disclosure of the information.

(e) *Consideration of objection(s) and notice of intent to disclose.* The FOIA Officer will consider all pertinent factors, including but not limited to the submitter's timely objection(s) to disclosure and the specific grounds provided by the submitter for non-disclosure in deciding whether to disclose business information. Information provided by the submitter after the specified time limit and after the component has made its disclosure decision generally will not be considered. In addition to meeting the requirements of § 1.557, when a FOIA Officer decides to disclose business information over the objection of the submitter, the FOIA Officer will provide the submitter with written notice, which includes:

(1) A statement of the reason(s) why each of the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date of not less than ten (10) days from the date of the notice (to allow the submitter time to take necessary legal action).

(f) *Exceptions to notice requirements.* The notice requirements set forth in

paragraphs (c) and (g) of this section will not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by statute, other than the FOIA, or by a regulation issued in accordance with the requirements of Executive Order 12600 or any other Executive Order.

(g) *Notice to requesters.* When VA receives a request for records that may contain confidential commercial information protected by FOIA Exemption 4, 5 U.S.C. 552(b)(4), regarding business information, the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested.

[76 FR 51895, Aug. 19, 2011]

§ 1.559 Appeals.

(a) *Informal resolution prior to appeal.* Before filing an appeal, the requester may wish to communicate with the contact person listed in the FOIA response or the component's FOIA Officer to see if the issue can be resolved informally. Informal resolution of the requester's concerns may be appropriate, for example, where additional details may be required for a search for responsive records. Communication with VA at this level does not toll the time limit for filing an administrative appeal.

(b) *How to file and address a written appeal.* The requester may appeal an adverse determination denying the request, in any respect, except for those concerning Office of Inspector General records, to the VA Office of the General Counsel (024), 810 Vermont Avenue, NW., Washington, DC 20420. Any appeals concerning Office of Inspector General records must be sent to the VA Office of Inspector General, Office of Counselor (50), 810 Vermont Avenue, NW., Washington, DC 20420. The FOIA appeal must be in writing. VA accepts

facsimiles (faxes) as written FOIA appeals. If the appeal concerns documents protected by another confidentiality statute, the appeal must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. Information regarding where to fax the FOIA appeal is available on VA's FOIA home page on the Internet. See § 1.552(a) for the pertinent Internet address. A legible return address must be included with the FOIA appeal; the requester may include other contact information as well, such as a telephone number and electronic mail (e-mail) address.

(c) *How to file an e-mail appeal.* VA will accept a FOIA appeal by e-mail. If the appeal concerns documents protected by another confidentiality statute, the email transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. In order to assure prompt processing, e-mail FOIA appeals must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA appeals; an e-mail FOIA appeal that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA appeal. Mailbox addresses designated to receive e-mail FOIA appeals are available on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(d) *Time limits and content of appeal.* The appeal to the VA OGC (024), or VA Office of Inspector General (50), as appropriate, must be postmarked no later than sixty (60) calendar days after the date of the adverse determination. The appeal must clearly identify the determination being appealed, including any assigned request number. Other information should also be included, such as the name of the FOIA officer, the address of the component, the date of the component's determination, if any, and the precise subject matter of the appeal. If appealing only a portion of the component's determination, the requester must specify which part of the determination he or she is appealing. Copies of the request and VA's response, if any, should be included with the appeal. An appeal is not perfected

until VA either receives the information identified above or the appeal is otherwise sufficiently defined. Appeals should be marked "Freedom of Information Act Appeal." The General Counsel, Deputy General Counsel, or Assistant General Counsel with jurisdiction over information disclosure matters (024) will act on behalf of the Secretary on all appeals under this section, except those pertaining to the Office of Inspector General. The designated official in the Office of Inspector General will act on all appeals pertaining to Office of Inspector General records. A determination by the General Counsel, Deputy General Counsel, or Assistant General Counsel, or designated official within the Office of Inspector General, will be the final VA action.

(e) *Responses to appeals.* The Office of the General Counsel or the Office of Inspector General, as applicable, will provide the requester a decision on the appeal in writing. The decision will include a brief statement of the reasons for the decision, including, if applicable, any FOIA exemptions applied and notice of the right to judicial review of the decision.

(f) *Court review.* Unless the requester has been deemed to have exhausted all administrative remedies, he or she must first appeal the adverse determination in accordance with this section before seeking review by a court.

[76 FR 51895, Aug. 19, 2011]

§ 1.560 Maintenance and preservation of records.

(a) Each component will preserve all correspondence pertaining to FOIA requests as well as copies of pertinent records, until disposition is authorized under title 44, U.S.C., or the National Archives and Records Administration's General Records Schedule 14.

(b) The FOIA Officer must maintain copies of records that are the subject of a pending request, appeal, or lawsuit under the FOIA. A copy of all records shall be provided promptly to the Office of the General Counsel upon request.

[76 FR 51895, Aug. 19, 2011]

§ 1.561 Fees.

(a) *General.* Components will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (e) of this section or where a waiver or reduction of fees is granted under paragraph (n) of this section. The FOIA Officer will collect all applicable fees before releasing copies of requested records to the requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States. Note that fees associated with requests from VA beneficiaries, applicants for VA benefits, or other individuals, for records retrievable by their names or individual identifiers processed under 38 U.S.C. 5701 (records associated with claims for benefits) and 5 U.S.C. 552a (the Privacy Act), will be assessed fees in accordance with the applicable regulatory fee provisions relating to VA benefits and VA Privacy Act records.

(b) *Definitions.* For purposes of assessing or determining fees, the following definitions apply:

(1) *All other requests* means a request that does not fit into any of the categories in this section.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, to include furthering those interests through litigation. To the extent possible, the FOIA Officer shall determine the use to which the requester will put the requested records. When the intended use of the records is unclear from the request or when there is reasonable cause to doubt the use to which the requester will put the records sought, the FOIA Officer will provide the requester a reasonable opportunity to submit further clarification.

(3) *Direct costs* mean expenses that VA incurs in responding to a FOIA request, including searching for and duplicating (and in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits costs) and the cost of oper-

ating duplication machinery. Direct costs do not include overhead expenses, such as the costs of space or heating and lighting of the facility where the records are kept.

(4) *Duplication* means making a copy of a record necessary to respond to a FOIA request; copies may take the form of paper, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(5) *Educational institution* means a pre-school, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, the FOIA Officer must make a determination that the request is authorized by and made under the auspices of a qualifying institution and that the records are sought to further a scholarly research goal of the institution and not the individual goal of the requester or a commercial goal of the institution.

(6) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis (as that term is defined in paragraph (b)(2) of this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not sought for a commercial use.

(7) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television

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or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase or subscription or free distribution to the general public. These examples are not all-inclusive. As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media that otherwise meet the criteria for news media shall be considered to be news-media entities. Freelance journalists may be regarded as working for a news-media entity if they can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it. A publication contract would be the clearest proof, but the requester’s publication history may also be considered. To be in this category, the requester must not be seeking the requested records for a commercial use; a records request supporting the requester’s news-dissemination function shall not be considered to be for a commercial use.

(8) *Review* means examining a record including audiovisual, electronic mail, data bases, documents and the like in response to a commercial use request to determine whether any portion of it is exempt from disclosure. Review includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure. Review time includes time spent contacting any submitter and considering or responding to any objections to disclosure made by a submitter under § 1.558(d) but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if, after review, a record is not disclosed.

(9) *Search* means the process of looking for and retrieving records that are responsive to a request, including line-by-line or page-by-page identification of responsive information within records. *Search* also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The component will conduct searches in the most effi-

cient and least expensive manner reasonably possible. The FOIA Officer may charge for time spent searching even if he or she does not locate any responsive record(s) or if any record(s) located is withheld as entirely exempt from disclosure.

(c) *Categories of requesters and fees to be charged each category.* There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. Unless a waiver or reduction of fees is granted under paragraph (n) of this section or is limited in accordance with paragraph (e) of this section, specific levels of fees will be charged for each category as follows:

(1) *Commercial use requesters.* Subject to the limitations in paragraph (e) of this section, commercial use requesters will be charged the full direct costs of the search, review, and duplication of records sought. Commercial use requesters are not entitled to 2 hours of free search time or the first 100 pages of reproduced documents free of charge.

(2) *Educational and non-commercial scientific institution requesters.* Subject to the limitations in paragraph (e) of this section, educational and non-commercial scientific institution requesters will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(3) *Representative of the news media.* Subject to the limitations in paragraph (e) of this section, representatives of the news media will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(4) *All other requesters.* Subject to the limitations in paragraph (e) of this section, a requester who does not fit into any of the categories in this section will be charged fees to recover the full, reasonable direct cost of searching for and reproducing records responsive to a request, except that the first 2 hours of search time and the first 100 pages of reproduction will be furnished without cost.

(d) *Fees to be charged.* The following fees will be used when calculating the fee owed pursuant to a request or appeal. The fees also apply to making

documents available for public inspection and copying under § 1.553 of this part.

(1) *Search.* (i) *Search fees.* When a FOIA Officer determines that a search fee applies, the fee will be based on the hourly salary of VA personnel performing the search, plus 16 percent of the salary. The type and number of personnel involved in addressing the request or appeal depends on the nature and complexity of the request and responsive records. Fees are charged in quarter hour increments.

(ii) *Computer search.* In cases where a computer search is required, the requester will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (e)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (e)(4) of this section) will be entitled to the cost of 2 hours of employee search time without charge. When a computer search is required, VA will combine the hourly cost of operating the computer with the employee's salary, plus 16 percent of the salary. When the cost of the search (including the employee time, to include the cost of developing a search methodology, and the cost of the computer to process a request) equals the dollar amount of 2 hours of the salary of the employee performing the search, VA will begin to assess charges for a computer search.

(2) *Duplication.* When a duplication fee applies, the FOIA Officer will charge a fee of 15 cents per one-sided page for a paper photocopy of a record; no more than one copy will be provided. For other forms of duplication, including electronic copies, the FOIA Officer will charge the direct costs of that duplication.

(3) *Review.* When review fees apply, review fees will be charged at the initial level of review only, when the component responsible for processing the request determines whether an exemption applies to a record or portion of a record. For review at the appeal level, no fee will be charged for an exemption that has already been applied and is determined to still apply. However, record or record portions withheld

under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable. Review fees will be charged at the same rates as those charged for search under paragraph (d)(1) of this section.

(e) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media.

(2) No search or review fee will be charged for a quarter hour period unless more than half of that period is required for search or review.

(3) No search fee (or duplication fee, when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or a representative of the news media) will be charged in accordance with this section if the agency fails to comply with the time limit under § 1.556(a), and if no unusual or exceptional circumstances apply to the processing of the request pursuant to § 1.556(c). Duplication and search fees may still be charged to commercial use requesters. Duplication fees may still be charged for "all other" requesters.

(4) Except for requesters seeking records for a commercial use, the following will be provided without charge:

(i) The first 100 pages of duplication (or the cost equivalent).

(ii) The first 2 hours of search time (or the cost equivalent).

(5) Whenever a total fee calculated under paragraph (d) of this section is less than \$25.00, no fee will be charged.

(6) VA may provide free copies of records or free services in response to an official request from other government agencies and Congressional offices and when a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise assist in the performance of VA's mission.

(f) The following table summarizes the chargeable fees for each category of requester.

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Category	Search fees	Review fees	Duplication fees
(1) Commercial Use	Yes	Yes	Yes.
(2) Educational Institution.	No	No	Yes (100 pages free).
(3) Non-Commercial Scientific Institution.	No	No	Yes (100 pages free).
(4) News Media	No	No	Yes (100 pages free).
(5) All other	Yes (2 hours free)	No	Yes (100 pages free).

(g) *Fee schedule.* If it is determined that a fee will be charged for processing the FOIA request, VA will charge the requester to search for, review, and duplicate the requested records according to his or her fee category (see § 1.561(c)) and the following fee schedule. In addition, VA will charge the requester for any special handling or services performed in connection with processing the request and/or appeal. The following fees will be used by VA; these fees apply to services performed in making documents available for public inspection and copying under § 1.553 as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is \$25.00 or less or where the requester has met the requirements for a statutory fee waiver.

(1) Search and review (review applies to commercial-use requesters only). Fees are based on the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter-hour increments.

(i) Clerical—Based on GS-6, Step 5, pay (all employees at GS-7 and below).

(ii) Professional—Based on GS-11, Step 7, pay (all employees at GS-8 through GS-12).

(iii) Managerial—Based on GS-14, Step 2, pay (all employees at GS-13 and above).

NOTE TO PARAGRAPH (G)(1): Fees for the current fiscal year are posted on VA's FOIA home page (see § 1.552(a) for the pertinent Internet address).

(2) Schedule of fees:

Activity	Fees
(i) Duplication of standard size (8½" x 11"; 8½" x 14"; 11" x 14") paper records.	\$0.15 per page.
(ii) Duplication of non-paper items (e.g., x-rays), paper records which are not of a standard size (e.g., architectural drawings/construction plans or EKG tracings), or other items which do not fall under category (1), in paragraph (c)(1) of this section.	Direct cost to VA.
(iii) Record search by manual (non-automated) methods	Basic hourly salary rate of the employee(s), plus 16 percent. *Note—If a component uses a single class of personnel for a search, e.g., all clerical or professional, an average rate for the grades of employees involved in the search may be used.
(iv) Record search using automated methods, such as by computer.	Direct cost to perform search.
(v) Record review (for Commercial Use Requesters only)	Basic hourly rate of employees performing review to determine whether to release records and to prepare them for release, plus 16 percent.
(vi) Other activities, such as: Attesting under seal or certifying that records are true copies; sending records by special methods; forwarding mail; compiling and providing special reports, drawings, specifications, statistics, lists, abstracts or other extracted information; generating computer output; providing files under court process where the federal government is not a party to, and does not have an interest in, the litigation.	Direct cost to VA.

(h) *Notification of fee estimate or other fee issues.* (1) Threshold for charging fees: VA will not charge the requester if the fee is \$25.00 or less.

(2) When a FOIA Officer determines or estimates that the fees to be charged under this section will amount to more than \$25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify the requester in writing of the actual or estimated amount of the fees, and ask the requester to provide written assurance of the payment of all fees or fees up to a designated amount, unless he or she has indicated a willingness to pay fees as high as those anticipated. Any such agreement to pay the fees shall be memorialized in writing. In addition, when the requester does not provide sufficient information upon which VA can identify a fee category (see paragraphs (c)(1) through (4) of this section), or an issue otherwise arises regarding fee assessment, the FOIA Officer may seek clarification from the requester. In either case, the timeline for responding to the request will be tolled and no further work will be done on it until the fee issue has been resolved. If VA does not receive a written response within ten (10) days after contacting the requester regarding a fee issue, it will assume that the requester no longer wishes to pursue the request and will close the file on the request.

(i) *Charges for other services.* Apart from the other provisions of this section, when special service, such as certifying that records are true copies or sending them by other than ordinary mail, is requested, and the FOIA Officer chooses to provide such a service as a matter of administrative discretion, the direct costs of providing the service ordinarily will be charged.

(j) *Charging interest.* The FOIA Officer may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer

reporting agencies, collection agencies, and offset.

(k) *Aggregating requests.* Whenever a FOIA Officer reasonably believes that a requester or group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge accordingly. FOIA Officers may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the FOIA Officer will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(1) *Advance payments.* (1) For requests other than those described in paragraphs (1)(2) and (1)(3) of this section, a FOIA Officer shall not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (*i.e.*, a prepayment before copies are sent to the requester) is not an advance payment.

(2) Where a FOIA Officer determines or estimates that a total fee to be charged under this section will be more than \$250.00, the FOIA Officer may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request.

(3) Where the requester previously has failed to pay a properly charged FOIA fee to any component within thirty (30) days of the date of billing, a FOIA Officer may require the requester to pay the full amount due, plus any applicable interest as specified in this section, and to make an advance payment of the full amount of any anticipated fee, before the FOIA Officer begins to process a new request or continues to process a pending request from that requester.

(4) When the requester has a history of prompt payment, the FOIA Officer may accept a satisfactory assurance of full payment from the requester rather than an advance payment.

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(5) In cases in which a FOIA Officer requires advance payment or payment is due under this section, the timeline for responding to the request will be tolled and further work will not be done on it until the required payment is received.

(m) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily-based fee schedule programs, the FOIA Officer will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(n) *Requirements for waiver or reduction of fees.* (1) Waiving or reducing fees. Fees for processing the request may be waived if the requester meets the criteria listed in this section. The requester must submit adequate justification for a fee waiver; without adequate justification, the request will be denied. The FOIA Officer may, at his or her discretion, communicate with the requester to request additional information, if necessary, regarding the fee waiver request. If such additional information is not received within ten (10) business days, VA will assume that the requester does not agree to pay the required fees and the file will be closed pending receipt of the requester's notice that he or she will pay the required fee. Requests for fee waivers are decided on a case-by-case basis; receipt of a fee waiver in the past does not establish entitlement to a fee waiver each time a request is submitted.

(2) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of this section where a FOIA Officer determines, based on all available evidence, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(3) To determine whether the fee waiver requirement under paragraph (n)(2)(i) of this section is met, the FOIA Officer will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by

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the disclosure to a significant extent. The FOIA Officer will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is important enough to be made public.

(4) To determine whether the fee waiver requirement under paragraph (n)(2)(ii) of this section is met, the FOIA Officer will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of “commercial use” in paragraph (b)(2) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The FOIA Officer ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a fee waiver will be granted only for those records which so qualify.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraph (n)(3) and (4) of this section, insofar as they apply to each

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request. FOIA Officers will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decision-making process, however, in deciding to grant waivers or reductions of fees.

(7) An appeal from an adverse fee determination will be processed in accordance with § 1.559.

(8) When considering a request for fee waiver, VA may require proof of identity.

[76 FR 51895, Aug. 19, 2011]

§ 1.562 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

(Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501)

[76 FR 51895, Aug. 19, 2011]

SAFEGUARDING PERSONAL INFORMATION IN DEPARTMENT OF VETERANS AFFAIRS RECORDS

NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93–579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

SOURCE: 40 FR 33944, Aug. 12, 1975, unless otherwise noted.

§ 1.575 Social security numbers in veterans’ benefits matters.

(a) Except as provided in paragraph (b) of this section, no one will be denied any right, benefit, or privilege provided by law because of refusal to disclose to the Department of Veterans Affairs a social security number.

(b) VA shall require mandatory disclosure of a claimant’s or beneficiary’s social security number (including the social security number of a dependent

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of a claimant or beneficiary) on necessary forms as prescribed by the Secretary as a condition precedent to receipt or continuation of receipt of compensation or pension payable under the provisions of chapters 11, 13 and 15 of title 38, United States Code, provided, however, that a claimant shall not be required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA may also require mandatory disclosure of an applicant's social security number as a condition for receiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97-365, sec. 4)

(c) A person requested by VA to disclose a social security number shall be told, as prescribed by § 1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that VA is requesting the social security number under the authority of title 38 U.S.C., or in the case of existing direct or vendee loan borrowers, under the authority of 26 U.S.C. 6109(a) in conjunction with sections 145 and 148 of Pub. L. 98-369, or in the case of loan applicants, under the authority of section 4 of Pub. L. 97-365. The person shall also be told that it will be used in the administration of veterans' benefits in the identification of veterans or persons claiming or receiving VA benefits and their records, that it may be used in making reports to the Internal Revenue Service where required by law, and to determine whether a loan guaranty applicant has been identified as a delinquent taxpayer by the Internal Revenue Service, and that such taxpayers may have their loan applications rejected, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both title 38 U.S.C., and the Privacy Act of 1974, (Pub. L. 93-579), or, where required

by another statute. (Pub. L. 97-365, sec. 4)

(Authority: 38 U.S.C. 5101)

[44 FR 22068, Apr. 13, 1979, as amended at 51 FR 21750, June 16, 1986; 56 FR 25044, June 3, 1991]

§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

(a) The Department of Veterans Affairs will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will:

(1) Permit an individual to determine what records pertaining to him or her will be collected, maintained, used, or disseminated by the Department of Veterans Affairs.

(2) Permit an individual to prevent records pertaining to him or her, obtained by the Department of Veterans Affairs for a particular purpose, from being used or made available for another purpose without his or her consent.

(3) Permit an individual to gain access to information pertaining to him or her in Department of Veterans Affairs records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(4) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is correct and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(5) Permit exemptions from records requirements provided in 5 U.S.C. 552a only where an important public policy need for such exemption has been determined pursuant to specific statutory authority.

(b) The Department of Veterans Affairs will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(1) To those officers and employees of the agency which maintains the record

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and who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552;

(3) For a routine use of the record compatible with the purpose for which it was collected;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(5) To a recipient who has provided the Department of Veterans Affairs with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department of Veterans Affairs specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) With respect to each system of records (*i.e.*, a group of records from which information is retrieved by the

name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) under Department of Veterans Affairs control, the Department of Veterans Affairs will (except for disclosures made under paragraph (b)(1) or (2) of this section) keep an accurate accounting as follows:

(1) For each disclosure of a record to any person or to another agency made under paragraph (b) of this section, maintain information consisting of the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting under paragraph (c)(1) of this section available to the individual named in the record at his or her request; and

(4) Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with § 1.579 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) For the purposes of §§ 1.575 through 1.584, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(e) Section 552a(i), title 5 U.S.C., provides that:

(1) Any officer or employee of the Department of Veterans Affairs, who by virtue of his or her employment or official position, has possession of, or access to, Department of Veterans Affairs records which contain individually identifiable information the disclosure of which is prohibited by 5 U.S.C. 552a or by § 1.575 series established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be

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guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of the Department of Veterans Affairs who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) (see § 1.578(d)) shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Veterans Affairs under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(f) For purposes of § 1.575 series the following definitions apply:

(1) The term *agency* includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(2) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(3) The term *maintain* includes maintain, collect, use, or disseminate.

(4) The term *record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(5) The term *system of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(6) The term *statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable indi-

vidual except as provided by section 8 of title 13 U.S.C.

(7) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) When the Department of Veterans Affairs provides by a contract for the operation by or on behalf of the Department of Veterans Affairs of a system of records to accomplish a Department of Veterans Affairs function, the Department of Veterans Affairs will, consistent with its authority, cause the requirements of 5 U.S.C. 552a (as required by subsection (m)) and those of the § 1.575 series to be applied to such system. For the purposes of 5 U.S.C. 552a(i) and § 1.576(e) any such contractor and any employee of such contractor, if such contract is agreed to on or after September 27, 1975, will be considered to be an employee of the Department of Veterans Affairs.

(h) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 U.S.C. Any such record will be considered subject to the provisions of § 1.575 series implementing 5 U.S.C. 552a and any other applicable Department of Veterans Affairs regulations. The Administrator of General Services is not authorized to disclose such a record except to the Department of Veterans Affairs, or under regulations established by the Department of Veterans Affairs which are not inconsistent with 5 U.S.C. 552a.

(i) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such

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records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of 5 U.S.C. 552a) will be published in the FEDERAL REGISTER.

(j) The Department of Veterans Affairs will also, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and is transferred to the National Archives on or after September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are exempt from the requirements of 5 U.S.C. 552a except subsections (e)(4) (A) through (G) and (e)(9) thereof.

(Authority: 38 U.S.C. 501)

[40 FR 33944, Aug. 12, 1975, as amended at 40 FR 58644, Dec. 18, 1975; 47 FR 16323, Apr. 16, 1982]

§ 1.577 Access to records.

(a) Except as otherwise provided by law or regulation any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system of records maintained by the Department of Veterans Affairs. The individual will be permitted, and upon his or her request, a person of his or her own choosing permitted to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. The Department of Veterans Affairs will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) Any individual will be notified, upon request, if any Department of Veterans Affairs system of records named contains a record pertaining to him or her. Such request must be in writing, over the signature of the requester. The request must contain a reasonable description of the Department of Veterans Affairs system or systems of records involved, as described at least annually by notice published in the FEDERAL REGISTER describing the existence and character of the Department of Veterans Affairs

system or systems of records pursuant to § 1.578(d). The request should be made to the office concerned (having jurisdiction over the system or systems of records involved) or, if not known, to the Director or Department of Veterans Affairs Officer in the nearest Department of Veterans Affairs regional office, or to the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Personal contact should normally be made during the regular duty hours of the office concerned, which are 8:00 a.m. to 4:30 p.m., Monday through Friday for Department of Veterans Affairs Central Office and most field facilities. Identification of the individual requesting the information will be required and will consist of the requester's name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum. Additional identifying data or documents may be required in specified categories as determined by operating requirements and established and publicized by the promulgation of Department of Veterans Affairs regulations. (5 U.S.C. 552a(f)(1))

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Department of Veterans Affairs will comply to the extent permitted by law and Department of Veterans Affairs regulation. (5 U.S.C. 552a(f)(2))

(d) Access to sensitive material in records, including medical and psychological records, is subject to the following special procedures. When an individual requests access to his or her records, the Department of Veterans Affairs official responsible for administering those records will review them and identify the presence of any sensitive records. Sensitive records are those that contain information which may have a serious adverse effect on the individual's mental or physical health if they are disclosed to him or her. If, on review of the records, the Department of Veterans Affairs official concludes that there are sensitive

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records involved, the official will refer the records to a Department of Veterans Affairs physician, other than a rating board physician, for further review. If the physician who reviews the records believes that disclosure of the information directly to the individual could have an adverse effect on the physical or mental health of the individual, the responsible Department of Veterans Affairs official will then advise the requesting individual: (1) That the Department of Veterans Affairs will disclose the sensitive records to a physician or other professional person selected by the requesting individual for such redisclosure as the professional person may believe is indicated, and (2) in indicated cases, that the Department of Veterans Affairs will arrange for the individual to report to a Department of Veterans Affairs facility for a discussion of his or her records with a designated Department of Veterans Affairs physician and for an explanation of what is included in the records. Following such discussion, the records should be disclosed to the individual; however, in those extraordinary cases where a careful and conscientious explanation of the information consid-

ered harmful in the record has been made by a Department of Veterans Affairs physician and where it is still the physician's professional medical opinion that physical access to the information could be physically or mentally harmful to the patient, physical access may be denied. Such a denial situation should be an unusual, very infrequent occurrence. When denial of a request for direct physical access is made, the responsible Department of Veterans Affairs official will: (1) Promptly advise the individual making the request of the denial; (2) state the reasons for the denial of the request (e.g., 5 U.S.C. 552a(f)(3), 38 U.S.C. 5701(b)(1)); and (3) advise the requester that the denial may be appealed to the General Counsel and of the procedure for such an appeal. (Authority: 5 U.S.C. 552a(f)(3))

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of civil action or proceeding. (5 U.S.C. 552a(d)(5))

(f) Fees to be charged, if any, to any individual for making copies of his or her record shall not include the cost of any search for and review of the record, and will be as follows:

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" × 11"; 8½" × 14"; 11" × 14").	\$0.15 per page after first 100 one-sided pages.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audio tapes, etc.), computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(3) Duplication of document by any type of reproduction process not covered by paragraphs (f)(1) or (2) of this section to produce a copy in a form reasonably usable by the requester.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.

NOTE. Fees for any activities other than duplication by any type of reproducing process will be assessed under the provisions of § 1.526(i) or (j) of this part of any other applicable law.)

(g) When VA benefit records, which are retrievable by name or individual identifier of a VA beneficiary or applicant for VA benefits, are requested by the individual to whom the record per-

tains, the duplication fee for one complete set of such records will be waived.

(Authority: 5 U.S.C. 552a(f)(5)) (38 U.S.C. 501)

[40 FR 33944, Aug. 12, 1975, as amended at 47 FR 16323, Apr. 16, 1982; 53 FR 10380, Mar. 31, 1988; 55 FR 21546, May 25, 1990]

§ 1.578 [Reserved]

§ 1.579 Amendment of records.

(a) Any individual may request amendment of any Department of Veterans Affairs record pertaining to him

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or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date or receipt of such request, the Department of Veterans Affairs will acknowledge in writing such receipt. The Department of Veterans Affairs will complete the review to amend or correct a record as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. The Department of Veterans Affairs will promptly either:

(1) Correct any part thereof which the individual believes is not accurate, relevant, timely or complete; or

(2) Inform the individual of the Department of Veterans Affairs refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Secretary or designee, and the name and address of such official.

(Authority: 5 U.S.C. 552a(d)(2))

(b) The administration or staff office having jurisdiction over the records involved will establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Department of Veterans Affairs of an initial adverse Department of Veterans Affairs determination, and for whatever additional means may be necessary for each individual to be able to exercise fully, his or her right under 5 U.S.C. 552a.

(1) Headquarters officials designated as responsible for the amendment of records or information located in Central Office and under their jurisdiction include, but are not limited to: Secretary; Deputy Secretary, as well as other appropriate individuals responsible for the conduct of business within the various Department of Veterans Affairs administrations and staff offices. These officials will determine and advise the requester of the identifying information required to relate the request to the appropriate record,

evaluate and grant or deny requests to amend, review initial adverse determinations upon request, and assist requesters desiring to amend or appeal initial adverse determinations or learn further of the provisions for judicial review.

(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Medical Center, Outpatient Clinic, Regional Office, Supply Depot, and Regional Counsels. These officials will function in the same manner at field facilities as that specified in the preceding subparagraph for headquarters officials in Central Office.

(Authority: 5 U.S.C. 552a(f)(4))

(c) Any individual who disagrees with the Department of Veterans Affairs refusal to amend his or her record may request a review of such refusal. The Department of Veterans Affairs will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual request such review and make a final determination unless, for good cause shown, the Secretary extends such 30-day period. If, after review, the Secretary or designee also refuses to amend the record in accordance with the request the individual will be advised of the right to file with the Department of Veterans Affairs a concise statement setting forth the reasons for his or her disagreement with the Department of Veterans Affairs refusal and also advise of the provisions for judicial review of the reviewing official's determination. (5 U.S.C. 552a(g)(1)(A))

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Department of Veterans Affairs will clearly note any part of the record which is disputed and provide copies of the statement (and, if the Department of Veterans Affairs deems it appropriate, copies of a concise statement of the Department of Veterans Affairs reasons for not making the

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amendments requested) to persons or other agencies to whom the disputed record has been disclosed. (5 U.S.C. 552a(d)(4)) (38 U.S.C. 501)

[47 FR 16324, Apr. 16, 1982]

§ 1.580 Administrative review.

(a) Upon denial or a request under 38 CFR 1.577 or 1.579, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the Department of Veterans Affairs regulations upon which the denial is based, and advise that the denial may be appealed to the General Counsel.

(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

(Authority: 38 U.S.C. 501)

[40 FR 33944, Aug. 12, 1975, as amended at 47 FR 16324, Apr. 16, 1982; 55 FR 21546, May 25, 1990]

§ 1.581 [Reserved]

§ 1.582 Exemptions.

(a) Certain systems of records maintained by the Department of Veterans Affairs are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k) of 5 U.S.C. 552a.

(b) *Exemption of Inspector General Systems of Records.* The Department of Veterans Affairs provides limited access to Inspector General Systems of Records as indicated.

(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G), (H) and (I), (e)(5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:

(i) Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA and Federal Laws, Regulations, Programs, etc.—VA (11 VA51); and

(ii) Inspector General Complaint Center Records—VA (66VA53).

(2) These exemptions apply to the extent that information in those systems

is subject to exemptions pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(3) For the reasons set forth, the systems of records listed under paragraph (b)(1) of this section are exempted under sections 552a (j)(2) and (k)(2) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects to the existence of the investigation and identify that such persons are subject of that investigation. Since release of such information to subjects would provide them with significant information concerning the nature of the investigation, it could result in the altering or destruction of derivative evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) 5 U.S.C. 552a(c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the amendment of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these

sources, and disclose investigative techniques and procedures.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in paragraph (b)(3)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. These systems of records are exempt from the foregoing provisions because:

(A) It is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his/her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the

greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

(A) The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary;

(B) The purposes for which the information is intended to be used;

(C) The routine uses which may be made of the information; and

(D) The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(I) The disclosure to the subject of the purposes of the investigation as stated in paragraph (b)(3)(vi)(B) of this paragraph would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(2) If the complainant or the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of the authority under which the information is being requested. This could conceivably jeopardize undercover agents' identities and impair their safety, as well as impair the successful conclusion of the investigation.

(3) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines *maintain* to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not always possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(c) *Exemption of Loan Guaranty Service, Veterans Benefits Administration,*

Systems of Records. The Department of Veterans Affairs provides limited access to Loan Guaranty Service, Veterans Benefits Administration, systems of records as indicated:

(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1) and (e)(4) (G), (H) and (I) and (f):

(i) Loan Guaranty Fee Personnel and Program Participant Records—VA (17VA26); and

(ii) Loan Guaranty Home Condominium and Mobile Home Loan Applicant Records and Paraplegic Grant Application Records—VA (55VA26).

(2) These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(3) For the reasons set forth, the systems of records listed under paragraph (c)(1) of this section are exempted under 5 U.S.C. 552a(k)(2) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses and other activities that could impede or compromise the investigation.

(ii) 5 U.S.C. 552a(d), (e)(4) (G) and (H) and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system

is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated above, this exemption is still being cited in the event an individual wanted to know a specific source of information.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In interviewing persons or obtaining other forms of evidence during an investigation, information may be sup-

plied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated.

(4) The following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f): Loan Guaranty Fee Personnel and Program Participant Records—VA (17 VA 26).

(5) This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(6) For the reasons set forth, the system of records listed in paragraph (c)(4) of this section is exempt under 5 U.S.C. 552a(k)(5) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of background suitability investigations to the existence of the investigation and reveal that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in revealing the identity of a confidential source.

(ii) 5 U.S.C. 552a(d), (e)(4) (G) and (H) and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such an individual or to grant access to an investigative file would disclose the

identity of confidential sources and reveal confidential information supplied by these sources.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose sufficient information to disclose the identity of a confidential source and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct background suitability investigations.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:

(A) It is not possible to detect relevance and necessity of specific information from a confidential source in the early stages of an investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established regarding suitability for VA approval as a fee appraiser or compliance inspector.

(C) In interviewing persons or obtaining other forms of evidence during an investigation for suitability for VA approval, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated and disclosure might jeopardize the identity of a confidential source.

(d) *Exemption of Police and Security Records.* VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records—VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of

1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records—VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources of these records in this system. However, for the reason stated in paragraph (d)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) These records contained in the Police and Security Records—VA (103VA076B) are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Office of Security and Law Enforcement may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Security and Law Enforcement should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these records in the Police and Security

Records—VA (103VA07B) from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines “maintain” to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(Authority: 5 U.S.C. 552a (j) and (k); 38 U.S.C. 501)

[48 FR 29847, June 29, 1983, as amended at 68 FR 35298, June 13, 2003]

Department of Veterans Affairs

§ 1.601

§§ 1.583–1.584 [Reserved]

INVENTIONS BY EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS

AUTHORITY: Sections 1.650 to 1.666 issued under sect. 1, 66 Stat. 811, 72 Stat. 1114; 35 U.S.C. 266; 15 U.S.C. 3710a; 38 U.S.C. 501; E.O. 10096, E.O. 10930, 15 FR 389; 3 CFR 1949–1953 Comp.

EXPANDED REMOTE ACCESS TO COMPUT- ERIZED VETERANS CLAIMS RECORDS BY ACCREDITED REPRESENTATIVES

§ 1.600 Purpose.

(a) Sections 1.600 through 1.603 establish policy, assign responsibilities and prescribe procedures with respect to:

(1) When, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated Veterans Benefits Administration (VBA) claims records of those claimants whom they represent;

(2) The exercise of authorized access by claimants' representatives; and

(3) The bases and procedures for disqualification of a representative for violating any of the requirements for access.

(b) VBA will grant access to its automated claimants' claims records from locations outside Regional Offices under the following conditions. Access will be provided:

(1) Only to individuals and organizations granted access to automated claimants' records under §§ 1.600 through 1.603;

(2) Only to the claims records of VA claimants whom the organization or individual represents as reflected in the claims file;

(3) Solely for the purpose of the representative assisting the individual claimant whose records are accessed in a claim for benefits administered by VA; and

(4) On a read-only basis. Individuals authorized access to VBA automated claims records under §§ 1.600 through 1.603 will not be permitted to modify the data.

(c)(1) Access will be authorized only to the inquiry commands of the Benefits Delivery Network which provide access to the following categories of data:

(i) Beneficiary identification data such as name, social security number, sex, date of birth, service number and related service data; and

(ii) Claims history and processing data such as folder location, claim status, claim establishment date, claim processing history, award data, rating data, including service-connected medical conditions, income data, dependency data, deduction data, payment data, educational facility and program data (except chapter 32 benefits), and education program contribution and delimiting data (except chapter 32 benefits).

(2) Access to this information will currently be through the inquiry commands of BINC (BIRLS (Beneficiaries Identification and Records Location Subsystem) Inquiry), SINC (Status Inquiry), MINC (Master Record Inquiry), PINC (Pending Issue Inquiry) and TINC (Payment History Inquiry). The identifying information received from BIRLS to representative inquiries will be limited to file number, veteran's name, date of death, folder location and transfer date of folder, insurance number, insurance type, insurance lapse date and insurance folder jurisdiction.

(d) Sections 1.600 through 14.603 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States; or

(2) Create, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

[59 FR 47084, Sept. 14, 1994. Redesignated and amended at 73 FR 29870, 29879, May 22, 2008]

§ 1.601 Qualifications for access.

(a) An applicant for read-only access to VBA automated claims records from a location other than a VA Regional Office must be:

(1) An organization, representative, attorney or agent approved or accredited by VA under §§ 14.626 through 14.635; or

(2) An attorney of record for a claimant in proceedings before the Court of Veterans Appeals or subsequent proceedings who requests access to the claimant's automated claims records as part of the representation of the claimant.

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(b) The hardware, modem and software utilized to obtain access, as well as their location, must be approved in advance by VBA.

(c) Each individual and organization approved for access must sign and return a notice provided by the Regional Office Director (or the Regional Office Director's designee) of the Regional Office of jurisdiction for the claim. The notice will specify the applicable operational and security requirements for access and an acknowledgment that the breach of any of these requirements is grounds for disqualification from access.

[59 FR 47084, Sept. 14, 1994. Redesignated at 73 FR 29870, May 22, 2008]

§ 1.602 Utilization of access.

(a) Once an individual or organization has been issued the necessary passwords to obtain read-only access to the automated claims records of individuals represented, access will be exercised in accordance with the following requirements:

(1) The individual or organization will obtain access only from equipment and software approved in advance by the Regional Office from the location where the individual or organization primarily conducts its representation activities which also has been approved in advance;

(2) The individual will use only his or her assigned password to obtain access;

(3) The individual will not reveal his or her password to anyone else, or allow anyone else to use his or her password;

(4) The individual will access only the VBA automated claims records of VA claimants who are represented by the person obtaining access or by the organization employing the person obtaining access;

(5) The individual will access a claimant's automated claims record solely for the purpose of representing that claimant in a claim for benefits administered by VA;

(6) Upon receipt of the password, the individual will destroy the hard copy; no written or printed record containing the password will be retained; and

(7) The individual and organization will comply with all security requirements VBA deems necessary to ensure

the integrity and confidentiality of the data and VBA's automated computer systems.

(b) An organization granted access shall ensure that all employees provided access in accordance with these regulations will receive regular, adequate training on proper security, including the items listed in § 1.603(a). Where an individual such as an attorney or registered agent is granted access, he or she will regularly review the security requirements for the system as set forth in these regulations and in any additional materials provided by VBA.

(c) VBA may, at any time without notice:

(1) Inspect the computer hardware and software utilized to obtain access and their location;

(2) Review the security practices and training of any individual or organization granted access under these regulations; and

(3) Monitor an individual's or organization's access activities. By applying for, and exercising, the access privileges under §§ 1.600 through 1.603, the applicant expressly consents to VBA monitoring the access activities of the applicant at any time.

[59 FR 47084, Sept. 14, 1994. Redesignated and amended at 73 FR 29870, 29879, May 22, 2008]

§ 1.603 Disqualification.

(a) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges to a particular claimant's records because the individual or organization no longer represents the claimant, and, therefore, the beneficiary's consent is no longer in effect. The individual or organization is no longer entitled to access as a matter of law under the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7332. Under these circumstances, the individual or organization is not entitled to any hearing or to present any evidence in opposition to the revocation.

(b) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges either to an individual claimant's records or to all

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claimants' records in the VBA automated claims benefits systems if the individual or organization:

(1) Violates any of the provisions of §§ 1.600 through 1.603;

(2) Accesses or attempts to access data for a purpose other than representation of an individual veteran;

(3) Accesses or attempts to access data other than the data specified in these regulations;

(4) Accesses or attempts to access data on a VA beneficiary who is not represented either by the individual who obtains access or by the organization employing the individual who obtains access;

(5) Utilizes unapproved computer hardware or software to obtain or attempt to obtain access to VBA computer systems;

(6) Modifies or attempts to modify data in the VBA computer systems.

(c) If VBA is considering revoking an individual's access under § 1.603(b), and that individual works for an organization, the Regional Office of jurisdiction will notify the organization of the pendency of the action.

(d) After an individual's access privileges are revoked, if the conduct which resulted in revocation was such that it merits reporting to an appropriate governmental licensing organization such as a State bar, the VBA Regional Office of jurisdiction will immediately inform the licensing organization in writing of the fact that the individual's access privileges were revoked and the reasons why.

(e) The VBA Regional Office of jurisdiction may temporarily suspend access privileges prior to any determination on the merits of the proposed revocation where the Regional Office Director or the Director's designee determines that such immediate suspension is necessary in order to protect the integrity of the system or confidentiality of the data in the system from a reasonably foreseeable compromise. However, in such case, the Regional Office shall offer the individual or organization an opportunity to respond to the charges immediately after the temporary suspension.

[59 FR 47084, Sept. 14, 1994. Redesignated and amended at 73 FR 29870, 29879, May 22, 2008]

INVENTIONS BY EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS

AUTHORITY: Sections 1.650 to 1.666 issued under sect. 1, 66 Stat. 811, 72 Stat. 1114; 35 U.S.C. 266; 15 U.S.C. 3710a; 38 U.S.C. 501; E.O. 10096, E.O. 10930, 15 FR 389; 3 CFR 1949-1953 Comp.

§ 1.650 Purpose.

The purpose of these regulations is to prescribe the procedure to be followed in determining and protecting the respective rights of the United States Government and of Department of Veterans Affairs employees who make inventions.

[21 FR 10377, Dec. 28, 1956, as amended at 61 FR 29658, June 12, 1996]

§ 1.651 Definitions.

The terms as used in the regulations concerning inventions by employees of the Department of Veterans Affairs are defined as follows:

(a) The term *invention* includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(b) The term *employee* or *Government employee* means any officer or employee, civilian or military, of the Department of Veterans Affairs. Part-time, without compensation (WOC) employees and part-time consultants are included.

(c) The term *Secretary of Commerce* means the Under Secretary of Commerce for Technology.

[21 FR 10377, Dec. 28, 1956, as amended at 31 FR 5291, Apr. 2, 1966; 61 FR 29658, June 12, 1996]

§ 1.652 Criteria for determining rights to employee inventions.

(a) The criteria to be applied in determining the respective rights of the Government and of the employee-inventor in and to any invention subject to these provisions shall be in accordance with the Uniform Patent Policy regulations found at 37 CFR 501.6 and 501.7.

(b) Ownership in and to inventions arising under Cooperative Research and Development Agreements

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(CRADAs) pursuant to 15 USC 3710a shall be governed by the provisions of the pertinent CRADA, as authorized by the Federal Technology Transfer Act.

(Authority: 15 U.S.C. 3710a; 37 CFR part 501)
[61 FR 29658, June 12, 1996]

§ 1.653 Delegation of authority.

The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, Deputy General Counsel or the Assistant General Counsel for Professional Staff Group IV, in accordance with 37 CFR part 500.

[62 FR 14822, Mar. 28, 1997]

§ 1.654 Patenting of inventions.

Any invention owned by the Government under the criteria as set forth in 37 CFR 501.6 should be protected by an application for a domestic patent and other necessary documents executed by the employee inventor prepared by or through the General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV, unless some other agency has primary interest or it is decided to dedicate the invention to the public. Such dedication requires approval of the Secretary of Commerce. Applications on behalf of the Government for foreign patents may be made if determined to be in the public interest. The payment of necessary expenses in connection with any application filed or patent obtained under this section by the Department of Veterans Affairs is authorized.

[31 FR 5291, Apr. 2, 1966, as amended at 54 FR 26027, June 21, 1989; 61 FR 29658, June 12, 1996; 62 FR 14822, Mar. 28, 1997]

§ 1.655 Government license in invention of employee.

If an invention is made by an employee and it is determined that the employee inventor is entitled to full

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ownership under 37 CFR 501.6, subject to a nonexclusive, irrevocable, royalty-free license in the Government with power to grant sublicenses for all Governmental purposes, it shall be the duty of the employee inventor to notify the Office of General Counsel of the status of the patent application, including the patent application number, so that the Department may protect the interests reserved to the Government under 37 CFR 501.6.

[61 FR 29658, June 12, 1996]

§ 1.656 Information to be submitted by inventor.

(a) In the case of an invention or believed invention, the inventor will prepare a statement for submission to his or her immediate superior. It will be submitted regardless of where the ownership is believed to exist. The statement will consist of two parts:

(1) One part of the statement will be a disclosure of the invention sufficient to permit the preparation of a patent applicant. It shall consist of a description, including where applicable, of the parts or components of the invention as shown on the drawings or blueprints, accompanied further by a description of the construction and operation of the invention. Photographs of the invention may be included. The inventor should state pertinent prior art known to him or her, and set forth in detail as clearly as possible the respects which his or her invention differs.

(2) The other part of the statement will set forth the circumstances attending the making of the invention. It will include the full name and address of the inventor; the grade and title of his or her position; whether full time or part time; his or her duties at the time the invention was made; the facts pertinent to a determination whether the invention bore a direct relation to or was made in consequence of such official duties; whether there was, and if so, the terms of any special agreement or understanding with respect to use or manufacture of his or her invention; date of the invention; when and where it was conceived, constructed and tested; whether it was made entirely during working hours; whether, and to what extent there was a contribution

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by the Government of any of the following: Facilities; equipment; materials or supplies; funds; information; time or services of other Government employees on duty. When the invention is disclosed through publication, or in consultation with a manufacturer or attorney, simultaneous notification of the publication shall be given to the Office of General Counsel. A copy of the article will accompany the notification.

(b) The inventor's immediate superior shall promptly review the statement of the employee inventor for completeness and accuracy, and shall certify that the employee's statement of circumstances attending the invention is or is not correct, giving reasons if pertinent. The file should then be submitted through the facility head (or administration heads or top staff officials in the case of Central Office employees) to the General Counsel together with any comments or recommendations.

[61 FR 29658, June 12, 1996]

§ 1.657 Determination of rights.

The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV will make a determination of rights subject to review where required by the Secretary of Commerce. The determination will be in accordance with 37 CFR 501.7.

[61 FR 29658, June 12, 1996, as amended at 62 FR 14822, Mar. 28, 1997]

§ 1.658 Right of appeal.

In accordance with 37 CFR 501.8, the employee has a right of appeal to the Secretary of Commerce within 30 days of receipt of the Department's determination of ownership rights. The decision reached by the Secretary of Commerce will be communicated to the employee.

[61 FR 29658, June 12, 1996]

§ 1.659 Relationship to incentive awards program.

Procedures set out in the regulations concerning inventions by employees of the Department of Veterans Affairs are not affected by the submission or proposed submission of an employee sug-

gestion or idea on an item which may be patentable. Consideration of an item for a determination of ownership rights and also for an incentive award will proceed simultaneously, usually on separate correspondence. An employee suggestion or copies and extracts of the file may be forwarded to the General Counsel by the reviewing or awarding authority, or by the facility head, for an ownership determination where the employee idea or suggestion involves an invention. The employee shall be directed to submit a disclosure of invention in accordance with these regulations if such has not been previously submitted.

[31 FR 5291, Apr. 2, 1966, as amended at 61 FR 29659, June 12, 1996]

§ 1.660 Expeditious handling.

No patent may be granted where the invention has been in public use or publicly disclosed for more than one year before filing of a patent application. Hence, submissions involving inventions should be made as promptly as possible in order to avoid delay which might jeopardize title to the invention or impair the rights of the inventor or the Government.

[61 FR 29659, June 12, 1996]

§ 1.661 Information to be kept confidential.

All information pertaining to inventions and pending patent applications is confidential, and employees having access to such information are forbidden to disclose or reveal the same except as required in the performance of their official duties.

[21 FR 10378, Dec. 28, 1956. Redesignated at 61 FR 29659, June 12, 1996]

§ 1.662 Provisions of regulations made a condition of employment.

The provisions of the regulations concerning inventions by employees of the Department of Veterans Affairs shall be a condition of employment of all employees.

[21 FR 10378, Dec. 28, 1956. Redesignated at 61 FR 29659, June 12, 1996]

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§ 1.663 Licensing of Government-owned inventions.

(a) The licensing of Government-owned inventions under VA control and custody will be conducted pursuant to the regulations on the licensing of Government-owned inventions contained in 37 CFR part 404, and 15 U.S.C. 3710a, as appropriate.

(b) Any person whose application for a license in an invention under VA control and custody has been denied; whose license in such an invention has been modified or terminated, in whole or in part; or who timely filed a written objection in response to a proposal to grant an exclusive or partially exclusive license in an invention under VA control or custody, may, if damaged, appeal any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license to the Secretary of Veterans Affairs. Such appeal shall be in writing; shall set forth with specificity the basis of the appeal; and shall be postmarked not later than 60 days after the action being appealed. Upon request of the appellant, such appeal may be considered by one to three persons appointed on a case-by-case basis by the Secretary of Veterans Affairs. Such a request will be granted only if it accompanies the written appeal. Appellant may appear and be represented by counsel before such a panel, which will sit in Washington, DC. If the appeal challenges a decision to grant an exclusive or partially exclusive license in an invention under VA control or custody, the licensee shall be furnished a copy of the appeal, shall be given the opportunity to respond in writing, may appear and be represented by counsel at any hearing requested by appellant, and may request a hearing if appellant has not, under the same terms and conditions, at which the appellant may also appear and be represented by counsel.

[61 FR 29659, June 12, 1996]

§§ 1.664–1.666 [Reserved]

ADMINISTRATIVE CONTROL OF FUNDS

SOURCE: 48 FR 30622, July 5, 1983, unless otherwise noted.

§ 1.670 Purpose.

The following regulations establish a system of administrative controls for all appropriations and funds available to the Department of Veterans Affairs to accomplish the following purposes:

(a) Establish an administrative subdivision of controls to restrict obligations and expenditures against each appropriation or fund to the amount of the apportionment or the reapportionment; and

(b) Fix responsibility for the control of appropriations or funds to high level officials who bear the responsibility for apportionment or reapportionment control.

(Authority: 31 U.S.C. 1514)

§ 1.671 Definitions.

For the purpose of §§ 1.670 through 1.673, the following definitions apply:

(a) *Administrative subdivision of funds.* An administrative subdivision of funds is any administrative subdivision of an appropriation or fund which makes funds available in a specified amount for the purpose of controlling apportionments or reapportionments.

(b) *Allotment.* An allotment is an authorization by the Director, Office of Budget and Finance, to department and staff office heads (allottees) to incur obligations within specified amounts, during a specified period, pursuant to an Office of Management and Budget apportionment or reapportionment action. The creation of an obligation in excess of an allotment is a violation of the administrative subdivision of funds.

(c) *Allowance.* An allowance is a subdivision below the allotment level, and is a guideline which may be issued by department or staff office heads (allottees) to facility directors and other officials, showing the expenditure pattern or operating budget they will be expected to follow in light of the program activities contemplated by the overall VA budget or plan of expenditure. The creation of an obligation in excess of an allowance is not a violation of the administrative subdivision of funds.

(Authority: 31 U.S.C. 1514)

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§ 1.672 Responsibilities.

(a) The issuance of an allotment to the administration and staff office heads (allottees) is required and is the responsibility of the Director, Office of Budget and Finance. The sum of such allotments shall not be in excess of the amount indicated in the apportionment or reapportionment document.

(b) The issuance of an allowance is discretionary with department or staff office heads (allottees), as an allowance is merely a management device which allottees may utilize in carrying out their responsibilities. Allottees are responsible for keeping obligations within the amounts of their allotments, whether allowances are issued or not.

(c) The Director, Office of Budget and Finance, is responsible for requesting apportionments and reapportionments from the Office of Management and Budget. Administration and staff heads shall promptly request that an appropriation or fund be reapportioned if feasible whenever it appears that obligations may exceed the level of the apportionment.

(Authority: 31 U.S.C. 1514)

§ 1.673 Responsibility for violations of the administrative subdivision of funds.

(a) In the event an allotment or an apportionment is exceeded except in the circumstances described in paragraph (b) of this section, the following factors will be considered in determining which official, or officials, are responsible for the violation.

(1) Knowledge of circumstances which could lead to an allotment or apportionment being exceeded;

(2) Whether the official had received explicit instructions to continue or cease incurring obligations;

(3) Whether any action was taken in contravention of or with disregard for, instructions to monitor obligations incurred;

(4) Whether the official had the authority to curtail obligations by directing a change in the manner of operations of the department or staff office; or

(5) Any other facts which tend to fix the responsibility for the obligations

which resulted in the allotment or apportionment being exceeded.

(b) In the event that the sum of the allotments made in a particular fiscal year exceeds the amount apportioned by the Office of Management and Budget, and the apportionment is subsequently exceeded because of this action, the official who made the excess allotments will be the official responsible for the violation.

(Authority: 31 U.S.C. 1514)

USE OF OFFICIAL MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

SOURCE: 52 FR 10889, Apr. 6, 1987, unless otherwise noted.

§ 1.700 Purpose.

Sections 1.700 through 1.705 of this title provide a Missing Children Official Mail Program in the Department of Veterans Affairs.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)
[60 FR 48387, Sept. 19, 1995]

§ 1.701 Contact person for missing children official mail program.

The Department of Veterans Affairs contact person for the Missing Children Official Mail Program is: Mrs. Roslynd R. Stewart, Information Management Service (045A4), Office of Policy and Program Assistance, Office of Information Resources Management, Office of Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420-0001. Telephone: (202) 565-8949.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)
[60 FR 48388, Sept. 19, 1995]

§ 1.702 Policy.

(a) The Department of Veterans Affairs will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children information in domestic official mail and publications directed to members of the public and Department of Veterans Affairs employees.

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(b) The Department of Veterans Affairs will insert pictures and biographical information related to missing children in a variety of official mail originating at the Department of Veterans Affairs automation centers. In addition, pictures and biographical information are printed in self-mailers and other Department of Veterans Affairs publications (newsletters, bulletins, etc.).

(c) The National Center for Missing and Exploited Children (National Center) is the sole source from which the Department of Veterans Affairs will acquire the camera-ready and other photographic and biographical materials to be disseminated for use by Department of Veterans Affairs organizational units. The information is ordered and disseminated by Information Management Service.

(d) The Department of Veterans Affairs will remove all printed inserts and other materials from circulation or other use within a three-month period from the date the National Center notifies the Department of Veterans Affairs that a child whose picture and biographical information have been made available to the Department of Veterans Affairs has been recovered or that permission of the parent(s) or guardian to use the child's photograph and biographical information has been withdrawn. The National Center is responsible for immediately notifying the Department of Veterans Affairs contact person, in writing, of the need to withdraw from circulation official mail and other materials related to a particular child. Photographs which were reasonably current as of the time of the child's disappearance shall be the only acceptable form of visual medium or pictorial likeness used in official mail.

(e) The Department of Veterans Affairs will give priority to official mail that is addressed to:

(1) Members of the public that will be received in the United States, its territories and possessions; and

(2) Inter- and intra-agency publications and other media that will also be widely disseminated to Department of Veterans Affairs employees.

(f) The Department of Veterans Affairs will avoid repetitive mailings of material to the same individuals.

(g) All Department of Veterans Affairs employee suggestions and/or recommendations for additional cost-effective opportunities to use photographs and biographical data on missing children will be provided to the Department of Veterans Affairs contact person.

(h) These shall be the sole regulations for the Department of Veterans Affairs and its component organizational units.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301).

[52 FR 10889, Apr. 6, 1987, as amended at 60 FR 48388, Sept. 19, 1995]

§ 1.703 Percentage estimate.

It is the Department of Veterans Affairs objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

[60 FR 48388, Sept. 19, 1995]

§ 1.704 [Reserved]

§ 1.705 Restrictions on use of missing children information.

Missing children pictures and biographical data shall not be:

(a) Printed on official envelopes and other materials ordered and stocked in quantities that represent more than a 90-day supply.

(b) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents Sales Program or be distributed to depository libraries.

(c) Inserted in any envelope or publication the contents of which may be construed to be inappropriate for association with the missing children program.

(d) Inserted in any envelope where the insertion would increase the postage cost for the item being mailed.

(e) Placed on letter-size envelopes on the official indicia, the area designated for optical character readers (OCRs), bar code read area, and return address area in accordance with the Office of

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Juvenile Justice and Delinquency Prevention guidelines and U.S. Postal Service standards.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

[52 FR 10889, Apr. 6, 1987, as amended at 60 FR 48388, Sept. 19, 1995]

HOMELESS CLAIMANTS

§ 1.710 Homeless claimants: Delivery of benefit payments and correspondence.

(a) All correspondence and all checks for benefits payable to claimants under laws administered by the Department of Veterans Affairs shall be directed to the address specified by the claimant. The Department of Veterans Affairs will honor for this purpose any address of the claimant in care of another person or organization or in care of general delivery at a United States post office. In no event will a claim or payment of benefits be denied because the claimant provides no mailing address.

(Authority: 38 U.S.C. 5103; 5120)

(b) To ensure prompt delivery of benefit payments and correspondence, claimants who seek personal assistance from Veterans Benefits Counselors when filing their claims shall be counseled as to the importance of providing his or her current mailing address and, if no address is provided, the procedures for delivery described in paragraph (d) of this section.

(Authority: 38 U.S.C. 5103; 5120)

(c) The Department of Veterans Affairs shall prepare and distribute to organizations specially serving the needs of veterans and the homeless, including but not limited to shelters, kitchens and private outreach facilities, information encouraging such organizations to counsel individuals on the importance of providing mailing addresses to the Department of Veterans Affairs and advising them of this regulation.

(Authority: 38 U.S.C. 5103; 5120)

(d) If a claimant fails or refuses to provide a current mailing address to the Department of Veterans Affairs, all correspondence and any checks for benefits to which the claimant is entitled will be delivered to the Agent Cashier

of the regional office which adjudicated or is adjudicating the claim in the case of compensation, pension or survivors' benefits, to the Agent Cashier of the Department of Veterans Affairs facility closest to the educational institution or training establishment attended by a claimant in the case of education benefits, or to the Agent Cashier of any other Department of Veterans Affairs facility deemed by the Agency to be appropriate under the circumstances of the particular case. The claimant, within 30 days after issuance, may obtain delivery of any check or correspondence held by an Agent Cashier upon presentation of proper identification. Checks unclaimed after 30 days will be returned to the Department of the Treasury and the correspondence to the regional office or facility of jurisdiction. Thereafter, the claimant must request the reissuance of any such check or item of correspondence by written notice to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5103; 5120)

[53 FR 22654, June 17, 1988]

§§ 1.780–1.783 [Reserved]

PART-TIME CAREER EMPLOYMENT PROGRAM

SOURCE: 44 FR 55172, Sept. 25, 1979, unless otherwise noted.

§ 1.891 Purpose of program.

Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who requires a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, and assisting students who must finance their own education or vocational training. In view of this, the Department of Veterans Affairs will operate a part-time

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career employment program, consistent with the needs of its beneficiaries and its responsibilities.

(Authority: 5 U.S.C. 3401 note)

§ 1.892 Review of positions.

Positions becoming vacant, unless excepted as provided by § 1.897, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

- (a) Mission requirements.
- (b) Workload.
- (c) Employment ceilings and budgetary considerations.
- (d) Availability of qualified applicants willing to work part time.
- (e) Other criteria based on local needs and circumstances.

(Authority: 5 U.S.C. 3402)

§ 1.893 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in § 1.892 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

(Authority: 5 U.S.C. 3402)

§ 1.894 Annual goals and timetables.

An departmentwide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, but may be supplemented by field facilities.

(Authority: 5 U.S.C. 3402)

§ 1.895 Review and evaluation.

The part-time career employment program will be reviewed through regular employment reports to determine levels of part-time employment. This program will also be designated an

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item of special interest to be reviewed during personnel management reviews.

(Authority: 5 U.S.C. 3402)

[61 FR 38571, July 25, 1996]

§ 1.896 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

- (a) Federal Job Information Centers.
- (b) State Employment offices.
- (c) VA Recruiting Bulletins.

(Authority: 5 U.S.C. 3402)

§ 1.897 Exceptions.

The Secretary of Veterans Affairs, or designees, may except positions from inclusion in this program as necessary to carry out the mission of the Department.

(Authority: 5 U.S.C. 3402)

STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION OR TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL CLAIMS FOR MONEY OR PROPERTY

AUTHORITY: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, 5302, 5302A, 5314, and as noted in specific sections.

SOURCE: 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

§ 1.900 Prescription of standards.

(a) The standards contained in §§ 1.900 through 1.953 are issued pursuant to the Federal Claims Collection Standards, issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) in parts 900 through 904 of 31 CFR, as well as other debt collection authority issued by Treasury in part 285 of 31 CFR, and apply to the collection, compromise, termination, and suspension of debts owed to VA, and the referral of such debts to Treasury (or other Federal agencies designated by Treasury) for offset and collection action and to DOJ for litigation, unless otherwise stated in this part or in other statutory or regulatory authority, or by contract.

(b) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of

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uncollectible debt) are contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62191, Oct. 25, 2004]

§ 1.901 No private rights created.

Sections 1.900 through 1.953 do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of VA to comply with any of the provisions of §§1.900 through 1.953 be available to any debtor as a defense.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62191, Oct. 25, 2004]

§ 1.902 Antitrust, fraud, and tax and interagency claims.

(a) The standards in §§1.900 through 1.953 relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice (DOJ) has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in §§1.900 through 1.953 relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, VA shall promptly refer the case to DOJ. At its discretion, DOJ may return the claim to VA for further handling in accordance with the standards in §§1.900 through 1.953.

(b) Sections 1.900 through 1.953 do not apply to tax debts.

(c) Sections 1.900 through 1.953 do not apply to claims between Federal agencies.

(d) Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409-412).

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62192, Oct. 25, 2004]

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§1.900 through 1.953 precludes VA settlement, waiver, compromise, or other disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in Title 31 CFR parts 900 through 904. See, for example, the Federal Medical Care Recovery Act (42 U.S.C. 2651 *et seq.*) and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of VA generally take precedence over 31 CFR parts 900 through 904.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62192, Oct. 25, 2004]

§ 1.904 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, VA may demand the return of specific property or the performance of specific services.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62192, Oct. 25, 2004]

§ 1.905 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single debt in determining whether the debt is one of less than \$100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time

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to time prescribe for purposes of compromise, suspension, or termination of collection activity.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62192, Oct. 25, 2004]

§ 1.906 Required administrative proceedings.

(a) In applying §§1.900 through 1.953, VA is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing contained in §§1.900 through 1.953 is intended to foreclose the right of any debtor to an administrative proceeding, including appeals, waivers, and hearings provided by statute, contract, or VA regulation (see 38 U.S.C. 3720(a)(4) and 5302 and 42 U.S.C. 2651-2653).

(Authority: 38 U.S.C. 501, 3720(a)(4), 5302; 42 U.S.C. 2651 through 2653)

[69 FR 62192, Oct. 25, 2004]

§ 1.907 Definitions.

(a) The definitions and construction found in the Federal Claims Collection Standards in 31 CFR 900.2(a) through (d), and the definitions in the provisions on administrative wage garnishment in 31 CFR 285.11(c) shall apply to §§1.900 through 1.953, except as otherwise stated.

(b) As used in §§1.900 through 1.953, *referral for litigation* means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to a VA Regional Counsel for legal action.

(c) As used in §§1.900 through 1.953, *VA benefit program* means medical care, home loan, and benefits payment programs administered by VA under Title 38 of the United States Code, except as otherwise stated.

(d) As used in §§1.900 through 1.953, *Treasury* means the United States Department of the Treasury.

(Authority: 31 U.S.C. 3701, 3711; 38 U.S.C. 501, 5316)

[69 FR 62192, Oct. 25, 2004]

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STANDARDS FOR COLLECTION OF CLAIMS

AUTHORITY: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

SOURCE: 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

§ 1.910 Aggressive collection action.

(a) VA will take aggressive collection action on a timely basis, with effective follow-up, to collect all claims for money or property arising from its activities.

(b) In accordance with 31 U.S.C. 3711(g) and the procedures set forth at 31 CFR 285.12, VA shall transfer to Treasury any non-tax debt or claim that has been delinquent for a period of 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action. This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. VA may request that the Secretary of the Treasury exempt specific classes of debts.

(c) In accordance with 31 U.S.C. 3716(c)(6) and the procedures set forth in 31 CFR part 285, VA shall notify Treasury of all past due, legally enforceable non-tax debt that is over 180 days delinquent for purposes of administrative offset, including tax refund offset and federal salary offset. (Procedures for referral to Treasury for tax refund offset are found at 31 CFR 285.2 and procedures for referral to Treasury

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for federal salary offset are found at 38 CFR 1.995 and 31 CFR 285.7.)

(Authority: 31 U.S.C. 1311, 1316; 38 U.S.C. 501, 5314; 31 CFR part 285)

[69 FR 62192, Oct. 25, 2004]

§ 1.911 Collection of debts owed by reason of participation in a benefits program.

(a) *Scope.* This section applies to the collection of debts resulting from an individual's participation in a VA benefit or home loan program. It does not apply to VA's other debt collection activities. Standards for the demand for payment of all other debts owed to VA are set forth in § 1.911a. School liability debts are governed by § 21.4009 of this title.

(b) *Written demands.* When VA has determined that a debt exists by reason of an administrative decision or by operation of law, VA shall promptly demand, in writing, payment of the debt. VA shall notify the debtor of his or her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.

(c) *Rights and remedies.* Subject to limitations referred to in this paragraph, the debtor has the right to informally dispute the existence or amount of the debt, to request waiver of collection of the debt, to a hearing on the waiver request, and to appeal the Department of Veterans Affairs decision underlying the debt. These rights can be exercised separately or simultaneously. Except as provided in § 1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding.

(1) *Informal dispute.* This means that the debtor writes to the Department of Veterans Affairs and questions whether he or she owes the debt or whether the amount is accurate. The Department of Veterans Affairs will, as expeditiously as possible, review the accuracy of the debt determination. If the resolution is adverse to the debtor, he or she may also request waiver of collection as indicated in paragraphs (c)(2) and (3) of this section.

(2) *Request for waiver; hearing on request.* The debtor has the right to re-

quest waiver of collection, in accordance with § 1.963 or § 1.964, and the right to a hearing on the request. Requests for waivers must be filed in writing. A waiver request must be filed within the time limit set forth in 38 U.S.C. 5302. If waiver is granted, in whole or in part, the debtor has a right to refund of amounts already collected up to the amount waived.

(3) *Appeal.* In accordance with parts 19 and 20 of this title, the debtor may appeal the decision underlying the debt.

(d) *Notification.* The Department of Veterans Affairs shall notify the debtor in writing of the following:

(1) The exact amount of the debt;

(2) The specific reasons for the debt, in simple and concise language;

(3) The rights and remedies described in paragraph (c) of this section, including a brief explanation of the concept of, and requirements for, waiver;

(4) That collection may be made by offset from current or future VA benefit payments (see § 1.912a). In addition, the debtor shall be advised of any policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; any other remedies to enforce payment of the debt, including administrative wage garnishment, Federal salary offset, tax refund offset, and litigation; and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for administrative offset or collection.

(5) That interest and administrative costs may be assessed in accordance with § 1.915, as appropriate;

(6) That the debtor shall have the opportunity to inspect and copy records; and

(7) That the debtor shall have the opportunity to enter into a repayment agreement.

(e) *Sufficiency of notification.* Notification is sufficient when sent by ordinary mail directed to the debtor's last known address and not returned as undeliverable by postal authorities.

(f) *Further explanation.* Further explanation may be found for—

(1) Appellate rights, in parts 19 and 20 of this title;

(2) Notification of any decision affecting the payment of benefits or granting relief, in § 3.103(e);

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(3) Right to appeal a waiver decision, in § 1.958;

(4) Refund to a successful waiver applicant of money already collected, in § 1.967; and

(5) The assessment of interest and administrative costs, in § 1.915.

(Authority: 38 U.S.C. 501, 5302, 5314)

[48 FR 1055, Jan. 10, 1983; 48 FR 6336, Feb. 11, 1983. Redesignated and amended at 52 FR 42105, Nov. 3, 1987; 54 FR 34980, Aug. 23, 1989; 69 FR 62193, Oct. 25, 2004]

§ 1.911a Collection of non-benefit debts.

(a) This section is written in accordance with 31 CFR 901.2 and applies to the demand for payment of all debts, except those debts arising out of participation in a VA benefit or home loan program. Procedures for the demand for payment of VA benefit or home loan program debts are set forth in § 1.911.

(b) Written demand as described in paragraph (c) of this section shall be made promptly upon a debtor of VA in terms that inform the debtor of the consequences of failing to cooperate with VA to resolve the debt. Generally, one demand letter is sufficient, but subsequent letters may be issued. In determining the timing of the demand letter, VA should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with §§ 1.950 through 1.953. When necessary to protect VA's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under 38 CFR 1.900 through 1.953, including immediate referral for litigation.

(c) The written demand letter shall inform the debtor of:

(1) The basis for the indebtedness and any rights the debtor may have to seek review within VA, including the right to request waiver;

(2) The applicable standards for imposing any interest or other late payment charges;

(3) The date by which payment should be made to avoid interest and other late payment charges and enforced collection, which generally should not be more than 30 days from

the date that the demand letter is mailed;

(4) The name, address, and phone number of a contact person or office within the agency;

(5) The opportunity to inspect and copy VA records related to the debt; and

(6) The opportunity to make a written agreement to repay the debt.

(d) In addition to the items listed in paragraph (c) of this section, VA should include in the demand letter VA's willingness to discuss alternative methods of payment and its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies. The letter should also indicate the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, Federal salary offset, tax refund offset, administrative offset, and litigation) and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for collection.

(e) VA should respond promptly to communications from debtors and should advise debtors who dispute debts, or request waiver, to furnish available evidence to support their contentions.

(f) Prior to referring a debt for litigation, VA should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification may be given as part of a demand letter under paragraph (c) of this section or in a separate letter.

(g) When VA learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, VA should immediately seek legal advice from either VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless VA determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After VA seeks legal advice, a proof of claim should be filed in most

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cases with the bankruptcy court or the Trustee. VA should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If VA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is prohibited in most cases by the automatic stay. However, VA should seek legal advice from VA's General Counsel or Regional Counsel to determine whether payments to the debtor and payments of other agencies available for offset may be frozen by VA until relief from the automatic stay can be obtained from the bankruptcy court. VA also should seek legal advice from VA's General Counsel or Regional Counsel to determine whether recoupment is available.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62193, Oct. 25, 2004]

§ 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with the procedures set forth in 31 CFR 901.3, as well as 31 CFR part 285, VA shall collect debts by administrative offset from payments made by VA to a debtor indebted to VA. Also in accordance with 31 CFR 901.3(b), as well as 31 CFR part 285, VA shall refer past due, legally enforceable non-tax debts which are over 180 days delinquent to Treasury for collection by centralized administrative offset (further procedures are set forth in paragraph (g) of this section). This section does not pertain to offset from either VA benefit payments made under the authority of 38 U.S.C. 5314 or from current salary, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments are found in § 1.912a. Procedures for offset from current Federal salary are found in §§ 1.980 through 1.995. NOTE: VA cannot offset, or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.953 and §§ 1.980 through 1.995, any VA home loan program debt described in 38 U.S.C. 3726 unless the re-

quirements set forth in that section have been met.

(b) *Notification.* Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, VA is required to provide the debtor with written notice of:

(1) The nature and amount of the debt;

(2) VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of the debt, or to request a hearing on any of these matters;

(5) That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this section within 30 days of the date of this notice; and

(6) The opportunity to enter into a written agreement with VA to repay the debt in lieu of offset.

(c) *Deferral of offset.* (1) If the debtor, within 30 days of the date of the notification required by paragraph (b) of this section, disputes in writing the existence or amount of the debt or the amount of the scheduled offset, offset shall not commence until the dispute is reviewed and a decision is rendered by VA adverse to the debtor.

(2) If the debtor, within 30 days of the date of the required notification by VA, requests in writing the waiver of collection of the debt in accordance with § 1.963, § 1.963a, or § 1.964, offset shall not commence until VA has made an initial decision to deny the waiver request.

(3) If the debtor, within 30 days of the required notification by VA, requests in writing a hearing on the issues found in paragraphs (c)(1) and (2) of this section, offset shall not commence until a decision is rendered by VA on the issue which is the basis of the hearing.

(d) *Exceptions.* (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request

as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset (for example, if VA first learns of the debt when there is insufficient time before a final payment would be made to the debtor to allow for prior notice and opportunity for review or waiver consideration). In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible. VA shall promptly refund any money that has been collected that is ultimately found not to have been owed to the Government.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963, § 1.963a, or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(3) The procedures set forth in paragraph (b) of this section may be omitted when the debt arises under a contract that provides for notice and other procedural protections.

(4) Offset may commence without the notification required by paragraph (b) of this section when the offset is in the nature of a recoupment. As defined in 31 CFR 900.2(d), recoupment is a special method for adjusting debts arising under the same transaction or occurrence.

(e) *Hearing.* (1) After a debtor requests a hearing, VA shall notify the debtor of the form of the hearing to be provided; *i.e.*, whether the hearing will either be oral or paper. If an oral hearing is determined to be proper by the hearing official, the notice shall set forth the date, time, and location of the hearing. If the hearing is to be a paper review, the debtor shall be notified that he or she should submit his or her position and arguments in writing to the hearing official by a specified date, after which the record shall be closed. This date shall give the debtor reasonable time to submit this information.

(2) Unless otherwise required by law, an oral hearing under this paragraph is not required to be a formal evidentiary type of hearing.

(3) A debtor who requests a hearing shall be provided an oral hearing if VA determines that the matter cannot be resolved by review of documentary evidence. Whenever an issue of credibility or veracity is involved, an oral hearing will always be provided the debtor. For example, the credibility or veracity of a debtor is always an issue whenever the debtor requests a waiver of collection of the debt. Thus, a hearing held in conjunction with a waiver request will always be an oral hearing. If a determination is made to provide an oral hearing, the hearing official may offer the debtor the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official declines to offer a telephone conference call, the debtor shall be provided an oral hearing permitting the personal appearance of the debtor, his or her personal representative, and witnesses. Witnesses shall testify under oath or affirmation.

(4) In all other cases where a debtor requests a hearing, a paper hearing shall be provided. The debtor shall be provided an opportunity to submit material for the record. A paper hearing shall consist of a review of the written evidence of record by the designated hearing official.

(f) *Statutes of limitation; multiple debts.* When collecting multiple debts by administrative offset, VA shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 31 CFR 901.3(a)(4), VA may not initiate offset to collect a debt more than 10 years after VA's right to collect the debt first accrued (with certain exceptions as specified in 31 CFR 901.3(a)(4)).

(g) *Centralized administrative offset.* (1) When VA refers delinquent debts to Treasury for centralized administrative offset in accordance with 31 CFR part 285, VA must certify that:

(i) The debts are past due and legally enforceable; and

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(ii) VA has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section.

(2) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

(h) *Computer Matching and Privacy Act waiver.* In accordance with 31 U.S.C. 3716(f), the Secretary of the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section have been met. The certification of a debt in accordance with paragraph (g) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g).

(i) *Requests by creditor agencies for offset.* Unless the offset would not be in VA's best interest, or would otherwise be contrary to law, VA will comply with requests by creditor agencies to offset VA payments (except for current salary or benefit payments) made to a person indebted to the creditor agency. However, before VA may initiate offset, the creditor agency must certify in writing to VA that the debtor has been provided:

(1) Written notice of the type and amount of the debt and the intent of the creditor agency to use administrative offset to collect the debt;

(2) The opportunity to inspect and copy agency records related to the debt;

(3) The opportunity for review within the agency of the determination of the indebtedness; and

(4) The opportunity to make a written agreement to repay the debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[52 FR 42105, Nov. 3, 1987, as amended at 54 FR 34980, Aug. 23, 1989; 69 FR 62194, Oct. 25, 2004]

§ 1.912a Collection by offset—from VA benefit payments.

(a) *Authority and scope.* VA shall collect debts governed by § 1.911 of this part by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. Certain military service debts shall be collected by offset against current or future compensation or pension benefit payments to the debtor under authority of 38 U.S.C. 5301(c), as provided in paragraph (e) of this section.

(b) *Notification.* Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been notified in writing of the matters described in § 1.911(c) and (d) and paragraph (c) of this section.

(c) *Deferral of offset.* (1) If the debtor, within thirty days of the date of the notification required by paragraph (b) of this section, disputes, in writing, the existence or amount of the debt in accordance with § 1.911(c)(1), offset shall not commence until the dispute is reviewed as provided in § 1.911(c)(1) and unless the resolution is adverse to the debtor.

(2) If the debtor, within thirty days of the date of notification required by paragraph (b) of this section, requests, in writing, waiver of collection in accordance with § 1.963 or § 1.964, as applicable, offset shall not commence until the Department of Veterans Affairs has made an initial decision on waiver.

(3) If the debtor, within thirty days of the notification required by paragraph (b) of this section, requests, in writing, a hearing on the waiver request, no decision shall be made on the waiver request until after the hearing has been held.

(4) VA will pursue collection action once an adverse initial decision is reached on the debtor's request for waiver and/or the debtor's informal dispute (as described in § 1.911(c)(1)) concerning the existence or amount of the debt, even if the debtor subsequently pursues appellate relief in accordance with parts 19 and 20 of this title.

(d) *Exceptions.* Offset may commence prior to the resolution of a dispute or a

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decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911(d) shall be made at the time offset begins or as soon thereafter as possible.

(Authority: 38 U.S.C. 5314, Ch. 37)

(e) *Offset of military service debts.* (1) In accordance with 38 U.S.C. 5301(c), VA shall collect by offset from any current or future compensation or pension benefits payable to a veteran under laws administered by VA, the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of 10 U.S.C. chapter 73.

(2) Offsets of a veteran's compensation or pension benefit payments to recoup indebtedness to the military services as described in paragraph (e)(1) of this section shall only be made by VA when the military service owed the debt has:

(i) Determined the amount of the indebtedness of the veteran;

(ii) Certified to VA that due process in accordance with the procedures prescribed in 31 U.S.C. 3716 have been provided to the veteran; and

(iii) Requested collection of the total debt amount due.

(3) Offset from any compensation or pension benefits under the authority of 38 U.S.C. 5301(c) shall not exceed 15% of the net monthly compensation or pension benefit payment. The net monthly compensation or pension benefit payment is defined as the authorized monthly compensation or pension benefit payment less all current deductions.

(Authority: 38 U.S.C. 5301(c) and 5314)

[48 FR 1055, Jan. 10, 1983, as amended at 52 FR 42106, Nov. 3, 1987; 57 FR 47263, Oct. 15, 1992; 69 FR 62194, Oct. 25, 2004]

§ 1.913 Liquidation of collateral.

(a) VA should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt, if the debtor fails to pay the debt within 180 days after demand and if such action is in the best interest of

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the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor, unless such action is expressly required by statute or contract.

(b) When VA learns that a bankruptcy petition has been filed with respect to a debtor, VA should seek legal advice from VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62195, Oct. 25, 2004]

§ 1.914 Collection in installments.

(a) Whenever feasible, VA shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, VA may accept payment in regular installments. VA should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible. If VA agrees to accept payments in regular installments, VA should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments should be obtained in appropriate cases. However, VA may accept installment payments if the debtor refuses to execute a written agreement or to give security.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62195, Oct. 25, 2004]

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§ 1.915 Interest, administrative costs, and penalties.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, and subject to 38 U.S.C. 3485(e) and 5302, VA shall assess:

(1) Interest on all indebtedness to the United States arising out of participation in a VA benefit, medical care, or home loan program under authority of Title 38, U.S. Code.

(2) Interest and administrative costs of collection on such debts described in paragraph (a)(1) of this section where repayment has become delinquent (as defined in 31 CFR 900.2(b)), and

(3) Interest, administrative costs, and penalties in accordance with 31 CFR 901.9 on all debts other than those described in paragraph (a)(1) of this section.

(b) Every party entering into an agreement with the Department of Veterans Affairs for repayment of indebtedness in installments shall be advised of the interest charges to be added to the debt. All debtors being provided notice of indebtedness, including those entering into repayment agreements, shall be advised that upon the debt becoming delinquent, or in the case of repayment of already delinquent debts, interest and the administrative costs of collection will be added to the principal amount of the debt.

(c) The rate of interest charged by VA shall be based on the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and shall be adjusted annually by VA on the first day of the calendar year. Once the rate of interest has been determined for a particular debt, the rate shall remain in effect throughout the duration of repayment of that debt. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, VA may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on accrued interest and administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, interest and administrative costs that accrued but were not collected under the

defaulted agreement shall be added to the principal under the new agreement.

(d) Interest on amounts covered by this section shall accrue from the date the initial notice of the debt is mailed to the debtor. Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to accrue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 5302 of title 38 U.S.C., and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government's best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the

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Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) [Reserved]

(g) Administrative costs assessed under this section shall be the average costs of collection of similar debts, or actual collection costs as may be accurately determined in the particular case. No administrative costs of collection will be assessed under this section in any cases where the indebtedness is paid in full prior to the 30-day period specified in paragraph (e) of this section, or in any case where a repayment plan is proposed by the debtor and accepted by VA within that 30-day period, unless such repayment agreement becomes delinquent (as defined in 31 CFR 900.2(b)).

(Authority: 31 U.S.C. 3717; 38 U.S.C. 501, 5302, 5315)

[46 FR 62057, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987. Redesignated and amended at 69 FR 62195, Oct. 25, 2004]

§ 1.916 Disclosure of debt information to consumer reporting agencies (CRA).

(a) The Department of Veterans Affairs may disclose all information determined to be necessary, including the name, address, Department of Veterans Affairs file number, Social Security number, and date of birth, to consumer reporting agencies for the purpose of—

(1) Obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by VA or indebted in any other manner to VA;

(2) Obtaining a consumer report in order to assess an individual's ability to repay a debt when such individual has failed to respond to the Department's demand for repayment or when such individual has notified the Department that he/she will not repay the indebtedness; or

(3) Obtaining the location of an individual in order to conduct program evaluation studies as required by 38 U.S.C. 527 or any other law.

(b) Information disclosed by the Department of Veterans Affairs under paragraph (a) of this section to consumer reporting agencies shall neither

expressly nor implicitly indicate that an individual is indebted to the United States nor shall such information be recorded by consumer reporting agencies in a manner that reflects adversely upon the individual. Prior to disclosing this information, the Department of Veterans Affairs shall ascertain that consumer reporting agencies with which it contracts are able to comply with this requirement. The Department of Veterans Affairs shall also make reasonable efforts to insure compliance by its contractor with this requirement.

(c) Subject to the conditions set forth in paragraph (d) of this section, information concerning individuals may be disclosed to consumer reporting agencies for inclusion in consumer reports pertaining to the individual, or for the purpose of locating the individual. Disclosure of the fact of indebtedness will be made if the individual fails to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number.

(d)(1) Prior to releasing information under paragraph (c) of this section, the Department of Veterans Affairs will send a notice to the individual. This notice will inform the individual that—

(i) The Department of Veterans Affairs has determined that he or she is indebted to the Department of Veterans Affairs;

(ii) The debt is presently delinquent; and

(iii) The fact of delinquency may be reported to consumer reporting agencies after 30 days have elapsed from the date of the notice.

(2)(i) In accordance with § 1.911 and § 1.911a, VA shall notify each individual of the right to dispute the existence and amount of the debt and to request a waiver of the debt, if applicable.

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(ii) If the Department of Veterans Affairs has not previously notified the individual of the rights described in paragraph (d)(2)(i) of this section, the Department of Veterans Affairs will include this information in the notice described in paragraph (d)(1) of this section. The individual shall be afforded a minimum of 30 days from the date of the notice to respond to it before information is reported to consumer reporting agencies.

(3) The Department of Veterans Affairs will defer reporting information to a consumer reporting agency if the individual disputes the existence or amount of any debt or requests waiver of the debt within the time limits set forth in paragraph (d)(2)(ii) of this section. The Department of Veterans Affairs will review any dispute and notify the individual of its findings. If the original decision is determined to be correct, or if the individual's request for waiver is denied, the Department of Veterans Affairs may report the fact of delinquency to a consumer reporting agency. However, the individual shall be afforded 30 days from date of the notice of the agency's determination to repay the debt.

(4) Nothing in this section affects an individual's right to appeal an agency decision to the Board of Veterans Appeals. However, information concerning the debt may be disclosed while an appeal is pending before the Board of Veterans Appeals.

(5) Upon request, the Department of Veterans Affairs will notify an individual—

(i) Whether information concerning a debt has been reported to consumer reporting agencies;

(ii) Of the name and address of each consumer reporting agency to which information has been released; and

(iii) Of the specific information released.

A notice of the right to request this information will be sent with the notice described in paragraph (d)(1) of this section.

(e) Subsequent to disclosure of information to consumer reporting agencies as described in paragraph (c) of this section, the Department of Veterans Affairs shall:

(1) Notify on a monthly basis each consumer reporting agency concerned of any substantial change in the status or amount of indebtedness.

(2) Promptly verify any and all information disclosed if so requested by the consumer reporting agency concerned.

(f) In the absence of a different rule prescribed by statute, contract, or other regulation, an indebtedness is considered delinquent if not paid by the individual by the date due specified in the notice of indebtedness, unless satisfactory arrangements are made by such date.

(g) Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(h) The Privacy Act (5 U.S.C. 552a) does not apply to any contract between the Department of Veterans Affairs and a consumer reporting agency, nor does it apply to a consumer reporting agency and its employees. See 38 U.S.C. 5701(i). This paragraph does not relieve the Department of Veterans Affairs of its obligation to comply with the Privacy Act.

(i) The term "consumer reporting agency" means any person or agency which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties or to other consumer reporting agencies. The term "consumer reporting agency" shall also mean any person or agency which serves as a marketing agent under arrangements enabling third parties to obtain such information from consumer reporting agencies, or which obtain such information for the purpose of furnishing it to consumer reporting agencies.

(Authority: 31 U.S.C. 3711(e); 38 U.S.C. 501, 5701(g) and (i))

[46 FR 62058, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987. Redesignated and amended at 69 FR 62195, Oct. 25, 2004]

§ 1.917 Contracting for collection services.

(a) VA has authority to contract for collection services to recover delinquent debts, provided that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection and refer the matter for litigation shall be retained by VA;

(2) The contractor shall be subject to 38 U.S.C. 5701, and to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*

(3) The contractor shall be required to strictly account for all amounts collected;

(4) Upon returning an account to VA for subsequent referral to the Department of Justice for litigation, the contractor must agree to provide any data contained in its files relating to § 1.951.

(b) In accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law, collection service contracts may be funded in the following manner:

(1) VA may fund a collection service contract on a fixed-fee basis (*i.e.*, payment of a fixed fee determined without regard to the amount actually collected under the contract). Payment of the fee under this type of contract must be charged to available appropriations;

(2) VA may also fund a collection service contract on a contingent-fee basis (*i.e.*, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract). The fee should be based upon a percentage of the amount collected, consistent with prevailing commercial practice;

(3) VA may enter into a contract under paragraph (b)(1) of this section only if and to the extent that funding for the contract is provided for in advance by an appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute;

(4) Except as authorized under paragraphs (b)(2) and (b)(5) of this section, or unless otherwise specifically provided by law, VA shall deposit all amounts recovered under collection

service contracts for Loan Guaranty debts into the Loan Guaranty Revolving Fund, and for all other debts in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(5) For benefit overpayments recovered under collection service contract, VA, pursuant to 31 U.S.C. 3302, shall deposit:

(i) Amounts equal to the original overpayments in the appropriations account from which the overpayments were made, and

(ii) Amount of interest or administrative costs in the Treasury as miscellaneous receipts.

(c) VA shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, VA may refer debts to private collection contractors pursuant to a contract between VA and a private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. See 31 U.S.C. 3711(g), 31 CFR 285.12(e), and 38 CFR 1.910.

(d) VA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) VA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

(Authority: 31 U.S.C. 3718; 38 U.S.C. 501)

[52 FR 42107, Nov. 3, 1987. Redesignated and amended at 69 FR 62195, Oct. 25, 2004]

§ 1.918 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to compromise or collect a debt in accordance with §§ 1.900 through 1.953, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) VA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose

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such mailing addresses to other agencies and to collection agencies for collection purposes.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[52 FR 42108, Nov. 3, 1987. Redesignated and amended at 69 FR 62196, Oct. 25, 2004]

§ 1.919 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, and in accordance with 31 CFR 901.3(d), VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or FERS be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management (OPM) in accordance with such regulations prescribed by the Director of OPM. (See 5 CFR 831.1801 through 831.1808). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment. See § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, VA shall include a written certification that:

(1) The debtor owes VA a debt, including the amount of the debt;

(2) VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) VA has complied with §§ 1.911, 1.911a, 1.912, 1.912a, and 31 CFR 901.3, to the extent applicable, including any required hearing or review.

(c) Once VA decides to request administrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may

identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.

(d) If VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of VA's determination with respect to the amount and validity of the debt waiver under 5 U.S.C. 5584 or 38 U.S.C. 5302, or providing or not providing an oral hearing.

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716; 38 U.S.C. 501)

[52 FR 42108, Nov. 3, 1987. Redesignated and amended at 69 FR 62196, Oct. 25, 2004]

§ 1.920 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of collection action. Collection action may include the offsetting of the debt from any current or future payment, except salary (see paragraph (e) of this section), made by such Federal or State agency to the person indebted to VA.

(b) VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date VA's right to collect the debt first accrued.

(c) This certification will also state that VA provided the debtor with written notice of:

(1) The nature and amount of the debt;

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(2) VA's intention to pursue collection by offset procedures;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;

(5) The opportunity to enter into a written agreement with VA for the repayment of the debt; and

(6) Other applicable notices required by §§ 1.911, 1.911a, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both VA and the debtor subsequent to the notice, as well as the dates of such actions.

(e) The referral by VA of a VA debt to another agency for the purpose of salary offset shall be done in accordance with 38 CFR 1.980 through 1.995 and regulations prescribed by the Director of the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[52 FR 42108, Nov. 3, 1987. Redesignated and amended at 69 FR 62196, Oct. 25, 2004]

§ 1.921 Analysis of costs.

VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

(Authority: 31 U.S.C. 3711–3719; 38 U.S.C. 501)

[69 FR 62196, Oct. 25, 2004]

§ 1.922 Exemptions.

(a) Sections 1.900 through 1.953, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus,

contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of §§ 1.900 through 1.953 when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62196, Oct. 25, 2004]

§ 1.923 Administrative wage garnishment.

(a) In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, VA or Treasury may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to VA. VA may pursue wage garnishment independently in accordance with this section or VA or Treasury may pursue garnishment after VA refers a debt to Treasury in accordance with § 1.910 of this part and 31 CFR 285.12. For the purposes of this section, any reference to Treasury also includes any private collection agency under contract to Treasury.

(b) At least 30 days prior to the initiation of garnishment proceedings, VA or Treasury shall send a written notice, as described in 31 CFR 285.11(e), by first class mail to the debtor's last known address. This notice shall inform the debtor of:

(1) The nature and amount of the debt;

(2) The intention of VA or Treasury to initiate proceedings to collect the

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debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;

(3) An explanation of the debtor's rights, including the opportunity:

(i) To inspect and copy VA records pertaining to the debt;

(ii) To enter into a written repayment agreement with VA or Treasury under terms agreeable to VA or Treasury, and;

(iii) To a hearing in accordance with 31 CFR 285.11(f) and paragraph (c) of this section concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(3)(ii) of this section.

(c) Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies.

(1) The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity. The hearing official shall establish the time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hear-

ing shall be borne by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(2) If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record.

(3) If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph (b) of this section, then VA or Treasury shall not issue a withholding order as described in paragraph (d) of this section until the debtor is afforded the requested hearing and a decision rendered. If the debtor's written request for a hearing is not received within 15 business days following the mailing of the notice described in paragraph (b) of this section, then the hearing official shall provide a hearing to the debtor, but will not delay issuance of a withholding order as described in paragraph (d) of this section, unless the hearing official determines that the delay in filing was caused by factors beyond the debtor's control.

(4) The hearing official shall notify the debtor of:

(i) The date and time of a telephone conference hearing;

(ii) The date, time, and location of an in-person oral hearing, or;

(iii) The deadline for the submission of evidence for a written hearing.

(5) Except as provided in paragraph (c)(6) of this section, VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt, after which the debtor must show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In general, this means that the debtor must show that it is more likely than not that a debt does not exist or that the amount of the debt is incorrect. The debtor may also present evidence that terms of the repayment agreement are

unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law.

(6) If the debtor has previously contested the existence and/or amount of the debt in accordance with § 1.911(c)(1) or § 1.911a(c)(1) and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become the basis of the hearing official's decision on such matters.

(7) The hearing official shall issue a written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA or Treasury. The decision will be the final action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*). The decision shall include:

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis, and conclusions, and;
- (iii) The terms of the repayment schedule, if applicable.

(d) In accordance with 31 CFR 285.11(g) and (h), VA or Treasury shall send a Treasury-approved withholding order and certification form by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing. If a timely request for a hearing has been filed by the debtor, then VA or Treasury shall send a withholding order and certification form by first class mail to the debtor's employer within 30 days after a final decision is made to proceed with the garnishment. The employer shall complete and return the certification form as described in 31 CFR 285.11(h).

(e) After receipt of the garnishment order, the employer shall withhold the amount of garnishment as described in 31 CFR 285.11(i) from all disposable pay payable to the applicable debtor during each pay period.

(f) A debtor whose wages are subject to a wage withholding order under 31 CFR 285.11 may request a review, under the procedures set forth in 31 CFR 285.11(k), of the amount garnished. A request for review shall only be considered after garnishment has been initiated. The request must be based on ma-

terially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship that limit the debtor's ability to provide food, housing, clothing, transportation, and medical care for himself/herself and his/her dependents.

(Authority: 31 U.S.C. 3720D; 38 U.S.C. 501; 31 CFR 285.11)

[69 FR 62196, Oct. 25, 2004, as amended at 72 FR 65462, Nov. 21, 2007]

§ 1.924 Suspension or revocation of eligibility for federal loans, loan insurance, loan guarantees, licenses, permits, or privileges.

(a) In accordance with 31 U.S.C. 3720B and the procedures set forth in 31 CFR 285.13 and § 901.6, a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance unless exempted under paragraph (d) of this section or waived under paragraph (e) of this section.

(b) Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

(c) For the purposes of this section only, a debt is in a delinquent status if the debt has not been paid within 90 days of the payment due date or by the end of any grace period provided by statute, regulation, contract, or agreement. The payment due date is the date specified in the initial written demand for payment. Further guidance concerning the delinquent status of a debt may be found at 31 CFR 285.13(d).

(d) Upon the written request and recommendation of the Secretary of Veterans Affairs, the Secretary of the Treasury may grant exemptions from the provisions of this section. The standards for exemptions granted for classes of debts are set forth in 31 CFR 285.13(f).

(e)(1) VA's Chief Financial Officer or Deputy Chief Financial Officer may waive the provisions of paragraph (a) of this section only on a person-by-person basis.

(2) The Chief Financial Officer or Deputy Chief Financial Officer should balance the following factors when deciding whether to grant a waiver:

- (i) Whether the denial of the financial assistance to the person would

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tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal government; and

(ii) Whether the granting of the financial assistance to the person is contrary to the government's goal of reducing losses by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (e)(2)(i) and (e)(2)(ii) of this section, the Chief Financial Officer or Deputy Chief Financial Officer should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of the total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) A centralized record shall be retained of the number and type of waivers granted under this section.

(f) In non-bankruptcy cases, in seeking the collection of statutory penalties, forfeitures, or other similar types of claims, VA may suspend or revoke any license, permit, or other privilege granted a debtor when the debtor inexcusably or willfully fails to pay such a debt. The debtor should be advised in VA's written demand for payment of VA's ability to suspend or revoke licenses, permits, or privileges. VA may suspend or disqualify any lender, contractor, or broker who is engaged in making, guaranteeing, insuring, acquiring, or participating in loans from doing further business with VA or engaging in programs sponsored by VA if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time, or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury.

(g) In bankruptcy cases, before advising the debtor of the intention to suspend or revoke licenses, permits, or privileges, VA should seek legal advice from VA's General Counsel or Regional

Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

(Authority: 31 U.S.C. 3720B; 38 U.S.C. 501)

[69 FR 62197, Oct. 25, 2004]

§ 1.929 Reduction of debt through performance of work-study services.

(a) *Scope.* (1) Subject to the provisions of this section VA may allow an individual to reduce an indebtedness to the United States through offset of benefits to which the individual becomes entitled by performance of work-study services under 38 U.S.C. 3485 and 3537 when the debt arose by virtue of the individual's participation in a benefits program provided under any of the following:

(i) 38 U.S.C. chapter 30;

(ii) 38 U.S.C. chapter 31;

(iii) 38 U.S.C. chapter 32;

(iv) 38 U.S.C. chapter 34;

(v) 38 U.S.C. chapter 35;

(vi) 38 U.S.C. chapter 36 (other than an education loan provided under subpart F, part 21 of this title); or

(vii) 10 U.S.C. chapter 1606 (other than an indebtedness arising from a refund penalty imposed under 10 U.S.C. 16135).

(2) This section shall not apply in any case in which the individual has a pending request for waiver of the debt under §§ 1.950 through 1.970.

(Authority: 38 U.S.C. 3485(e)(1); Pub. L. 102-16)

(b) *Selection criteria.* (1) If there are more candidates for a work-study allowance than there are work-study positions available in the area in which the services are to be performed, VA will give priority to the candidates who are pursuing a program of education or rehabilitation.

(2) Only after all candidates in the area described in paragraph (b)(1) of this section either have been given work-study contracts or have withdrawn their request for contracts will VA offer contracts to those who are not pursuing a program of education or rehabilitation and who wish to reduce their indebtedness through performance of work-study services.

(3) VA shall not offer a contract to an individual who is receiving compensation from another source for the work-study services the individual wishes to perform.

(4) VA shall not offer a contract to an individual if VA determines that the debt can be collected through other means such as collection in a lump sum, collection in installments as provided in § 1.917 or compromise as provided in § 1.918.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(c) *Utilization.* The work-study services to be performed under a debt-liquidation contract will be limited as follows:

(1) If the individual is concurrently receiving educational assistance in a program administered by VA, work-study services are limited to those allowed in the educational program under which the individual is receiving benefits.

(2) If the individual is not concurrently receiving educational assistance in a program administered by VA, the individual may perform only those work-study services and activities which are or were open to those students receiving a work-study allowance while pursuing a program of education pursuant to the chapter under which the debt was incurred.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(d) *Contract to perform services.* (1) The work-study services performed to reduce indebtedness shall be performed pursuant to a contract between the individual and VA.

(2) The individual shall perform the work-study services required by the contract at the place or places designated by VA.

(3) The number of hours of services to be performed under the contract must be sufficient to enable the individual to become entitled to a sum large enough to liquidate the debt by offset.

(4) The number of weeks in the contract will not exceed the lesser of—

(i) The number of weeks of services the individual needs to perform to liquidate his or her debt; or

(ii) 52.

(5) In determining the number of hours per week and the number of

weeks under paragraphs (d)(3) and (d)(4) of this section necessary to liquidate the debt, VA will use the amount of the account receivable, including all accrued interest, administrative costs and marshal fees outstanding on the date the contract is offered to the individual and all accrued interest, administrative costs and marshal fees VA estimates will have become outstanding on the debt on the date the debt is to be liquidated.

(6) The contract will automatically terminate after the total amount of the individual's indebtedness described in paragraph (d)(5) of this section has been recouped, waived, or otherwise liquidated. An individual performing work-study services under a contract to liquidate a debt is released from the contract if the debt is liquidated by other means.

(7) The contract to perform work-study services for the purpose of liquidating indebtedness will be terminated if:

(i) The individual is liquidating his or her debt under this section while receiving either an educational assistance allowance for further pursuit of a program of education or a subsistence allowance for further pursuit of a program of rehabilitation;

(ii) The individual terminates or reduces the rate of pursuit of his or her program of education or rehabilitation; and

(iii) The termination or reduction causes an account receivable as a debt owed by the individual.

(8) VA may terminate the contract at any time the individual fails to perform the services required by the contract in a satisfactory manner.

(Authority: 38 U.S.C. 3485(e), 7104(a); Pub. L. 102–16)

(e) *Reduction of indebtedness.* (1) In return for the individual's agreement to perform hours of services totaling not more than 40 times the number of weeks in the contract, VA will reduce the eligible person's outstanding indebtedness by an amount equal to the higher of—

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the

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number of hours the individual works; or

(ii) The hourly minimum wage under comparable law of the State in which the services are performed times the number of hours the individual works.

(2) VA will reduce the individual's debt by the amount of the money earned for the performance of work-study services after the completion of each 50 hours of services (or in the case of any remaining hours required by the contract, the amount for those hours).

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(f) *Suspension of collections by offset.* Notwithstanding the provisions of § 1.912a, during the period covered by the work-study debt-liquidation contract with the individual, VA will ordinarily suspend the collection by offset of a debt described in paragraph (a)(1) of this section. However, the individual may voluntarily permit VA to collect part of the debt through offset against other benefits payable while the individual is performing work-study services. If the contract is terminated before its scheduled completion date, and the debt has not been liquidated, collection through offset against other benefits payable will resume on the date the contract terminates.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(g) *Payment for additional hours.* (1) If an individual, without fault on his or her part, performs work-study services for which payment may not be authorized, including services performed after termination of the contract, VA will pay the individual at the applicable hourly minimum wage for such services as the Director of the VA field station of jurisdiction determines were satisfactorily performed.

(2) The Director of the VA field station of jurisdiction shall determine whether the individual was without fault. In making this decision he or she shall consider all evidence of record and any additional evidence which the individual wishes to submit.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)
[62 FR 15401, Apr. 1, 1997]

STANDARDS FOR COMPROMISE OF CLAIMS

AUTHORITY: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

SOURCE: 32 FR 2614, Feb. 8, 1967, unless otherwise noted.

§ 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.936 of this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. VA may exercise such compromise authority when the amount of the debt due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice (DOJ). If VA receives an offer to compromise any debt in excess of \$100,000, VA should evaluate the compromise offer using the same factors as set forth in § 1.931 of this part. If VA believes the offer has merit, it shall refer the debt to the Civil Division or other appropriate division in DOJ using a Claims Collection Litigation Report (CCLR). The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if VA decides to reject a compromise offer.

(c) The \$100,000 limit in paragraph (b) of this section does not apply to debts that arise out of participation in a VA loan program under Chapter 37 of Title 38 of the U.S. Code. VA has unlimited authority to compromise debts arising out of participation in a Chapter 37 loan program, regardless of the amount of the debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

§ 1.931 Bases for compromise.

(a) VA may compromise a debt if it cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) VA is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning VA's ability to prove its case in court.

(b) In determining the debtor's inability to pay, VA will consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) VA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. VA should consider the applicable exemptions available to the debtor under State and Federal law in determining the ability to enforce collection. VA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning VA's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for VA's claim. In determining the risks involved in litigation, VA will consider the probable

amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) VA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, VA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle.

(f) VA generally will not accept compromises payable in installments. If, however, payment of a compromise in installments is necessary, VA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, VA will also obtain security for repayment.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, VA will obtain a current financial statement from the debtor showing the debtor's assets, liabilities, income, and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

§ 1.932 Enforcement policy.

VA may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if VA's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by VA's acceptance of the sum to be agreed upon.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

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§ 1.933 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, VA will pursue collection activity against all debtors, as appropriate. VA will not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) VA will ensure that a compromise agreement with one debtor does not release VA's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

§ 1.934 Further review of compromise offers.

If VA is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within its delegated compromise authority, it may refer the offer to VA General Counsel or Regional Counsel or to the Civil Division or other appropriate division in the Department of Justice (DOJ), using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to the agency with instructions or advice.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

§ 1.935 Consideration of tax consequences to the Government.

In negotiating a compromise, VA will consider the tax consequences to the Government. In particular, VA will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

§ 1.936 Mutual releases of the debtor and VA.

In all appropriate instances, a compromise that is accepted by VA shall be implemented by means of a mutual re-

lease, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and VA and its officials, past and present, are released and discharged from any and all claims and causes of action that the debtor may have arising from the same transaction. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against VA and its officials related to the transaction giving rise to the compromised debt.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)
[69 FR 62198, Oct. 25, 2004]

STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

AUTHORITY: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

SOURCE: 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

§ 1.940 Scope and application.

Except as otherwise provided in § 1.945:

(a) The standards set forth in §§ 1.940 through 1.944 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, VA may suspend or terminate collection under this part with respect to the debt.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If VA believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, it shall refer the

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debt to the Civil Division or other appropriate division in DOJ, using the Claims Collection Litigation Report (CCLR). The referral should specify the reasons for VA's recommendation. If, prior to referral to DOJ, VA determines that a debt is plainly erroneous or clearly without legal merit, VA may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62199, Oct. 25, 2004, as amended at 75 FR 53201, Aug. 31, 2010]

§ 1.941 Suspension of collection activity.

(a) VA may suspend collection activity on a debt when:

- (1) It cannot locate the debtor;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, VA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, and with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.911a, 1.912, and 1.912a, pending VA action on requests for administrative review of the existence or amount of the debt or a request for waiver of collection of the debt. However, collection action will be resumed once VA issues an initial decision on the administrative review or waiver request.

(d) When VA learns that a bankruptcy petition has been filed with re-

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spect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless VA can clearly establish that the automatic stay does not apply, has been lifted, or is no longer in effect. VA shall seek legal advice immediately from either the VA General Counsel or Regional Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by VA to the debtor until relief from the automatic stay is obtained.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62199, Oct. 25, 2004]

§ 1.942 Termination of collection activity.

Termination of collection activity involves a final determination. Collection activity may be terminated on cases previously suspended. The Department of Veterans Affairs may terminate collection activity and consider closing the agency file on a claim which meets any one of the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: Age and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

(b) *Inability to locate debtor.* The debtor cannot be located, no security remains to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote.

(c) *Death of debtor.* The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

(d) *Cost will exceed recovery.* The cost of further collection effort is likely to exceed the amount recoverable.

(e) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(f) *Claim cannot be substantiated by evidence.* VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

(g) *Discharge in bankruptcy.* Generally, VA shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. VA may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge.

(h) Before terminating collection activity, VA should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude VA from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[32 FR 2615, Feb. 8, 1967, as amended at 52 FR 42111, Nov. 3, 1987; 69 FR 62200, Oct. 25, 2004]

§ 1.943 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, VA may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62200, Oct. 25, 2004]

§ 1.944 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), VA shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under §§ 1.940 through 1.943 and is governed by the Internal Revenue Code (see 26 U.S.C. 6050P). When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in §§ 1.900 through 1.953. When VA discharges a debt in full or in part, further collection action is prohibited. Therefore, VA should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, VA must terminate debt collection action.

(b) Upon discharge of an indebtedness, VA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. VA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on VA's behalf.

(c) When discharging a debt, VA must request that any liens of record securing the debt be released.

(d) 31 U.S.C. 3711(i)(2) requires agencies to sell a delinquent nontax debt upon termination of collection action

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if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), VA may not discharge a debt until the requirements of § 3711(i)(2) have been met.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)
[69 FR 62200, Oct. 25, 2004]

§ 1.945 Authority to suspend or terminate collection action on certain benefit indebtedness; authority for refunds.

(a) The Secretary of Veterans Affairs (Secretary) may suspend or terminate collection action on all or any part of an indebtedness owed to VA by a member of the Armed Forces who dies while on active duty, if the Secretary determines that such suspension or termination of collection is appropriate and in the best interest of the United States.

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary, other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an *individual* is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001.

(c) For purposes of this section:

(1) *Theater of combat operations* means the geographic area of operations where the Secretary in consultation with the Secretary of Defense determines that combat occurred.

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Sec-

retary in consultation with the Secretary of Defense.

(d) The Secretary may refund amounts collected after the death of a member of the Armed Forces or veteran in accordance with this paragraph and paragraph (e) of this section.

(1) In any case where all or any part of a debt of a member of the Armed Forces, as described under paragraph (a) of this section, was collected, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been suspended or terminated under authority of 31 U.S.C. 3711(f). The member of the Armed Services must have been serving on active duty on or after September 11, 2001. In any case where all or any part of a debt of a covered member of the Armed Forces was collected, the Secretary may refund the amount collected, but only if the Secretary determines that, under the circumstances applicable with respect to the deceased member of the Armed Forces, it is appropriate to do so.

(2) In any case where all or any part of a debt of a covered member of the Armed Forces or veteran, as described under paragraph (b) of this section, was collected on or after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been terminated under authority of 38 U.S.C. 5302A. In addition, the Secretary may refund the amount only if he or she determines that the deceased individual is equitably entitled to the refund.

(e) Refunds under paragraph (d) of this section will be made to the estate of the decedent or, in its absence, to the decedent's next-of-kin in the order listed below.

(1) The decedent's spouse.

(2) The decedent's children (in equal shares).

(3) The decedent's parents (in equal shares).

(f) The authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts collected on certain indebtedness is reserved to the Secretary and will not be delegated.

(g) Requests for a determination to suspend or terminate collection action

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and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans' Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans' Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

(h) The provisions of this section concerning suspension or termination of collection actions and the refunding of moneys previously collected do not apply to any amounts owed the United States under any program carried out under 38 U.S.C. chapter 37.

(Authority: 38 U.S.C. 501, 5302A; 31 U.S.C. 3711(f)).

[75 FR 53201, Aug. 31, 2010]

REFERRALS TO GAO, DEPARTMENT OF JUSTICE, OR IRS

AUTHORITY: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

SOURCE: 52 FR 42111, 42112, Nov. 3, 1987, unless otherwise noted.

§ 1.950 Prompt referral.

(a) VA shall promptly refer debts to Department of Justice (DOJ) for litigation where aggressive collection activity has been taken in accordance with §§1.900 through 1.953, and such debts cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§1.930 through 1.936 and §§1.940 through 1.944. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and other late payment charges, shall be referred to the Civil Division or other division responsible for litigating such

debts at DOJ. Debts for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in §§1.900 through 1.953, and, in any event, well within the period for initiating timely lawsuits against the debtors. VA shall make every effort to refer delinquent debts to DOJ for litigation within 1 year of the date such debts last became delinquent. In the case of guaranteed or insured loans, VA should make every effort to refer these delinquent debts to DOJ for litigation within 1 year from the date the loan was presented to VA for payment or reinsurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. VA shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. VA should advise DOJ of the collection activities that have been utilized to date, and their result. VA shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. VA shall immediately notify DOJ of any payments credited to the debtor's account after referral of a debt under this section. DOJ shall notify VA, in a timely manner, of any payments it receives from the debtor.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62200, Oct. 25, 2004]

§ 1.951 Claims Collection Litigation Report (CCLR).

(a) Unless excepted by the Department of Justice (DOJ), VA shall complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. VA shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and

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furnish such other information as may be required in specific cases.

(b) VA shall indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim.

(c) VA shall also use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62200, Oct. 25, 2004]

§ 1.952 Preservation of evidence.

VA must take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove its claims in court. VA ordinarily should include certified copies of the documents that form the basis for the claim when referring such claims to DOJ for litigation. VA shall provide originals of such documents immediately upon request by DOJ.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62200, Oct. 25, 2004]

§ 1.953 Minimum amount of referrals to the Department of Justice.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, VA shall not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other minimum amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) shall promptly notify referring agencies if the Attorney General changes this minimum amount.

(b) VA shall not refer claims of less than the minimum amount prescribed by the Attorney General unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with VA's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to VA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Fed-

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eral law and the judicial remedies available to the Government.

(c) VA should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys, in DOJ, prior to referring claims valued at less than the minimum amount.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501)

[69 FR 62200, Oct. 25, 2004]

§ 1.955 Regional office Committees on Waivers and Compromises.

(a) *Delegation of authority and establishment.* (1) Sections 1.955 *et seq.* are issued to implement the authority for waiver consideration found in 38 U.S.C. 5302 and 5 U.S.C. 5584 and the compromise authority found 38 U.S.C. 3720(a) and 31 U.S.C. 3711. The duties, delegations of authority, and all actions required of the Committees on Waivers and Compromises are to be accomplished under the direction of, and authority vested in, the Director of the regional office. Delegations of authority and limitations for waiver actions under 5 U.S.C. 5584 are set forth in § 1.963a of this part.

(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 1.956 and 1.957. The term *regional office*, as used in § 1.955 *et seq.*, includes VA Medical and Regional Office Centers and VA Centers where such are established.

(b) *Selection.* The Director shall designate the employees to serve as Chairperson, members, and alternates. Except upon specific authorization of the Under Secretary for Benefits, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(c) *Control and staff.* The administrative control of each Committee on Waivers and Compromises is the responsibility of the station's Fiscal Officer. However, the station Director has the authority to reassign the administrative control function to another station activity, rather than the Fiscal

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Officer, whenever the Director determines that such reassignment is appropriate. The quality control of the professional and clerical staff of the Committee is the responsibility of the Chairperson.

(d) *Overall control.* The Assistant Secretary for Management is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.

(e) *Committee composition.* (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt claim areas (*i.e.*, compensation, pension, education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is \$20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than \$20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagree-

ment with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of collection of a debt of \$20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than \$20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.

(Authority: 5 U.S.C. 5584, 31 U.S.C. 3711, 38 U.S.C. 3720(a), 5302)

[44 FR 59905, Oct. 17, 1979, as amended at 48 FR 1056, Jan. 10, 1983; 54 FR 40871, Oct. 4, 1989; 57 FR 47264, Oct. 15, 1992; 60 FR 53276, Oct. 13, 1995; 69 FR 62201, Oct. 25, 2004]

§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under § 2.6(e)(4)(i) of this chapter where applicable, to consider and determine as limited in §§ 1.955 *et seq.*, settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Veterans Benefits Administration:

(i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.

(ii) Debts arising out of the loan program under 38 U.S.C. ch. 37 after liquidation of security, if any.

(iii) Such other debts as may be specifically designated by the Under Secretary for Benefits.

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(2) Arising out of operations of the Veterans Health Services and Research Administration:

(i) Debts resulting from services furnished in error (§17.101(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§17.101(b) of this chapter).

(iii) Other claims arising in connection with transactions of the Veterans Health Administration (§17.103(c) of this chapter).

(iv) Fiscal officers at VA medical facilities are authorized to waive veterans' debts arising from medical care copayments (§17.105(c) of this chapter).

(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584).

(b) The Under Secretary for Benefits may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section.

(Authority: 38 U.S.C. 501)

[39 FR 26400, July 19, 1974, as amended at 44 FR 59905, Oct. 17, 1979; 60 FR 53276, Oct. 13, 1995; 69 FR 62201, Oct. 25, 2004]

§ 1.957 Committee authority.

(a) *Regional office committee.* On matters covered in §1.956, the regional office Committee is authorized to determine the following issues:

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in the following debt categories:

(i) Loan guaranty program (38 U.S.C. 5302(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from: (A) The payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under §36.4318, and (D) the liquidation of vendee accounts. The phrase *veteran or spouse* includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program. (38 U.S.C. 5302(a))

(iii) Services erroneously furnished (§17.101(a)).

(2) *Compromises*—(i) *Loan program debts* (38 U.S.C. 3720(a)). Accept or reject a compromise offer irrespective of the amount of the debt (loan program matters under 38 U.S.C. chapter 37 are unlimited as to amount).

(ii) Other than loan program debts (31 U.S.C. 3711).

(A) Accept or reject a compromise offer on a debt which exceeds \$1,000 but which is not over \$100,000 (both amounts exclusive of interest and other late payment charges).

(B) Accept or reject a compromise offer on a debt of a \$1,000 or less, exclusive of interest and other late payment charges, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.

(C) Reject a compromise offer on a debt which exceeds \$100,000, exclusive of interest and other late payment charges.

(D) Recommend approval of a compromise offer on a debt which exceeds \$100,000, exclusive of interest and other late payment charges. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of \$100,000, using the factors set forth in §§1.930 through 1.938. If the Committee believes that the compromise offer is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with §1.951, will be referred to VA Central Office, Office of Financial Management (047G7), for submission to the Department of Justice for final approval.

(Authority: 31 U.S.C. 3711)

(b) *Chief of Fiscal activity.* The Chief of the Fiscal activity at both VBA and VHA offices has the authority, as to debts within his/her jurisdiction, to:

(1) On other than loan program debts under 38 U.S.C. chapter 37, accept compromise offers of 50% or more of a total debt not in excess of \$1,000, exclusive of

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interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(2) On other than loan program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of \$1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of \$1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver.

(Authority: 31 U.S.C. 3711 and 38 U.S.C. 3720(a))

[44 FR 59906, Oct. 17, 1979, as amended at 51 FR 38803, Sept. 25, 1985; 52 FR 42112, Nov. 3, 1987; 57 FR 47264, Oct. 15, 1992; 60 FR 53276, Oct. 13, 1995; 69 FR 62201, Oct. 25, 2004]

§ 1.958 Finality of decisions.

A decision by the regional office Committee, operating within the scope of its authority, denying waiver of all or part of a debt arising out of participation in a VA benefit or home loan program, is subject to appeal in accordance with 38 CFR parts 19 and 20. A denial of waiver of an erroneous payment of pay and allowances is subject to appeal in accordance with § 1.963a(a). There is no right of appeal from a decision rejecting a compromise offer.

(Authority: 38 U.S.C. 501 and 7104).

[69 FR 62201, Oct. 25, 2004]

§ 1.959 Records and certificates.

The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required.

(Authority: 38 U.S.C. 501)

[44 FR 59906, Oct. 17, 1979]

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the Regional Counsel for action in accordance with

delegations of the General Counsel, unless there is an existence a General Counsel's opinion or an approved Regional Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the Regional Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff.

(Authority: 38 U.S.C. 501)

[44 FR 59906, Oct. 17, 1979]

§ 1.961 Releases.

On matters within its jurisdiction, the Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Department of Veterans Affairs under the provisions of 38 U.S.C. ch. 37, or on an acquired loan, or on a vendee account.

[39 FR 26400, July 19, 1974]

§ 1.962 Waiver of overpayments.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term *overpayment* refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable in an indebtedness resulting from work

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study and education loan default, as well as indebtedness of a veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similarly, the misrepresentation must be more than non-willful or mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the Inspector General or the Regional Counsel has determined that prosecution is not indicated, or the Department of Justice has notified VA that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney, specifically authorized action on the request for waiver.

(Authority: 38 U.S.C. 501)

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979; 50 FR 38803, Sept. 25, 1985; 52 FR 42112, Nov. 3, 1987]

§ 1.963 Waiver; other than loan guaranty.

(a) *General.* Recovery of overpayments of any benefits made under laws administered by the VA shall be waived if there is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver and recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(b) *Application.* A request for waiver of an indebtedness under this section shall only be considered:

(1) If made within 2 years following the date of a notice of indebtedness issued on or before March 31, 1983, by the Department of Veterans Affairs to the debtor, or

(2) Except as otherwise provided herein, if made within 180 days following the date of a notice of indebtedness issued on or after April 1, 1983, by the Department of Veterans Affairs to the debtor. The 180 day period may be extended if the individual requesting waiver demonstrated to the Chairperson of the Committee on Waivers and Compromises that, as a result of an error by either the Department of Veterans Affairs or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in such individual's receipt of the notification of indebtedness beyond the time customarily required for mailing (including forwarding). If the requester does substantiate that there was such a delay in the receipt of the notice of indebtedness, the Chairperson shall direct that the 180 day period be computed from the date of the requester's actual receipt of the notice of indebtedness.

(Authority: 38 U.S.C. 5302 (a) & (c))

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979; 48 FR 27400, June 15, 1983; 50 FR 38803, Sept. 25, 1985; 58 FR 3840, Jan. 12, 1993]

§ 1.963a Waiver; erroneous payments of pay and allowances.

(a) The provisions applicable to VA (including refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances, and travel, transportation, and relocation expenses and allowances, are set forth in 5 U.S.C. 5584. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are delegated all authority granted the Secretary under 5 U.S.C. 5584 to deny waiver or to grant waiver in whole or in part of any debt regardless of the amount of the indebtedness. Committee members also have exclusive authority to consider and render a decision on the appeal of a waiver denial or the granting of a partial waiver.

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However, the Chairperson of the Committee must assign the appeal to a different Committee member or members than the member or members who made the original decision that is now the subject of the appeal. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances, and travel, transportation, and relocation expenses and allowances, under 5 U.S.C. 5584: §§ 1.955(a) through (e)(2), 1.956(a)(introductory text) and (a)(3), 1.959, 1.960, 1.963a, and 1.967(c).

(b) Waiver may be granted under this section and 5 U.S.C. 5584 when collection would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver of the claim, and waiver would not otherwise be inequitable. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard will depend upon the facts existing in each case.

(c) An application for waiver must be received within 3 years immediately following the date on which the erroneous payment was discovered.

(Authority: 5 U.S.C. 5584; 38 U.S.C. 501).

[69 FR 62202, Oct. 25, 2004]

§ 1.964 Waiver; loan guaranty.

(a) *General.* Any indebtedness of a veteran or the indebtedness of the spouse shall be waived only when the following factors are determined to exist:

(1) Following default there was a loss of the property which constituted security for the loan guaranteed, insured or made under chapter 37 of title 38 United States Code;

(2) There is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver; and

(3) Collection of such indebtedness would be against equity and good conscience.

(b) *Spouse.* The waiver of a veteran's indebtedness shall inure to the spouse of such veteran insofar as concerns said indebtedness, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the veteran's spouse shall not inure to the benefit of the veteran unless specifically provided for in the waiver decision.

(c) *Surviving spouse or former spouse.* A surviving spouse of a veteran or the former spouse of a veteran may be granted a waiver of the indebtedness provided the requirements of paragraph (a) of this section are met.

(d) *Preservation of Government rights.* In cases in which it is determined that waiver may be granted, the action will take such form (covenant not to sue, or otherwise) as will preserve the rights of the Government against obligors other than the veteran or the spouse.

(e) *Application.* A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

(f) *Exclusion.* Except as otherwise provided in this section, the indebtedness of a nonveteran obligor under the loan program is excluded from waiver.

(Authority: 38 U.S.C. 5302 (b) and (c))

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979; 57 FR 33875, July 31, 1992; 58 FR 3840, Jan. 12, 1993]

§ 1.965 Application of standard.

(a) The standard "Equity and Good Conscience", will be applied when the facts and circumstances in a particular case indicate a need for reasonableness

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and moderation in the exercise of the Government's rights. The decision reached should not be unduly favorable or adverse to either side. The phrase *equity and good conscience* means arriving at a fair decision between the obligor and the Government. In making this determination, consideration will be given to the following elements, which are not intended to be all inclusive:

(1) *Fault of debtor.* Where actions of the debtor contribute to creation of the debt.

(2) *Balancing of faults.* Weighing fault of debtor against Department of Veterans Affairs fault.

(3) *Undue hardship.* Whether collection would deprive debtor or family of basic necessities.

(4) *Defeat the purpose.* Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.

(5) *Unjust enrichment.* Failure to make restitution would result in unfair gain to the debtor.

(6) *Changing position to one's detriment.* Reliance on Department of Veterans Affairs benefits results in relinquishment of a valuable right or incurrance of a legal obligation.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any indication of which, if found, will preclude the granting of waiver:

(1) Fraud or misrepresentation of a material fact (see § 1.962(b)).

(2) *Bad faith.* This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Thus, a debtor's conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

(Authority: 38 U.S.C. 5302(c))

[39 FR 26400, July 19, 1974, as amended at 58 FR 3841, Jan. 12, 1993; 58 FR 7296, Feb. 5, 1993; 69 FR 62202, Oct. 25, 2004]

§ 1.966 Scope of waiver decisions.

(a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his/her representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Department of Veterans Affairs.

(b) A regional office Committee may:

(1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran's service.

(2) Waive or decline to waive recovery from specific benefits or sources, except that:

(i) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; *i.e.*, an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured.

(Authority: 38 U.S.C. 501, 5302)

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979; 48 FR 1056, Jan. 10, 1983; 69 FR 62202, Oct. 25, 2004]

§ 1.967 Refunds.

(a) Except as provided in paragraph (c) of this section, any portion of an indebtedness resulting from participation in benefits programs administered by the Department of Veterans Affairs which has been recovered by the U.S. Government from the debtor may be considered for waiver, provided the debtor requests waiver in accordance with the time limits of § 1.963(b). If collection of an indebtedness is waived as to the debtor, such portions of the indebtedness previously collected by the Department of Veterans Affairs will be refunded. In the event that waiver of collection is granted for either an education, loan guaranty, or direct loan debt, there will be a reduction in the debtor's entitlement to future benefits in the program in which the debt originated.

(b) The Department of Veterans Affairs may not waive collection of the indebtedness of an educational institution found liable under 38 U.S.C. 3685. Waiver of collection of educational

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benefit overpayments from all or a portion of the eligible persons attending an educational institution which has been found liable under 38 U.S.C. 3685 shall not relieve the institution of its assessed liability. (See 38 CFR 21.4009(f)).

(c) The regulatory provisions concerning refunds of indebtedness collected by the Department of Veterans Affairs arising from erroneous payments of pay and allowances and travel, transportation, and relocation expenses and allowances are set forth in 4 CFR Parts 91 and 92.

(d) Refund of the entire amount collected may not be made when only a part of the debt is waived or when collection of the balance of a loan guaranty indebtedness by the Department of Veterans Affairs from obligors, other than a husband or wife of the person requesting waiver, will be adversely affected. Only where the amount collected exceeds the balance of the indebtedness still in existence will a refund be made in the amount of the difference between the two. Otherwise, refunds will be made in accordance with paragraph (a) of this section.

(Authority: 38 U.S.C. 3685, 5302; 5 U.S.C. 5584)

[48 FR 1056, Jan. 10, 1983, as amended at 60 FR 53276, Oct. 13, 1995]

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§ 1.969 Revision of waiver decisions.

(a) *Jurisdiction.* A decision involving waiver may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Department of Veterans Affairs issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered by the same or any other regional office Committee.

(b) *Finality of decisions.* Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;

(2) Section 3.105 (a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may

postaudit or make an administrative review of any decision of a regional office Committee;

(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) *Difference of opinion.* Where reversal or amendment of a decision involving waiver is authorized under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter.

(Authority: 38 U.S.C. 501)

[44 FR 59907, Oct. 17, 1979]

§ 1.970 Standards for compromise.

Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§ 1.930 through 1.936. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on an offer of compromise may be revised or modified on the basis of any information which would warrant a change in the original decision.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720)

[44 FR 59907, Oct. 17, 1979, as amended at 69 FR 62202, Oct. 25, 2004]

SALARY OFFSET PROVISIONS

SOURCE: 52 FR 1905, Jan. 16, 1987, unless otherwise noted.

§ 1.980 Scope.

(a) In accordance with 5 CFR part 550, subpart K, the provisions set forth in §§ 1.980 through 1.995 implement VA's authority for the use of salary offset to satisfy certain debts owed to VA.

(b) These regulations apply to offsets from the salaries of current employees of VA, or any other agency, who owe debts to VA. Offsets by VA from salaries of current VA employees who owe

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debts to other agencies shall be processed in accordance with procedures set forth in 5 CFR part 550, subpart K.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended, the Social Security Act, the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108) or prohibited by another statute.

(d) These regulations do not preclude an employee from requesting waiver of an overpayment under 38 U.S.C. 5302, 5 U.S.C. 5584, or any other similar provision of law, or in any way questioning the amount or validity of a debt not involving benefits under the laws administered by VA by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by that office.

(e) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(f) These regulations do not apply to a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(g) These regulations do not apply to any adjustment to collect a debt amounting to \$50 or less, if at the time of such adjustment, or as soon thereafter as practicable, the individual is provided with written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(h) These regulations do not preclude the compromise, suspension, or termination of collection action under the Federal Claims Collection Standards

(FCCS) (31 CFR parts 900–904) and VA regulations 38 CFR 1.930 through 1.944.

(i) The procedures and requirements of these regulations do not apply to salary offset used to recoup a Federal employee's debt where a judgment has been obtained against the employee for the debt.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987, as amended at 54 FR 34980, Aug. 23, 1989; 69 FR 62202, Oct. 25, 2004]

§ 1.981 Definitions.

(a) *Agency* means:

(1) An executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service, and the U.S. Postal Rate Commission, and

(2) A military department as defined in 5 U.S.C. 102.

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Excluded from this definition are deductions described in 5 CFR 581.105(b) through (f).

(d) *Employee* means a current employee of VA or other Federal agency including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

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(e) *Salary offset* means an attempt to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(f) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to VA or another Federal agency as permitted or required by 5 U.S.C. 5584 or 38 U.S.C. 5302, or other similar statutes.

(g) *Extreme hardship to an employee* means an employee's inability to provide himself or herself and his or her dependents with the necessities of life such as food, housing, clothing, transportation, and medical care.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987]

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.

(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or appropriate designee first provides the employee with a minimum of 30 calendar days written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under 38 CFR parts 19 and 20 and the time for pursuing such an appeal has not expired (§ 20.302), the Secretary or appropriate designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in 38 CFR parts 19 and 20 and will contain the determination and information required by § 1.983(b)(1) through (5), (7), (9), (10), and (12) through (14). The notice will also state that the employee may request a hearing on the offset schedule under the procedures set forth in § 1.984 and such a request will stay the commencement of salary offset.

(c) If the employee previously appealed the amount or existence of the debt and the Board of Veterans Appeals decided the appeal on the merits or if the employee failed to pursue an appeal within the time provided by regulations, the Secretary or designee shall

provide the employee with written notice prior to collecting the debt by salary offset. The notice will state:

(1) The determinations and information required by § 1.983(b)(1)–(5), (7), and (12)–(14);

(2) That the employee's appeal of the existence or amount of the debt was determined on the merits or that the employee failed to pursue an appeal within the time provided, and VA's decision is final except as otherwise provided in agency regulations;

(3) That the employee may request a waiver of the debt pursuant to 38 CFR 1.911(c)(2) subject to the time limits of 38 U.S.C. 5302.

(4) That the employee may request an oral or paper hearing on the offset schedule and receive a decision within 60 days of such request under the procedures and time limit set forth in § 1.984 and that such a request will stay the commencement of salary offset.

(d) If the employee has appealed the existence or amount of the debt and the Board of Veterans Appeals has not decided the appeal on the merits, collection of the debt by salary offset will be suspended until the appeal is decided or the employee ceases to pursue the appeal.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62202, Oct. 25, 2004]

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under the laws administered by VA.

(a) For a debt not involving benefits under the laws administered by VA, the Secretary or designee will review the records relating to the debt to assure that it is owed prior to providing the employee with a notice of the debt.

(b) Except as provided in § 1.980(e), salary offset of debts not involving benefits under the laws administered by VA will not be made unless the Secretary or designee first provides the employee with a minimum of 30 calendar days written notice. This notice will state:

(1) The Secretary or designee's determination that a debt is owed;

(2) The amount of the debt owed and the facts giving rise to the debt;

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(3) The Secretary or designee's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest and associated costs are paid in full;

(4) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(5) An explanation of VA's requirements concerning interest, administrative costs, and penalties;

(6) The employee's right to inspect and copy VA records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(7) The employee's right to enter into a written agreement with the Secretary or designee for a repayment schedule differing from that proposed by the Secretary or designee, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary or designee;

(8) The VA employee's right to request an oral or paper hearing on the Secretary or appropriate designee's determination of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary. The hearing official for the hearing requested by a VA employee must be either a VA administrative law judge or a hearing official from an agency other than VA. Any VA hearing official may conduct an oral or paper hearing at the request of a non-VA employee on the determination by an appropriately designated official of the employing agency of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a hearing request is filed by the non-VA employee as prescribed by the employing agency.

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a request for a hearing (oral or paper) will stay the commencement of salary offset;

(11) That a final decision after the hearing will be issued at the earliest practical date, but no later than 60 calendar days after the filing of the re-

quest for the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

(12) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(13) The employee's right, if applicable, to request waiver under 5 U.S.C. 5584 and 38 CFR 1.963a and any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(14) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62202, Oct. 25, 2004; 72 FR 65462, Nov. 21, 2007]

§ 1.984 Request for a hearing.

(a) Except as provided in paragraph (b) of this section and in § 1.982, an employee wishing a hearing on the existence or amount of the debt or on the proposed offset schedule must send such a request to the office which sent the notice of the debt. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence. The request must be received by the office which sent the notice of the debt not later than 30 calendar days from the date of the notice.

(b) If the employee files a request for a hearing after the expiration of the 30 day period provided for in paragraph (a) of this section, VA may accept the request if the employee shows that the delay was because of circumstances beyond his or her control or because of

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failure to receive the written notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62203, Oct. 25, 2004]

§ 1.985 Form, notice of, and conduct of hearing.

(a) After an employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location for the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit his or her position and arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit this information.

(b) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence, for example, when an issue of credibility or veracity is involved. If a determination is made to provide an oral hearing, the hearing official or administrative law judge may offer the employee the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official or administrative law judge declines to offer a telephone conference call hearing, the employee shall be provided an oral hearing permitting the personal appearance of the employee, his or her personal representative, and witnesses. A record or transcript of every oral hearing shall be made. Witnesses shall testify under oath or affirmation. VA shall not be responsible for the payment of any expenses incident to attendance at the hearing which are incurred by either the employee, his or her representative or Counsel, or witnesses.

(c) In all other cases where an employee requests a hearing, a paper hearing shall be provided. A paper hearing shall consist of a review of the written evidence of record by the ad-

ministrative law judge or hearing official.

(d) In any hearing under this section, the administrative law judge or hearing official may exclude from consideration evidence or testimony which is irrelevant, immaterial, or unduly repetitious.

(Authority: 5 U.S.C. 5514)

§ 1.986 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule, if the employee:

(a) Fails to file a request for a hearing as prescribed in § 1.982, § 1.984, or §§ 19.1 through 19.200, whichever is applicable, unless such failure is excused as provided in § 1.984(b); or

(b) Fails to appear at an oral hearing of which he or she had been notified unless the administrative law judge or hearing official determines that failure to appear was due to circumstances beyond the employee's control.

(Authority: 5 U.S.C. 5514)

§ 1.987 Review by the hearing official or administrative law judge.

(a) The hearing official or administrative law judge shall uphold VA's determination of the existence and amount of the debt unless determined to be erroneous by a preponderance of the evidence.

(b) The hearing official or administrative law judge shall uphold VA's offset schedule unless the schedule would result in extreme hardship to the employee.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987]

§ 1.988 Written decision following a hearing requested under § 1.984.

(a) The hearing official or administrative law judge must issue a written decision not later than 60 days after the employee files a request for the hearing.

(b) Written decisions provided after a hearing requested under § 1.984 will include:

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(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The hearing official or administrative law judge's analysis, findings and conclusions concerning as applicable:

(i) The employee's or VA's grounds;

(ii) The amount and validity of the alleged debt; and

(iii) The repayment schedule.

(c) The decision in a case where a paper hearing was provided shall be based upon a review of the written record. The decision in a case where an oral hearing was provided shall be based upon the hearing and the written record.

(Authority: 5 U.S.C. 5514)

§ 1.989 Review of VA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy VA records related to the debt as permitted by a notice provided under § 1.983 must send a letter to the office which sent the notice of the debt stating his or her intention. The letter must be received by that office within 30 calendar days of the date of the notice.

(b) *VA response.* In response to timely notice submitted by the debtor as described in paragraph (a) of this section, VA will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62203, Oct. 25, 2004]

§ 1.990 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a notice under § 1.983, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the office which sent the notice of the debt within 30 calendar days of the date of the notice.

(b) *VA response.* In response to timely notice by the debtor as described in

paragraph (a) of this section, VA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within VA's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, VA will balance its interest in collecting the debt against the hardship to the employee. VA will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in extreme hardship.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62203, Oct. 25, 2004]

§ 1.991 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the notice to collect from the employee's current pay as modified by a written decision issued under § 1.982 or § 1.988, or parts 19 and 20 or by written agreement between the employee and the VA under § 1.990.

(b) If the employee filed a request for a hearing as provided by § 1.984 before the expiration of the period provided for in that section, deductions will not begin until after the hearing official or administrative law judge has provided the employee with a hearing, and has rendered a final written decision.

(c) If the employee failed to file a timely request for a hearing, deductions will begin on the date specified in the notice of intention to offset, unless a hearing is granted pursuant to § 1.984(b).

(d) If an employee retires, resigns, or his or her employment ends before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to procedures for administrative offset (see 5 CFR 831.1801 through 831.1808, 31 CFR 901.3, and 38 CFR 1.912).

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 69 FR 62203, Oct. 25, 2004]

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§ 1.992 Procedures for salary offset.

(a) *Types of collection.* A debt will be collected in a lump-sum or in installments. Collection will be in a lump-sum unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the employee's disposable pay. In these cases, deduction will be by installments.

(b) *Installment deductions.* (1) A debt to be collected in installments will be deducted at officially established pay intervals from an employee's current pay account unless the employee and the Secretary agree to alternative arrangements for repayment. The alternative arrangement must be in writing and signed by both the employee and Secretary or designee.

(2) Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than \$25 per pay period or \$50 a month will be acceptable only in the most unusual circumstances.

(c) Imposition of interest, penalties, and administrative costs. Interest, penalties, and administrative costs shall be charged in accordance with 31 CFR 901.9 and 38 CFR 1.915.

(Authority: 5 U.S.C. 5514; 38 U.S.C. 501)

[52 FR 1905, Jan. 16, 1987, as amended at 54 FR 34980, Aug. 23, 1989; 69 FR 62203, Oct. 25, 2004]

§ 1.993 Non-waiver of rights.

So long as there are not statutory or contractual provisions to the contrary, an employee's involuntary payment (of all or a portion of a debt) under these regulations will not be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

(Authority: 5 U.S.C. 5514)

VA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed the United States (unless expressly prohibited by statute or regulation); or

(b) VA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

(Authority: 5 U.S.C. 5514)

§ 1.995 Requesting recovery through centralized administrative offset.

(a) Under 31 U.S.C. 3716, VA and other creditor agencies must notify Treasury of all debts over 180 days delinquent so that recovery of such debts may be made by centralized administrative offset. This includes those debts that VA and other agencies seek from the pay account of an employee of another Federal agency via salary offset. Treasury and other disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part.

(b) Prior to submitting a debt to Treasury for the purpose of collection by offset, including salary offset, VA shall provide written certification to Treasury that:

(1) The debt is past due and legally enforceable in the amount submitted to Treasury and that VA will ensure that any subsequent collections are credited to the debt and that Treasury shall be notified of such;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred to Treasury for offset within 10 years after VA's right of action accrues;

(3) VA has complied with the provisions of 31 U.S.C. 3716 and 38 CFR 1.912 and 1.912a including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) VA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and 38 CFR 1.980 through 1.994 including, but not limited to, those provisions requiring that VA provide the debtor

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with applicable notices and opportunities for a hearing.

(c) Specific procedures for notifying Treasury of debts for purposes of collection by centralized administrative offset are contained in the 31 CFR 285.7. VA and other creditor agencies may notify Treasury of debts that have been delinquent for 180 days or less, including debts that VA and other creditor agencies seek to recover from the pay of an employee via salary offset.

(Authority: 31 U.S.C. 3716; 38 U.S.C. 501)

[69 FR 62203, Oct. 25, 2004]

PROCEDURES FOR FINANCIAL INSTITUTIONS REGARDING GARNISHMENT OF BENEFIT PAYMENTS AFTER DISBURSEMENT

§ 1.1000 Garnishment of payments after disbursement.

(a) Payments of benefits due under any law administered by the Secretary that are protected by 38 U.S.C. 5301(a) and made by direct deposit to a financial institution are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury and the agencies defined as a “benefit agency” in 31 CFR 212.3.

[76 FR 9961, Feb. 23, 2011]

PART 2—DELEGATIONS OF AUTHORITY

Sec.

2.1 General provisions.

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AUTHORITY: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

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§ 2.1 General provisions.

In addition to the delegations of authority in this part, numerous delegations of authority are set forth throughout this title.

(Authority: 38 U.S.C. 512)

[64 FR 47111, Aug. 30, 1999]

§ 2.2 Delegation of authority to employees to issue subpoenas, etc.

(a) *Authority to issue subpoenas.* Employees occupying or acting in the positions designated in paragraph (b) of this section shall have the power to issue subpoenas for (by countersigning VA Form 2-4003) and compel the attendance of witnesses within a radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Issuing officials shall use discretion when exercising this power.

(b) *Designated positions.* The positions designated pursuant to paragraph (a) of this section are: General Counsel, Deputy General Counsel, Chairman, Board of Veterans' Appeals, Heads of Regional Offices and Centers having insurance or regional office activities, Under Secretary for Health (for income matching programs), Director, Income Verification Match Center (for income matching programs), and the Associate Director for Operations, Income Verification Match Center (for income matching programs).

(c) *Means of service.* Subpoenas issued pursuant to this section may be served by registered or certified mail, return receipt requested, addressed to the witness only. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

(d) *Fees and mileage; district courts of the United States.* Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction in which the inquiry is carried on may, in the