

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), unless otherwise noted.

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### 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 Affairs, 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 dioxin and 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 a herbicide containing 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or 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 a herbicide containing dioxin or exposure to ionizing radiation, § 3.311a or § 3.311b of this title, as appropriate, 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 a particular type of exposure 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 a particular type of exposure 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 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 a particular exposure 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)

[54 FR 40391, Oct. 2, 1989; 54 FR 46187, Nov. 1, 1989]

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 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 Per-

sonnel 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

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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-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.

Whoever 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.

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(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.

(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 con-

ditions, 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

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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]

### 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.

(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

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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]

### 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:

*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).

*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.

*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 in-

formation 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.

*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



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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.

*Records.* The term “records” means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA, 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 underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

*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.

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

#### § 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, healthcare inspections, or non-patient

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investigations, or between such components and the Armed Forces, of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. 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)

### § 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 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 information 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))

**§ 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)

§§ 1.480–1.484 [Reserved]

DISCLOSURES WITHOUT PATIENT  
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§ 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 re-

quires 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

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

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

§ 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

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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 redisclose 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 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 med-

ical 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

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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))

**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

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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.

(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.

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(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 proceeding 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)

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**§§ 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.

(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 individuals 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

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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 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 Gov-

ernment 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 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.



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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 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]

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### **§ 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 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 disclosure 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.

(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

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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 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

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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 resumé 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.

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(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 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]

### **§ 1.515 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

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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 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 informa-

tion not specifically mentioned in this paragraph.

[46 FR 62059, Dec. 22, 1981]

### **§ 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.



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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 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

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U.S.C., then he or she may authorize 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

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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]

### **§ 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]

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### **§ 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

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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.

(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

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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.

(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 serv-

ices 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.

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(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]

## § 1.550

### RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS OTHER THAN CLAIMANT RECORDS

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those 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 claimant records, see §§1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

[40 FR 12656, Mar. 20, 1975]

AUTHORITY: Sections 1.550 to 1.559 issued under 72 Stat. 1114; 38 U.S.C. 501.

#### § 1.550 General.

The Department of Veterans Affairs policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Department of Veterans Affairs is authorized to withhold under 5 U.S.C. 552(b) (see §1.554) if it is determined: (a) By the Secretary of Veterans Affairs or the Deputy Secretary that disclosure of such information will serve a useful purpose or (b) by an administration, staff office, or field facility head or designee under §1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.

[40 FR 12656, Mar. 20, 1975]

#### § 1.551 [Reserved]

#### § 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.

(a) All final orders in such actions as entertained by the Contract Appeals Board, those statements of policy and interpretations adopted by the Department of Veterans Affairs but not published in the FEDERAL REGISTER, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined by the Secretary or des-

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ignee. Such index or indexes or supplements thereto will be promptly published, quarterly or more frequently, and distributed (by sale or otherwise) unless the Department of Veterans Affairs determines by order published in the FEDERAL REGISTER that publication would be unnecessary and impracticable, in which case the Department of Veterans Affairs will nonetheless provide copies of such index or indexes or supplements thereto on request at a cost not to exceed the direct cost of duplication. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying. Public reading facilities for this purpose will be maintained in Department of Veterans Affairs Central Office and Department of Veterans Affairs field facilities, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Department of Veterans Affairs are confidential and privileged by statute (38 U.S.C. 5701) and so are exempt from this requirement.

(b) The voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975]

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### § 1.553 Public access to other reasonably described records.

(a) Except for requests for records which are processed under §§1.551 and 1.552 of this part, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, VA will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§1.551 and 1.552 of this part, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in §1.554 of this part, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Services Officer in the nearest VA regional office; the Director, or Chief, Medical Administration Service, or other responsible official of VA medical facility where most recently treated; or to the Department of Veterans Affairs 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.

(Authority: 5 U.S.C. 552(a)(3))

[53 FR 10377, Mar. 31, 1988]

### § 1.553a Time limits for Department of Veterans Affairs response to requests for records.

(a) When a request for records made under §1.551, §1.552 or §1.553 is received it will be promptly referred for action to the proper employee designated in accordance with §1.556 to take initial action on granting or denying requests to inspect or obtain information from or copies of the records described.

(b) Any such request will then be promptly evaluated and a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request. Upon determination to comply or deny the request the person making the request will be notified immediately of the determination and the reasons therefor, and of the right of the person to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.

(c) Upon receipt of such an appeal from an adverse determination it will be evaluated and a further determination made within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the appeal. If on appeal the denial is in whole or in part upheld the Department of Veterans Affairs will notify the requester of the provisions for judicial review of this determination. (See §§1.557 and 1.558.)

(d) In unusual circumstances, specifically as follows, the time limits in paragraphs (b) and (c) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. The date specified will not result in an extension for more than 10 working days. *Unusual circumstances* will be interpreted to mean,



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but only to the extent reasonably necessary to the proper processing of the particular request, as follows:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department of Veterans Affairs having substantial subject-matter interest therein.

(e) Pursuant to section 552(a)(6), title 5 U.S.C., any person making a request to the Department of Veterans Affairs for records under section 552(a) (1), (2) or (3) (see §§ 1.551, 1.552 and 1.553) will be deemed to have exhausted his or her administrative remedies with respect to such request if the Department of Veterans Affairs fails to comply with the applicable time limit provisions of this section. If, however, the Government can show exceptional circumstances exist and that the Department of Veterans Affairs is exercising due diligence in responding to the request, the statute also permits the court to retain jurisdiction and allow the Department of Veterans Affairs additional time to complete its review of the records.

(f) Requests for the 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 (covered by §§ 1.500 through 1.527) may also be initiated under 5 U.S.C. 552. Such requests will also be evaluated, a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request, and the requester notified immediately of the determination and the reasons therefor, and of the right of the person

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to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.

[40 FR 12657, Mar. 20, 1975]

### § 1.554 Exemptions from public access to agency records.

(a) The exemptions in this paragraph constitute authority to withhold from disclosure certain categories of information in Department of Veterans Affairs records except that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy, and are in fact properly classified pursuant to such Executive order.

(2) Related solely to internal Department of Veterans Affairs personnel rules and practices.

(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552b, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Department of Veterans Affairs.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

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(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(Authority: 5 U.S.C. 552(b)(7))

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) Information in the categories exempted under paragraph (a) of this section, other than in paragraph (a)(3) which is applicable to Department of Veterans Affairs claimant records, will be released only as authorized in § 1.550. The release of information from Department of Veterans Affairs claimant records will be made only in accordance with §§ 1.501 through 1.526.

(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and

(i) The investigation or proceeding involves a possible violation of criminal law, and

(ii) There is reason to believe that

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Department may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(Authority: 5 U.S.C. 552(c)(1) and (c)(2))

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975; 42 FR 37976, July 26, 1977; 53 FR 9442, Mar. 23, 1988]

### § 1.554a Predisdisclosure notification procedures for confidential commercial information.

(a) *General.* During the conduct of its business the Department of Veterans Affairs (VA) may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act (FOIA) request, except under the provisions of this section. This section establishes uniform VA procedures for giving submitters predisdisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under 38 CFR 1.554(a)(4). These procedures are required by Executive Order 12600, Predisdisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) *Definitions*—(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552 (b)(4), as implemented by § 1.554 of this part, because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term “submitter” includes, but is not limited to corporations, State governments, and foreign governments.

(c) *Notification to submitters of confidential commercial information.* When a request is received, for a submitter’s record(s), or information which contains confidential commercial information, and the request is being processed under the FOIA, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by paragraph (d) of this section. The notification will advise the submitter that a request for its record(s) has been received and is being processed under the FOIA. The notice will describe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) *When notification is required.* (1) For confidential commercial information submitted to VA prior to January 1, 1988, notification to submitters is required whenever:

(i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to VA on or after January, 1, 1988, notification is required whenever:

(i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or

(ii) VA facility, administration, or staff office which has custody of the re-

quested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) *Designation by submitters of information as confidential commercial information.* (1) When business records are provided to VA, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to VA or within a reasonable period of time thereafter, but not later than 60 days after receipt of the information by VA. Information so designated will be clearly identified by marking it with the words “confidential commercial information” or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked “This entire (document, record, etc.) consists of confidential commercial information.” If only portions of documents are designated, only those specific designated portions will be conspicuously annotated as “confidential commercial information.”

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to VA, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter’s designation should include the earlier expiration date. Whenever possible, the submitter’s designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) *Opportunity to object to disclosure.* (1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to

the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10 working day time period, careful consideration will be given to all specified grounds for non-disclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the VA decision, the reason(s) that the submitter's objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) *Notices to requester.* (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(B)(4), 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.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an oppor-

tunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in VA's FOIA decision.

(h) *Notices of lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, the submitter of the information will be promptly notified.

(i) *Exceptions to the notification requirements.* The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

(3) Disclosure of the record(s) or information is required by law (other than the FOIA, 5 U.S.C. 552);

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to VA that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, VA

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must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.

(Approved by the Office of Management and Budget under control number 2900-0393)

(Authority: 38 U.S.C. 501; 5 U.S.C. 552(b)(4); E.O. 12600 (52 FR 23781))

[57 FR 2229, Jan. 21, 1992]

### § 1.555 Fees.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, 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.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis (as that term is referenced under *Commercial use request* of this paragraph) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. 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 or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication history can

be considered also. In any case, freelancers who do not qualify for inclusion in the *representative of the news media* category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) *Review* means the process of examining documents located in response to a *commercial use request* (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a *commercial use request*, e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term *review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term *search* does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in § 1.554 of this part.

(b) *Fees to be charged.* (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Department of Veterans Affairs will charge fees that recoup the full allowable direct costs for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in § 1.555(e) of this part are likely to exceed \$25, the requester will

be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each administration and staff office upon approval of the Secretary is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the administration, staff office, or field facility performed the task, itself. In no case may a administration, staff office, or field facility contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from VA.

(c) *Restrictions on assessing fees.* With the exception of commercial use requests no charges will be assessed for the first 100 pages of duplication and the first two hours of search time. Moreover, no fees are to be charged any requester, including commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of documents, fees can be charged for only 10 minutes of search

time and for only five pages of reproduction. If this cost were equal to or less than the cost to VA of billing the requester and processing the fee collected, no charges would be assessed. (NOTE: The cost of collecting fees are VA's administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Department's determination.)

(1) For purposes of the restriction on assessing fees, the word *pages* refers to one-sided paper copies of the standard sizes 8½" × 11" or 8½" × 14" or 11" × 14". Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term *search time* in this context is based on manual searches. To calculate the *computer search time* for the purpose of applying the two-hour search restriction, the hourly cost of operating the computer's central processing unit will be combined with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) *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; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

(1) *Commercial use requesters.* When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to

two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

(2) *Educational and non-commercial scientific institution requesters.* These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. In order to be considered a member of this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

(3) *Representatives of news media.* These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(vi) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished

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without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field facility heads, their designee, or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 5701 and 5 U.S.C. 552a and will be as-

sessed fees in accordance with the applicable fee provisions of §1.526(i) or §1.577(f) of this part. To the extent that records are not disclosable under these provisions, the disclosure of such records will be evaluated under §§1.550 through 1.559 of this part, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) *Schedule of fees:*

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.
(2) 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. (See paragraph (a)(2) of this section and, if costs are likely to exceed \$25.00, paragraph (b)(2) of this section.
(3) Duplication of documents by any type of reproduction process not covered by paragraphs (e)(1) and (2) of this section to produce a copy in a form reasonably usable by the requester.	Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed \$25.00, paragraph (b)(2) of this section.
(4) Document search by manual (non-automated) methods .....	Basic hourly salary rate of the employee(s) performing the search, plus 16 percent. (If costs are likely to exceed \$25.00, see paragraph (g)(2) of this section.)
(NOTE— If a department, staff office or field station uses exclusively a single class of personnel, e.g., all administrative/clerical or all professional/executive, an average rate for the range of grades involved may be used).	
(5) Document search using automated methods, such as by computer .....	Actual direct cost to perform search. (See paragraph (c)(2) of this section, and, if costs are likely to exceed \$25.00, see paragraph (g)(2) of this section.)
(6) Document review (use only for commercial use requesters) .....	Basic hourly salary rate of employee(s) performing initial review to determine whether to release document(s) or portions of records, plus 16 percent.
(NOTE.— Charge for document reviews covers only the time spent reviewing the document(s) at the initial administrative level to determine applicability of a specific FOIA exemption to a particular record or portion of a record. It does not cover any review incurred at the administrative appeal level once the initial exemptions are applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review may be properly assessed).	
(7) Other charges: Certifying that records are true copies; Sending records by special methods such as express mail.	Where applicable, assess under provisions of §§ 1.526(i) and (j) of this part, otherwise actual direct cost of service performed.

(f) *Waiving or reducing fees.* (1) Fees for records and services provided in response to a FOIA request will be waived or reduced when it is determined by responsible Central Office officials or field station heads or their designee that furnishing the document(s) is in the public interest be-

cause it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The following factors will be considered in sequence in determining whether disclosure of information is in



the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(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;

(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; and

(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.

(3) The following factors will be considered in sequence in determining whether disclosure of information is primarily in the commercial interest of the requester:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the 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.

(4) An appeal from an adverse fee waiver or reduction determination will be processed in the same manner as described in § 1.557 of this part.

(g) *Other administrative considerations to improve assessment and collection of fees*—(1) *Charging interest—notice and rate.* The Department of Veterans Affairs may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field facility head or designee. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the

original building was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that the fee has been received by VA, even if not processed, will suffice to stay the accrual of interest.

(2) *Charges for unsuccessful search.* When it is determined by the responsible Central Office official or field facility head or designee, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. If it is determined that search charges are likely to exceed \$25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating requests.* When the responsible Central Office official or field facility head or designee reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official, or field facility head or designee may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day time period that seek portion(s) of the same document(s) is an attempt to avoid payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to

conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will multiple requests on unrelated subjects from one requester be aggregated.

(4) *Advance payments.* The Department of Veterans Affairs may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Department of Veterans Affairs should either notify the requester of the likely cost and obtain satisfactory assurance of full payment, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, the Department of Veterans Affairs may require the requester to pay the full amount owed, plus any applicable interest as provided in paragraph (g)(1) of this section, or to demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the estimated fee before the Department begins to process a new request or a pending request from that requester.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in §1.553a of this part, for responding to initial requests and appeals from initial denials, will begin only after the Department has received the advance fee payments.

(5) *Debt collection.* In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies.

(Authority: 5 U.S.C. 552(a)(4)(A))  
[53 FR 10377, Mar. 31, 1988]

#### § 1.556 Requests for other reasonably described records.

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 §1.553. This responsibility includes maintaining a uniform listing of such requests. Data logged will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. In the field a denial of any such request may be made only by the Director or the designated employee and in Central Office only by the administration or staff office head or designee. The letter notifying the requester of the denial will be signed by the official making the denial decision. Any legal question arising in a field station 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. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

[40 FR 12658, Mar. 20, 1975]

#### § 1.557 Administrative review.

(a) Upon denial of a request, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the specific exemption in §1.554 upon which the denial is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise

\*EDITORIAL NOTE: At 42 FR 41410, Aug. 17, 1977, §13.401 was removed.

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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.

[40 FR 12658, Mar. 20, 1975, as amended at 55 FR 21546, May 25, 1990]

**§§ 1.558–1.559 [Reserved]**

**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 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 re-

ceiving 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:

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(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 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 trans-

ferred 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

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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 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 mis-

demeanor 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 individual 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

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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 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 Govern-

ment. 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

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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 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 indi-

vidual, 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 considered 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.

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Activity	Fees
(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 pertains, 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 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 in-

dividual 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



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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 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

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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:

(1) 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):

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(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 in-

formation 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 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.

(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.

(Authority: 5 U.S.C. 552a (j) and (k); 38 U.S.C. 501)

[48 FR 29847, June 29, 1983]

**§§ 1.583–1.584 [Reserved]**

NATIONAL CEMETERIES

AUTHORITY: Sections 1.601 to 1.633 issued under 38 U.S.C. 501, 2306, chapter 24.

SOURCE: 43 FR 26571, June 21, 1978, unless otherwise noted.

**§ 1.600 [Reserved]**

**§ 1.601 Advisory Committee on Cemeteries and Memorials.**

Responsibilities in connection with Committee authorized by 38 U.S.C. chapter 24 are as follows:

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(a) The Under Secretary for Memorial Affairs will schedule the frequency of meetings, make presentations before the Committee, participate when requested by the Committee, evaluate Committee reports and recommendations and make recommendations to the Secretary based on Committee actions.

(b) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Secretary or Under Secretary for Memorial Affairs, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Secretary for transmission to Congress.

[43 FR 26571, June 21, 1978, as amended at 61 FR 27281, May 31, 1996]

### § 1.602 Names for national cemetery activities.

(a) *Responsibility.* The Secretary is responsible for naming national cemeteries. The Under Secretary for Memorial Affairs, is responsible for naming activities and features therein, such as drives, walks, or special structures.

(b) *Basis for names.* The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as *drives*. To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

### § 1.603 Gifts and donations.

(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance

will be coordinated with the superintendent of the national cemetery.

(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.

(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.

(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(b) Officials and employees of the Department of Veterans Affairs will not solicit contributions from the public nor will they authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Department of Veterans Affairs. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

[43 FR 26571, June 21, 1978, as amended at 61 FR 27282, May 31, 1996]

### §§ 1.604–1.619 [Reserved]

### § 1.620 Eligibility for burial.

Section 2402 of title 38, United States Code, bestows eligibility for burial in any open cemetery in the National Cemetery Administration. The following rules in paragraphs (a) through (c) of this section state conditions in addition to those imposed by statute. To be eligible for burial in a national cemetery:

(a) A United States citizen who served in an allied armed force, as provided in 38 U.S.C. 2402(4), must have been a citizen of the United States at

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the time of entry on such service and at the time of his or her death.

(b) A minor child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been at the time of his or her death under 21 years old or under 23 years old if pursuing a course of instruction at an approved educational institution.

(c) An unmarried adult child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been physically or mentally disabled and incapable of self support.

(Authority: 38 U.S.C. 2402)

[61 FR 27282, May 31, 1996]

### § 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, "immediate family members" are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered "immediate family members."

(b) All requests for authority to disinter remains will be submitted on VA Form 40-4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statement(s) by all living immediate family members of the

decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

(Authority: 38 U.S.C. 2404)

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered.

(d) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900-0365)

[43 FR 26571, June 21, 1978, as amended at 47 FR 50860, Nov. 10, 1982; 49 FR 34483, Aug. 31, 1984; 54 FR 6521, Feb. 13, 1989; 62 FR 51783, Oct. 3, 1997]

### §§ 1.622-1.628 [Reserved]

### § 1.629 Monetary allowance in lieu of a Government-furnished outer burial receptacle.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) *Second interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery

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where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of Government-furnished graveliners will be based upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start

of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the "Notices" section of the FEDERAL REGISTER. The FEDERAL REGISTER Notice will also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

(Authority: 38 U.S.C. 2306(d))

[65 FR 76937, Dec. 8, 2000]

### § 1.630 Headstones and markers.

(a) Types of Government headstones and markers and inscriptions will be in accordance with policies approved by the Secretary.

(b) Inscriptions on Government headstones, markers, and private monuments will be in accordance with policies and specifications of the Under Secretary for Memorial Affairs.

(c) A memorial headstone or marker furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The headstones or markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

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

[43 FR 26571, June 21, 1978, as amended at 57 FR 44123, Sept. 24, 1992; 61 FR 27282, May 31, 1996]

### § 1.631 [Reserved]

### § 1.632 Headstone and marker application required.

(a) Headstones and markers for graves in national cemeteries shall be ordered from the Record of Interment



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(VA Form 40-4956) prepared by the national cemetery superintendent at the time of interment. No further application is required.

(b) Submission of VA Form 40-1330, Application for Headstone or Marker, is required for the purpose of:

(1) Ordering a Government headstone or marker for any unmarked grave of any eligible veteran buried in a private or local cemetery.

(2) Ordering a Government headstone or marker for any unmarked grave in a post cemetery of the Armed Forces.

(3) Ordering a Government memorial headstone or marker for placement in a national cemetery, in a private or local cemetery and any post cemetery of the Armed Forces.

#### § 1.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) Group—all the known and unknown dead who perished in a common military event.

(2) Memorial Monument—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 1.630.

(3) Next of kin—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendant.

(4) Documentary evidence—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval

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or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[57 FR 44124, Sept. 24, 1992]

#### 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.

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(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 (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 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

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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 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

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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 suggestion 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]

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### § 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]

### § 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

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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)

### § 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

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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.,

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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.

(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.

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(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 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, infor-

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mation 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]

### APPEALS FROM DECISIONS OF CONTRACTING OFFICERS UNDER THE CONTRACT DISPUTES ACT OF 1978

AUTHORITY: Sections 1.780 through 1.783 issued under 41 U.S.C. 601-613, 38 U.S.C. 501.

SOURCE: 47 FR 12340, Mar. 23, 1982, unless otherwise noted.

#### § 1.780 Board of Contract Appeals—jurisdiction.

The Department of Veterans Affairs Board of Contract Appeals (referred to in §§1.780 through 1.783 as the *Board*) shall consider and determine appeals from decisions of contracting officers

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pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) relating to contracts made by (a) the Department of Veterans Affairs or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

[47 FR 12340, Mar. 23, 1982, as amended at 54 FR 34980, Aug. 23, 1989]

### § 1.781 Organization and address of the Board.

(a) The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least 3 members who decide the case by a majority vote. Board Members are designated Administrative Judges.

(b) The Board's mailing address is 810 Vermont Avenue, NW., Washington, DC 20420.

### § 1.782 Policy and procedure.

(a) *Rules of procedure.* Appeals to the Board are processed in accordance with Rules of Procedure adopted by the Board in compliance with the guidelines issued by the Office of Federal Procurement Policy under the provisions of the Contract Disputes Act of 1978 (41 U.S.C. 601, 607(h)). There is no further administrative appeal within the Department of Veterans Affairs from final decisions rendered by the Board.

(b) *Application and interpretation of rules.* It is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules, therefore, are applied and interpreted to provide, to the fullest extent practicable, informal expeditious, and inexpensive resolution of disputes. For that purpose, the Board is authorized to require contracting officers and other Department of Veterans Affairs officials to furnish the Board with such information, technical data, and other assistance as the Board may require in the performance of its duties.

### § 1.783 Rules of the Board.

(a) *Rule 1; appeals from final decisions and requests for final decisions—(1) No-*

*tice of appeal.* Notice of an appeal shall be in writing and mailed to or otherwise furnished the Board within 90 days from the date of receipt of a contracting officer's final decision. A copy thereof shall be furnished the contracting officer from whose decision the appeal is taken.

(2) *Failure to issue a final decision.* (i) Where the contractor has submitted a claim of \$50,000 or less to the contracting officer and, in writing, has requested a decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a)(1) of this section, citing the failure of the contracting officer to issue a decision.

(ii) Where the contractor has submitted a properly certified claim in excess of \$50,000 to the contracting officer, or pursuant to the Disputes Clause, has requested a decision by the contracting officer which presently involves no monetary amount, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in paragraph (a)(1) of this section, citing the failure of the contracting officer to issue a decision.

(3) *Stay of proceedings.* Upon the docketing of an appeal filed pursuant to the provisions of paragraph (a)(2) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as determined by the Board.

(4) *Request for final decision.* In lieu of filing a notice of appeal under paragraph (a)(2) of this section, the contractor, in the event of undue delay or refusal on the part of the contracting officer, may request that the Board direct the contracting officer to issue a decision in a specified period of time, as determined by the Board.

(b) *Rule 2; notice of appeal, contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract by number, the department, agency, or bureau involved in the dispute, the decision from which the appeal is taken, and the



amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor taking the appeal) or by the appellant's duly authorized representative or attorney. The complaint referred to in paragraph (f) of this section (Rule 6) may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Rule 3; docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of §§ 1.780 through 1.783 and to the contracting officer.

(d) *Rule 4; preparation, content, organization, forwarding, and status of appeal file—(1) Duties of contracting officer.* Within 30 days of receipt of notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through the Office of General Counsel an appeal file consisting of all documents pertinent to the appeal, including:

- (i) The decision from which the appeal is taken;
- (ii) The contract, including specifications and pertinent amendments, plans, and drawings;
- (iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
- (iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
- (v) Any additional information considered relevant to the appeal.

Within the same time above specified, the Office of General Counsel shall furnish the appellant a copy of each document transmitted to the Board, except those in paragraph (d)(1)(ii) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(2) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to

the Board any documents not contained therein which are considered to be relevant to the appeal, and shall furnish two copies of such documents to the government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(4) *Lengthy documents.* Upon request by either party the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when it would be burdensome to do so. At the time a party files with the Board a document as to which such a waiver has been granted the party shall notify the other party that the document or a copy thereof is available for inspection at the office of the Board or of the party filing same.

(5) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with paragraphs (m) and (t) of this section (Rules 13 and 20).

(6) *Dispensing with appeal file requirements.* Notwithstanding the provisions of paragraph (d)(1) through (5) of this section, the filing of the documents in paragraph (d)(1) and (2) of this section may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

(e) *Rule 5; dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on

both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(f) *Rule 6; pleadings and motions*—(1) *Appellant*. Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(2) *Government*. Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(3) *Motions*. The Board may entertain and rule upon appropriate motions.

(g) *Rule 7; amendments of pleadings or record*—(1) *More definite statement and reply*. The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(2) *Amendments*. The Board may, in its discretion, and within the proper

scope of the appeal, permit either party to amend its pleadings upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable that party to meet such evidence.

(h) *Rule 8; hearing election*. After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it elects a hearing, as prescribed in paragraphs (q) through (y) of this section (Rules 17 through 25), or whether it elects to submit its case on the record without a hearing, as prescribed in paragraph (k) of this section (Rule 11).

(i) *Rule 9; prehearing briefs*. Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to paragraph (h) of this section (Rule 8). If the Board does not require prehearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be filed with the Board at least 15 days prior to the date set for hearing, and a copy simultaneously furnished to the other party.

(j) *Rule 10; prehearing or presubmission conference*. (1) Whether the case is to be submitted pursuant to paragraph (k) of this section (Rule 11), or heard pursuant to paragraphs (q) through (y) of this section (Rules 17 through 25), the Board may, upon its own initiative, or upon the application of either party,

arrange a telephone conference or require the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(i) Simplification, clarification, or severance of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(iii) Agreements and rulings to facilitate discovery;

(iv) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(v) The possibility of agreement disposing of any or all of the issues in dispute; and

(vi) Such other matters as may aid in the disposition of the appeal.

(2) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

(k) *Rule 11; submission without a hearing.* Either party may elect to waive a hearing and submit its case upon the record as settled pursuant to paragraph (m) of this section (Rule 13). Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. In accordance with paragraph (m) of this section (Rule 13), affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record. The Board may permit such submissions to be supplemented by oral argument (transcribed, if requested), and by briefs filed in accordance with paragraph (w) of this section (Rule 23).

(l) *Rule 12; optional small claims (expedited) and accelerated procedures.* These procedures are available solely at the election of the appellant.

(1) 12.1 *Elections to utilize small claims (expedited) and accelerated procedures.* (i)

In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(2) of this section (rule 12). An appellant may elect the accelerated procedure set forth in paragraph (1)(3) of this section (Rule 12) in any appeal eligible for small claims (expedited) procedure.

(ii) In appeals where the amount in dispute is \$100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(3) of this section (Rule 12).

(iii) The appellant's election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(iv) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

(2) 12.2 *The small claims (expedited) procedure.* (i) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(A) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the small claims (expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under paragraph (d) of this section (Rule 4) shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(B) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (1) Identify and simplify the issues; (2) establish a simplified procedure appropriate to the particular appeal involved; (3) determine whether either party wants a hearing and, if so, fix a time and place therefor; (4) require the Government to furnish all the additional documents relevant to the appeal; and (5) establish an expedited schedule for resolution of the appeal.

(ii) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under this section 1.783, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(iii) Written decisions by the Board in cases processed under the small claims (expedited) procedure will be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(iv) Decisions under this procedure shall have no value as precedent and, in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

(3) 12.3 *The accelerated procedure.* (i) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may shorten time periods prescribed or allowed under this § 1.783, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(ii) Written decisions by the Board in cases processed under the accelerated procedure will normally be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair, Vice Chair, or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is \$10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(4) 12.4 *Motions for reconsideration in cases under paragraph (1) of this section (Rule 12).* Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated need not be decided within the original 120-day or 180-day limits, but all such motions shall be processed and decided rapidly so as to fulfill the intent of paragraph (1) of this section (Rule 12).

(m) *Rule 13; settling the record.* (1) The record upon which the Board's decision will be rendered consists of the documents furnished under paragraphs (d) and (1) of this section (Rules 4 and 12), to the extent admitted in evidence, and the following items, if any: pleadings prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its discretion, no evidence shall be received after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(n) *Rule 14; discovery—depositions—(1) General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provision for protecting the secrecy of confidential information or documents.

(2) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may agree to, or the Board may order, upon application of either party, the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) *Orders on depositions.* The time, place, and manner of taking depositions shall be as agreed upon by the parties or, failing such agreement, governed by order of the Board.

(4) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(5) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(6) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of paragraph (u) of this section (Rule 21).

(o) *Rule 15; interrogatories to parties, admissions of fact, and production and inspection of documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (2) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service, the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and

(3) a request for the production, inspection, and copying of any documents or objects, not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after service. Any discovery engaged in under this rule shall be subject to the provisions of paragraph (n)(1) of this section (Rule 14(A)) with respect to general policy and protective orders, and paragraph (ii) of this section (Rule 35) with respect to sanctions.

(p) *Rule 16; service of papers other than subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers, replies, and briefs shall be filed directly with the Board for service. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in paragraph (u) of this section (Rule 21).

(q) *Rule 17; hearings, where and when held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, requirements of paragraph (1) of this section (Rule 12), and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

(r) *Rule 18; notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

(s) *Rule 19; unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in paragraph (k) of this section (Rule 11).

(t) *Rule 20; hearings, nature of and examination of witnesses—(1) Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will depend on relevancy and materiality. Evidence which may not be admissible under the Federal Rules of Evidence may be admitted in the discretion of the presiding Administrative Judge or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

(2) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his or her statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(u) *Rule 21; subpoenas—(1) General.* Upon written request of either party filed with the Board, or on the Board's own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chair may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient

for the witness that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to paragraph (u)(1)(i) or (ii) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(2) *Voluntary cooperation.* Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(3) *Requests for subpoenas*—(i) A request for a subpoena shall normally be filed at least:

(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion, the Board may honor requests for subpoenas not made within these time limitations.

(ii) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(4) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(5) *Form; issuance*—(i) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce speci-

fied books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(ii) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(6) *Service.* (i) The party requesting issuance of a subpoena shall arrange for service.

(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(iii) The party at whose request a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(7) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

(v) *Rule 22; copies of papers.* When books, records, papers, or documents have been received in evidence, true copies thereof, or of such part thereof as may be material or relevant, may be substituted therefor, during the hearing or at the conclusion thereof.

(w) *Rule 23; posthearing briefs.* Posthearing briefs may be submitted upon such terms as may be agreed to by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

(x) *Rule 24; transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under paragraph (1)(2) of this section (Rule 12.2). Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost of duplication.

(y) *Rule 25; withdrawal of exhibits.* After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(z) *Rule 26; representation—the appellant.* An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(aa) *Rule 27; representation—the government.* Government counsel may, in accordance with their authority, represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

(bb) *Rule 28; decisions.* Decisions of the Board will be made in writing and

authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the office of the Board in Washington, DC. Decisions of the Board will be made solely upon the record, as described in paragraph (m) of this section (Rule 13).

(cc) *Rule 29; motions for reconsideration.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to support the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(dd) *Rule 30; suspension and dismissal without prejudice.* Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend or terminate further processing of the appeal. If, thereafter, the Board is advised by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position. In other cases where the Board is unable to proceed with disposition for reasons not within the control of the Board, an appeal may be placed in a suspense status. Where the suspension has continued, or may continue, for an inordinate length of time, the Board, in its discretion, may dismiss such appeal from its docket without prejudice to restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to be with prejudice.

(ee) *Rule 31; dismissal or default for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to



## § 1.891

show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to paragraph (ii) of this section (Rule 35). If good cause is not shown, the Board may take appropriate action.

(ff) *Rule 32; remand from court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

(gg) *Rule 33; time, computation, and extensions.* (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(hh) *Rule 34; ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(ii) *Rule 35; sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order as it considers necessary to the just and expeditious conduct of the appeal.

(jj) *Rule 36; effective date and applicability.* These rules shall apply (1)

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mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter.

[47 FR 12340, Mar. 23, 1982, as amended at 60 FR 48029, Sept. 18, 1995]

### 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 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)

## Department of Veterans Affairs

## § 1.902

### § 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 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 to 1.906 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

### § 1.900 Prescription of standards.

The instructions contained in §§ 1.900 through 1.954 are issued pursuant to the Federal Claims Collection Act (Pub. L. 89-508 and 97-365) and the joint regulations thereunder of the Comptroller General of the United States and the Attorney General of the United States, title 4, chapter II, Code of Federal Regulations. Except as provided in § 1.903, they constitute standards governing the Department of Veterans Affairs collection, compromise, suspension or termination of collection effort, and the referral to the General Accounting Office and the Department of Justice for litigation of civil claims by the Department of Veterans Affairs for money or property.

[32 FR 2613, Feb. 8, 1967, as amended at 52 FR 42104, Nov. 3, 1987]

### § 1.901 Omissions not a defense.

The standards set forth in §§ 1.900 through 1.954 shall apply to VA handling of civil claims for money and property but the failure of the agency to comply with any provision of the standards shall not be available as a defense for any debtor.

[52 FR 42105, Nov. 3, 1987]

### § 1.902 Fraud, antitrust and tax claims excluded.

(a) The standards set forth in §§ 1.900 through 1.954 do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on violation of the antitrust laws. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims.

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(b) Upon identification of a claim of any of the types described in paragraph (a) of this section (an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim), VA shall refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may determine that no action is warranted and return the claim to VA for further handling in accordance with §§ 1.900 through 1.954.

(c) VA has no authority to consider or compromise Federal tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply.

(d) Sections 1.900 through 1.954 do not apply to claims between Federal agencies. VA shall attempt to resolve inter-agency claims by negotiation. Any unresolved claims shall be referred to the General Accounting Office (GAO) for final resolution.

(Authority: 37 U.S.C. 3711)

[52 FR 42105, Nov. 3, 1987]

### **§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.**

Nothing in §§ 1.900 through 1.954 is intended to preclude VA settlement, waiver, or compromise of claims under statutes other than the Federal Claims Collection Act. See, e.g. 38 U.S.C. 3720(a)(4) and (5) and 5302(a) and 42 U.S.C. 2651-2653. Nor are §§ 1.900 through 1.954 intended to preclude Department of Veterans Affairs settlement, waiver, or compromise of claims under § 17.48(f) of this chapter for the cost of medical or hospital care furnished pursuant to § 17.47 (c)(1) or (d) of this chapter to persons who are entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof by reason of "workmen's compensation" or "employer's liability" statutes, State or Federal; right to maintenance and cure in admiralty; or statutory or other relationships with third parties, giving rise to liability for damages because of negligence or other legal wrong.

[32 FR 2613, Feb. 8, 1967, as amended at 52 FR 42105, Nov. 3, 1987]

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### **§ 1.904 Conversion claims.**

The instructions contained in §§ 1.900 through 1.954 are directed primarily to the recovery of money on behalf of the Government and the circumstances in which the Department of Veterans Affairs may dispose of claims for less than the full amount. In addition, the Department of Veterans Affairs will assert demands for the return of specific property or the payment of its value in cases of conversion.

### **§ 1.905 Subdivision of claims not authorized.**

Claims shall not be subdivided in order 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 claim in determining whether the claim is one of less than \$20,000, exclusive of interest and administrative costs, either for purposes of suspension or termination of collection action (§§ 1.940 through 1.943) or for determining the applicability of the \$20,000 limit with respect to compromise (§§ 1.930 through 1.938).

(Authority: 31 U.S.C. 3711)

[52 FR 42105, Nov. 3, 1987]

### **§ 1.906 Required administrative proceedings.**

Nothing contained in §§ 1.900 through 1.954 is intended to foreclose the right of any debtor to appeal or administrative hearing provided by statute, contract, or applicable Department of Veterans Affairs Regulation.

### **§ 1.907 Definitions.**

(a) For the purpose of §§ 1.900 through 1.954, the terms *claims* and *debt* are synonymous and interchangeable. They refer to any amount of money or property which has been determined by an appropriate official of VA to be owed to the United States by any person, organization or entity, except another Federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the initial written notice of indebtedness or applicable contractual agreement, unless other satisfactory payment arrangements have been previously made. A debt is also considered

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delinquent if the debtor fails to satisfy obligations under a repayment agreement with VA.

(c) As used in §§1.900 through 1.954, *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 VA Regional Counsel for legal action.

(Authority: 31 U.S.C. 3701, 3711)

[52 FR 42105, Nov. 3, 1987]

### STANDARDS FOR COLLECTION OF CLAIMS

AUTHORITY: Sections 1.910 to 1.921 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

#### §1.910 Aggressive collection action.

The Department of Veterans Affairs will take aggressive action, on a timely basis with effective followup, to collect all claims for money or property arising from its activities.

#### §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 benefits program administered by the Department of Veterans Affairs. It does not apply to the Department's other claims collection activities. (Note: School liability debts are governed by §21.4009; financial institution debts are subject to chapter II, parts 209, 210, and 240 of title 31, Code of Federal Regulations; and other debts are governed by part 102 of title 4 of the Code of Federal Regulations.)

(b) *Written demands.* When the Department of Veterans Affairs has determined that a debt exists by reason of an administrative decision or by operation of law, the Department of Veterans Affairs shall promptly demand, in writing, payment of the debt. The Department of Veterans Affairs shall notify the debtor of his or her rights and remedies in connection with the debt and the consequences of failure to cooperate with collection efforts. Ordinarily, no more than three demand letters, at intervals of not more than thirty days, will be sent, but letters subse-

quent to the initial letter will not be necessary if:

(1) The Secretary determines that further demand would be futile;

(2) The debtor has indicated in writing that he or she does not intend to pay the debt;

(3) Judicial action to protect the Government's interest is indicated under the circumstances; or

(4) Collection by offset pursuant to §1.912a can be made.

(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 request 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.* The debtor may appeal, in accordance with part 19 of this title, 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;

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(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 Department of Veterans Affairs benefits, subject to § 1.912a; and

(5) That interest and administrative costs may be assessed, in accordance with § 1.919, as appropriate.

(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 part 19 of this title;

(2) Notification of any decision affecting the payment of benefits or granting relief, in § 3.103(e);

(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 § 1.919.

(Authority: 38 U.S.C. 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]

### § 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with part 102 of title 4 of the Code of Federal Regulations, VA shall collect debts by administrative offset from any payments made by VA to an individual indebted to VA. This section does not pertain to offset from either current salary or from benefit payments, 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 and current salary are found in § 1.912a and §§ 1.980 through 1.994. 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 1.954 and §§ 1.980 through 1.984, any debt described in 38 U.S.C. 3726 unless the requirements 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 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

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be jeopardized by deferral of offset. 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.

(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 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.

(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 pro-

vided 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) When collecting multiple debts by administrative offset, VA will 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 4 CFR 102.3(b)(3), 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 explained in § 102.3(b)(3)).

(Authority: 31 U.S.C. 3716)

[52 FR 42105, Nov. 3, 1987, as amended at 54 FR 34980, Aug. 23, 1989]

### § 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 § 1.911a(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

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existence or amount of the debt in accordance with § 1.911a(c)(1), offset shall not commence until the dispute is reviewed as provided in § 1.911a(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.

(d) *Exceptions.* Offset may commence prior to the resolution of a dispute or a decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911a(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

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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]

### § 1.913 Personal interview with debtor.

The Department of Veterans Affairs will, to the extent feasible, undertake personal interviews whenever requested by debtors and in other cases having regard for the amounts involved and the proximity of agency representatives to the debtors.

### § 1.914 Contact with debtor's employing agency.

When a debtor of the Department of Veterans Affairs is employed by another agency of the Federal Government or is a member of the Military establishment or the Coast Guard and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Department of Veterans Affairs will contact the employing agency in an effort to arrange with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469; 3 CFR 1965 Supp., pp. 130, 131).

### § 1.915 Suspension or revocation of eligibility.

Demands on debtors who are lenders, contractors, brokers, or other participants in Department of Veterans Affairs programs will include notification that failure to pay their debts within a reasonable time may be cause for suspension or disqualification to the extent authorized by law. Nothing in this section is intended to be in derogation of the provisions of 38 U.S.C. 3704(b) and 3704(d) as implemented by §§ 36.4331 and 36.4361 of this chapter. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 will be reported to the Treasury Department at once. Prompt and appropriate Department of Veterans Affairs action

will be taken upon receipt of Treasury Department notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited.

**§ 1.916 Liquidation of collateral.**

VA will exercise its rights to liquidate security or collateral and apply the proceeds to debts due it through use of a power of sale in the security instrument or a non-judicial foreclosure if the debtor fails to pay his or her debt, within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or the particular circumstances require judicial foreclosure. VA must provide the debtor with reasonable notice of the sale, and an accounting of any surplus proceeds, as well as notice of any other procedures required by law or contract. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless such action is expressly required by statute or contract.

(Authority: 31 U.S.C. 3711)

[52 FR 42106, Nov. 3, 1987]

**§ 1.917 Collection in installments.**

(a) Whenever feasible, and except as otherwise provided by law, debts owed to VA together with any interest and administrative costs assessed under § 1.919, shall be collected in full in one lump sum. Collection in one lump sum is applicable whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, payments may be accepted in regular installments when the debtor is financially unable to pay the debt in one lump sum.

(b) In agreeing to accept regular installment payments to liquidate an outstanding indebtedness, VA shall obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event that the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship 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 not more than three years. Installment payments of less than \$50 per month shall be accepted only if justified on the grounds of financial hardship or for some other reasonable cause.

(c) If VA is holding an unsecured claim for administrative collection, it shall attempt to obtain from a debtor an executed confess-judgment note in States and jurisdictions where permitted, using Department of Justice Form 1, or another appropriate Department of Justice form, whenever the total amount of the deferred installments will exceed \$750. Such notes may also be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, VA shall provide debtors with a written explanation of the consequences of signing the note, and shall maintain sufficient documentation to demonstrate that the debtor signed the note knowingly and voluntarily. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. VA may accept installment payments even if the debtor refuses to execute a confess-judgment note or to give other security.

(d) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among these debts, that designation must be followed by VA. If the debtor does not designate the application of the payment, VA shall apply payments to the various debts in accordance with the best interests of the Government as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(Authority: 31 U.S.C. 3711)

[52 FR 42106, Nov. 3, 1987]

**§ 1.918 Exploration of compromise.**

VA will attempt to effect compromises, preferably during the course of personal interviews, in accordance with the standards set forth in §§ 1.930 through 1.938 in all cases in which it is ascertained that the debtor is financially unable to pay the full amount or



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in which the litigative risks or the costs of litigation dictate such action.

[52 FR 42107, Nov. 3, 1987]

### § 1.919 Interest.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, VA shall assess:

(1) Interest on all indebtedness to the United States arising as a result of participation in VA benefit programs which are being paid in installments,

(2) Interest and administrative costs of collection on debts where repayment has become delinquent, and

(3) Interest, penalties, and administrative costs on all nonbenefit debts in accordance with 4 CFR 102.13.

(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 paid by the United States for its borrowing as published in the Treasury's Cash Management Regulations (ITFM 6-8000). The rate of interest shall be adjusted annually on the first day of the calendar year to reflect the average rate being charged in accordance with the Treasury's Cash Management Regulations. Once the rate of interest has been determined for a particular debt, the rate shall remain unchanged throughout the duration of repayment of that debt.

(d) Interest on amounts covered by § 1.919 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 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) When a debtor requests a waiver of collection of the indebtedness, interest and administrative costs shall not be assessed until either

(i) A Committee on Waivers and Compromises has considered the request and rendered an initial decision, or

(ii) The applicable time limit for requesting waiver, as stated in 38 U.S.C.

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5302, has expired and the debtor, after notice in accordance with § 1.911, has not made such a request. This subsection does not apply to debts resulting from participation in the loan program administered under chapter 37 of title 38 of the United States Code.

(Authority: 38 U.S.C. 5302, 5315)

(g) Administrative costs assessed under § 1.919 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 § 1.919 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 the Department of Veterans Affairs within that period, unless such repayment agreement becomes delinquent.

(Authority: 38 U.S.C. 5315)

[46 FR 62057, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987]

### § 1.920 Documentation of collection action.

An appropriate file will be maintained for each claim completely documenting all Department of Veterans Affairs collection action and the basis for any compromise or for suspension or termination of collection action.

[46 FR 62057, Dec. 22, 1981]

### § 1.921 Additional collection action.

Nothing in §§ 1.900 through 1.954 is intended to preclude the utilization of any other remedy available to the Department of Veterans Affairs.

### § 1.922 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

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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) VA will notify each individual of the right to dispute the existence or amount of any debt in accordance with §§3.101(e) and 19.109, and to request a waiver of the debt in accordance with §§1.955 through 1.970 if applicable.

(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

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information from consumer reporting agencies, or which obtain such information for the purpose of furnishing it to consumer reporting agencies.

(Authority: 38 U.S.C. 5701 (g), (i); 31 U.S.C. 952)

[46 FR 62058, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987]

### § 1.923 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) Funding of collection service contracts:

(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 require-

ment 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.

(Authority: 31 U.S.C. 3718)

[52 FR 42107, Nov. 3, 1987]

### § 1.924 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt in accordance with §§ 1.900 through 1.954, 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 may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors hired by VA, in order to facilitate the collection or compromise of debts. A mailing address obtained under paragraph (a) of this section may be disclosed to a consumer reporting agency under authority of § 1.922 only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) VA will insure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

(Authority: 31 U.S.C. 3711)

[52 FR 42108, Nov. 3, 1987]

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### **§ 1.925 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, VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System (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 in accordance with such regulations prescribed by the Director of that Office. See 5 CFR part 831, subpart R (§§ 831.1801 through 831.1808) and part 845, subpart O (§§ 845.401 through 845.408). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment, unless they represent continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.994. 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, 1.912, 1.912a, or 4 CFR 102.3 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)  
[52 FR 42108, Nov. 3, 1987]

### **§ 1.926 Referral of VA debts.**

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of offsetting the debt from any payment, except salary, (see paragraph (e) of this section), made by such 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;

(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

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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, 1.912, 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 purposes of salary offset shall be done in accordance with 5 CFR 550.1106.

(Authority: 31 U.S.C. 3711)

[52 FR 42108, Nov. 3, 1987]

### § 1.927 Analysis of costs and prevention of debts.

(a) 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 various dollar ranges should be used to compare the cost effectiveness of alternative collection procedures, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken. Costs and recovery data should also be useful in justifying adequate resources for an effective collection program, evaluating the feasibility and cost effectiveness of contracting for consumer reporting agencies' services (§ 1.922), collection services (§ 1.923), and for determining appropriate charges for administrative costs (§ 1.919).

(b) VA shall insure that adequate procedures are established which both identify the causes of overpayments, delinquencies, and defaults and also describe the actions necessary to correct such problems.

(Authority: 31 U.S.C. 3711 through 3719)

[52 FR 42109, Nov. 3, 1987]

### § 1.928 Exemptions.

(a) Sections 1.900 through 1.954 do not apply to debts arising under, or to pay-

ments made under, the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or tariff laws of the United States. However, the remedies and procedures described in §§ 1.900 through 1.954 are still authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or common law.

(b) This section shall not be construed as prohibiting the use of §§ 1.900 through 1.954 when VA attempts to collect debts owed to this agency by persons employed by the agencies administering the laws cited in paragraph (a) of this section.

(Authority: 31 U.S.C. 3711)

[52 FR 42109, Nov. 3, 1987]

### § 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

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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.

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(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 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 1.930 to 1.937 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: 32 FR 2614, Feb. 8, 1967, unless otherwise noted.

#### § 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.938 apply to the compromise of claims in accordance with 31 U.S.C. 3711. VA may exercise such compromise authority where the claim owed to VA does not exceed \$100,000 exclusive of interest and other late payment charges. This \$100,000 limit does not apply to debts which arise out of participation in the loan program under chapter 37 of title 38 of the United States Code. The Comptroller General or his/her designee may exercise compromise authority with respect to claims referred to the General Accounting Office (GAO). Only the Comptroller General or his/her designee may compromise a claim that arises out of an exception made by GAO on account of an accountable officer, including a claim against the payer, prior to its referral by GAO to the Department of Justice for litigation.

(b) When the claim exceeds \$100,000, exclusive of interest and other late payment charges, the authority to accept a compromise offer rests solely with the Department of Justice. However, approval by the Department of Justice is not required if VA wishes to reject a compromise offer on a debt in excess of \$100,000. If VA believes that the compromise offer on a debt in excess of \$100,000 should be accepted, it



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shall refer the matter to the Department of Justice by using the Claims Collection Litigation Report (section 1.951). The referral should contain a written memorandum by the local Committee on Waivers and Compromises specifying the exact reason why it is believed that the compromise offer should be accepted. Both the Claims Collection Litigation Report and the Committee's memorandum should be sent to VA Central Office, Office of Financial Management, for subsequent referral to the Department of Justice.

(Authority: 31 U.S.C. 3711)

[57 FR 47263, Oct. 15, 1992]

### § 1.931 Inability to pay.

(a) A claim may be compromised by VA pursuant to §§ 1.930 through 1.938 if VA cannot collect the full amount of the debt because of:

(1) The debtor's inability to pay the full amount of the debt within a reasonable amount of time; or

(2) The refusal of the debtor to pay the claim in full and the inability of VA to collect the debt in full within a reasonable time by means of enforced collection.

(b) In determining the debtor's ability to pay, the following factors, among others, may be considered:

- (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 which may be realized by means of enforced collection procedures.

(c) VA will give consideration to the applicable exemptions available to the debtor under various State and Federal laws in determining the ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at a forced sale may be properly considered in determining the ability to enforce collection. A compromise effected under §§ 1.930 through 1.938 should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to

the debtor and the time in which collection will take place.

(d) The payment of a compromise in installments is to be discouraged. However, if payment of a compromise in installments is necessary, then a legally enforceable agreement shall be obtained from the debtor for the reinstatement of the original amount of the indebtedness, less any amounts paid there on by the debtor, and also an acceleration of the balance due upon default. Such an agreement, together with security as described in § 1.917, should be obtained in every case possible.

(e) If VA files do not contain recent credit information as a basis for assessing a compromise proposal, such information shall be obtained from the debtor by obtaining a statement, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses. Forms such as VA Form 4-5655 "Financial Status Report" or Department of Justice Forms OBD-500 or OBD-500B shall be used to obtain this information. Similar data may be obtained from corporate debtors by using a form, such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as may be required.

(Authority: 31 U.S.C. 3711)

[52 FR 42109, Nov. 3, 1987]

### § 1.932 Litigative possibilities.

VA will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs and attorney fees which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. (See 28 U.S.C. 2412.)

[52 FR 42110, Nov. 3, 1987]

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### § 1.933 Cost of collecting claim.

The Department of Veterans Affairs will attempt to compromise claims when the cost of collection does not justify 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, having regard for the time required to effect collection. The cost of collection normally will be a proportionately great factor in the settlement of small claims.

### § 1.934 Enforcement policy.

Statutory penalties, interest, and administrative costs which are established as an aid to enforcement and to compel compliance may be compromised pursuant to §§ 1.930 through 1.938. However, such additional costs on debts will be considered for compromise only in connection with compromise of the total amount of the debt (original amount of debt plus interest and costs). Interest, administrative costs, and other additional costs will never be considered for compromise separately or exclusively from the original amount of the debt.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

### § 1.935 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. VA shall not attempt to allocate the burden of paying such claims as between the debtors, but shall proceed to liquidate the indebtedness as quickly as possible. Proper measures shall be taken to insure that a compromise with one such debtor does not release VA's claim against the remaining debtor. The amount of a compromise accepted from one debtor shall not be considered as a precedent or as morally binding in determining the amount which will be required from the other debtor held to be jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

### § 1.936 Settlement for a combination of reasons.

VA may compromise specific claims for any combination of reasons authorized by sections 1.930-1.938.

(Authority: 31 U.S.C. 3711)

[57 FR 47264, Oct. 15, 1992]

### § 1.937 Further review of compromise offers.

VA may refer to the GAO or Department of Justice firm written offers, plus supporting data, from debtors when there is doubt whether the offers should be accepted.

[52 FR 42110, Nov. 3, 1987]

### § 1.938 Restrictions.

VA will not accept either a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration shall be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

[52 FR 42110, Nov. 3, 1987]

#### STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

SOURCE: 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

### § 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.943 apply to the suspension and or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed \$100,000, exclusive of interest and other late payment charges, after deducting the amount of partial payments or collections, if any. VA may suspend or terminate collection action under §§ 1.940 through 1.943 with respect to claims for money or property arising out of the Department's activities prior to the referral of such claims to GAO or the Department of Justice for litigation. The Comptroller General may authorize such authority with respect to such claims referred to GAO by VA prior to their further referral to the Department of Justice for litigation.

(b) If after deducting the amount of any partial payments or collections, a

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claim exceeds \$100,000, exclusive of interest and other late payment charges, then the authority to suspend or terminate collection action rests solely with the Department of Justice. If VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standards set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (see § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection regardless of the amount involved, without the concurrence of the Department of Justice. If VA decides not to suspend or terminate collection action on the claim, Justice Department approval is not required.

(Authority: 31 U.S.C. 3711)

[57 FR 47264, Oct. 15, 1992]

### § 1.941 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. The following sources shall be used to locate missing debtors: Telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service (§ 1.924), other Federal agencies, employers, relatives, credit agency locate reports, and credit bureaus. Suspension as to a particular debtor should not prohibit the early liquidation of any security held for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations, in order to permit the timely filing of a suit, if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the

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entry of judgment should not be delayed because of his/her missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payments on the debt owed to VA or effect a compromise at the time, but his/her future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running again, or

(2) Future collection can be affected by offset, notwithstanding the statute of limitations, with due regard to the 10 year limitation prescribed by 31 U.S.C. 3716(c)(1), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been suspended temporarily, and such temporary suspension is likely to enhance the debtor's ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.912, and 1.912a, pending agency action on requests for administrative review or waiver.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

### § 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

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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.

[32 FR 2615, Feb. 8, 1967, as amended at 52 FR 42111, Nov. 3, 1987]

### § 1.943 Transfer of claims.

When VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which VA holds a judgment by assignment or otherwise shall be referred to the Department of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justi-

fied, except where VA has authority for handling its own litigation.

(Authority: 31 U.S.C. 3711)

[52 FR 42111, Nov. 3, 1987]

### REFERRALS TO GAO, DEPARTMENT OF JUSTICE, OR IRS

AUTHORITY: Sections 1.950 to 1.954 issued under 72 Stat. 1114; 38 U.S.C. 501.

SOURCE: 52 FR 42111, 42112, Nov. 3, 1987, unless otherwise noted.

### § 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive collection action and the observance of §§1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by VA must be referred to the GAO for review and approval, prior to referral to the Department of Justice, unless VA has been granted an exception by the GAO.

(c) When the merits of VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the Department of Veterans Affairs shall refer the matter to the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to the GAO or the Department of Justice pursuant to this section, VA shall refrain from having any contact with the debtor and shall direct the debtor to the GAO or the Department of Justice, as appropriate, when questions concerning the claim or a request for waiver of the claim are raised by the debtor. The GAO or the Department of Justice, as appropriate, shall be immediately notified by VA of any payments or requests for administrative remedies, such as waiver, which are received by this department from the debtor subsequent to referral of a claim under this section.

(e) In accordance with procedures set forth in 26 CFR part 301, information pertaining to past-due, legally enforceable debts owed to VA may be referred to the Internal Revenue Service by VA for the purpose of collection of such debts by means of tax refund offset.

(Authority: 31 U.S.C. 3711)

**§ 1.951 Claims Collection Litigation Report.**

(a) Unless an exception is granted by the Department of Justice, the Claims Collection Litigation Report (CCLR) shall be used with all referrals of administratively uncollectible claims made pursuant to § 1.950. As required by the CCLR, the following information shall be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions described in §§ 1.900 through 1.954 have been omitted, the reasons for their omission must be provided. The Department of Justice or GAO may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions.

(2) *Current address of the debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made, shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice, in which the current address of any party

is unknown, shall be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Current credit data, when applicable, indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and judicial remedies available to the government, shall be included:

(i) Such credit data may take the form of:

(A) A commercial credit report;

(B) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(C) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(D) An audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if:

(A) A surety bond is available in an amount sufficient to satisfy the claim in full;

(B) The forced sale value of the security available for application to the VA claim is sufficient to satisfy the claim in full;

(C) VA wishes to liquidate the loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(D) The debtor is in bankruptcy or receivership;

(E) The debtor's liability to VA is fully covered by insurance, in which case VA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage;

(F) The nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained; or

(G) Where it is clearly irrelevant to the Government's case.

(b) VA shall also use the Claims Collection Litigation Report (CCLR) when referring claims to the Department of Justice in order to obtain approval of

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that department with respect to compromise, suspension, or termination.

(Authority: 31 U.S.C. 3711)

### § 1.952 Preservation of evidence.

Care shall be taken to preserve all files, records, and exhibits on claims referred to or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the U.S. Attorney without their specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

(Authority: 31 U.S.C. 3711)

### § 1.953 Minimum amount of referrals to the Department of Justice.

VA shall not refer claims of less than \$600, exclusive of interest, penalties (if applicable), and administrative costs, for litigation unless:

(a) Referral is important to a significant enforcement policy, or

(b) The debtor not only has the clear ability to pay the claim but the government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the government.

(Authority: 31 U.S.C. 3711)

### § 1.954 Preliminary referrals to GAO.

As required by § 1.950, preliminary referrals to the Government Accounting Office (GAO) will be in accordance with instructions, including monetary limitations, contained in the "General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies".

#### REGIONAL OFFICE COMMITTEES ON WAIVERS AND COMPROMISES

AUTHORITY: Sections 1.955 to 1.970 issued under 5 U.S.C. 5584; 31 U.S.C. 3711; 38 U.S.C. 501, 3685, 3720, 5302; 4 CFR Parts 91 and 92.

### § 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 com-

promise 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 Division Chief of the Fiscal activity is accountable for the administrative control of the Committee functions. The quality control of the Committee and its professional and clerical staff is the responsibility of the Chairperson.

(d) *Overall control.* The Assistant Secretary for Finance and Information Resources Management (IRM) 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

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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 Disagreement 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

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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]

### § 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.

(2) Arising out of operations of the Veterans Health Services and Research Administration:

(i) Debts resulting from services furnished in error (§ 17.62(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§ 17.62(b) of this chapter).

(iii) Settlement of breached career residency contracts.

(iv) Other claims arising in connection with transactions of the Veterans Health Services and Research Administration (§ 17.64(c) of this chapter).

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(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, 4 CFR Parts 91 and 92).

(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]

### § 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 overpayment 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. (§ 17.62(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)

(3) *Breached career residency contracts.* Final settlement of any breached career residency contract in which terms are different than those provided in the contract, which will result in the payment of less than liquidated value or in an extension of time in which to pay damages.

(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 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.



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(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]

### § 1.958 Finality of decisions.

A decision by the regional office Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer.

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

[44 FR 59906, Oct. 17, 1979]

### § 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.

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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 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

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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.**

The provisions applicable to VA (including those for appeals and refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances and travel, transportation, and relocation expenses and allowances under 5 U.S.C. 5584 are set forth at 4 CFR Parts 91 and 92. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are hereby delegated all authority granted the Secretary under 5 U.S.C. 5584 and 4 CFR Parts 91 and 92 to grant waiver in whole or in part of a claim aggregating not more than \$1,500, to recommend approval of waiver in whole or in part of a claim aggregating more than \$1,500, and to deny waiver of a claim for any amount. 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).

(Authority: 5 U.S.C. 5584, 38 U.S.C. 501; 4 CFR Parts 91 and 92)

[60 FR 53276, Oct. 13, 1995]

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### § 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 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 incurrence 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

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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.

(3) *Lack of good faith.* Absence of an honest intention to abstain from taking unfair advantage of the holder and/or 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]

### § 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.

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979; 48 FR 1056, Jan. 10, 1983]

### § 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 re-

funded. 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 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]

### § 1.968 [Reserved]

### § 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

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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 §§1.900 through 1.937. 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: 38 U.S.C. 501)

[44 FR 59907, Oct. 17, 1979]

### SALARY OFFSET PROVISIONS

SOURCE: 52 FR 1905, Jan. 16, 1987, unless otherwise noted.

## 38 CFR Ch. I (7-1-02 Edition)

### § 1.980 Scope.

(a) The provisions set forth in §§1.980 through 1.994 implement VA's (Department of Veterans Affairs) authority for the use of salary offset to satisfy certain debts owed to the government.

(b) These regulations apply to offsets by VA from the salaries of current employees of VA or any other agency who owe debts to VA. Offsets by VA from salaries of current employees of VA who owe debts to other agencies shall be processed under 5 CFR 550.1108.

(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 preclude the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR parts 101-105, 38 CFR 1.900 *et seq.*).

(g) 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]

## Department of Veterans Affairs

## § 1.982

### § 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).

(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 designee provides the employee with written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under §§19.1 through 19.200 of this title and time for pursuing such an appeal has not expired (§19.129), the Secretary or 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 §§19.1 through 19.200 of this title and will contain the determination and information required by §1.983(b)(1)–(5), (7), (9), (10), and (12)–(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;

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(3) That the employee may request a waiver of the debt pursuant to §1.911a(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)

**§ 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;

(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 in-

spect 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 employee's right to request an oral or paper hearing, conducted by an administrative law judge or a hearing official of VA or another agency, on the Secretary or designee's determination of the existence of the debt, the 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;

(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 request 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) 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

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States will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514)

### § 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 20 calendar days from the date of the notice.

(b) If the employee files a request for a hearing after the expiration of the 20 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 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)

### § 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 administrative 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)



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**§ 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:

(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

20 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)

**§ 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 20 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)

**§ 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, 19.1 through 19.200 or § 1.988 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 or 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 4 CFR 101.1 through 105.5 and 5 CFR 831.1801 through 831.1807).

(Authority: 5 U.S.C. 5514)

**§ 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 interests, penalties, and administrative costs.* Interest, penalties, and administrative costs will be charged in accordance with § 1.919 and 4 CFR 102.13.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987, as amended at 54 FR 34980, Aug. 23, 1989]

**§ 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)

**§ 1.994 Refunds.**

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)

**PART 2—DELEGATIONS OF AUTHORITY**

Sec.

- 2.1 General provisions.
- 2.2 Delegation of authority to employees to issue subpoenas, etc.
- 2.3 Delegation of authority to employees to take affidavits, to administer oaths, etc.
- 2.4 Delegation of authority to order paid advertising for use in recruitment.
- 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.
- 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).
- 2.7 Delegation of authority to provide relief on account of administrative error.
- 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.

AUTHORITY: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2 appear at 61 FR 7216, Feb. 27, 1996.