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Title 38, Parts 0, 1, 2, 12, 14-16,  
18-20, 25-26, 38-45, 48-49, 74-75

*General*

**Veterans Benefits Administration**

Supplement No. 115  
Covering period of *Federal Register* issues  
through May 1, 2015

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<b>GENERAL INSTRUCTIONS</b>
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Custom Federal Regulations Service™

**Supplemental Materials for *Book A***

**Code of Federal Regulations**

**Title 38, Parts 0, 1, 2, 12, 14-16, 18-20, 25-26, 38-45, 48-49, 74-75**

*General*

**Veterans Benefits Administration**

**Supplement No. 115**

5 May 2015

Covering the period of Federal Register issues  
through May 1, 2015

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<b>FILING INSTRUCTIONS</b>
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**Book A, Supplement No. 115**

**May 5, 2015**

*Remove these  
old pages*

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new pages*

*Section(s)  
Affected*

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§38.628

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## HIGHLIGHTS

### Book A, Supplement No. 115

May 5, 2015

**Supplement Highlights references:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book A (*General*) was originally supplemented twice a year, in April and October. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

#### **Modifications in this supplement include the following:**

1. On 13 April 2015, the VA published a final rule effective that same day, to amend its regulations to establish a new program to provide reimbursement for caskets and urns for the interment of the remains of veterans with no known next-of-kin and where sufficient financial resources are not available for this purpose. Change:

- Added §38.628.

2. On 27 April 2015, the VA published a final rule effective that same day, to make technical amendments to its medical regulations by updating certain delegations of authority to be consistent with the statutory authority that established the Consolidated Patient Account Centers (CPACs). VA is, through this final rule, specifying delegations of authority for the collection of debts owed VA to the Chief Financial Officers of the CPACs. Change:

- In §1.956, revised paragraph (a)(2)(iv).

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education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is \$20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than \$20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of 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 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; 52 FR 42112, Nov. 3, 1987; 54 FR 40871, Oct. 4, 1989; 57 FR 47264, Oct. 15, 1992; 60 FR 53276, Oct. 13, 1995; 66 FR 44053, Aug. 22, 2001; 69 FR 62201, Oct. 25, 2004]

**Supplement *Highlights* references:** 9(2), 66(1).

**§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 Chief Benefits Director.

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

(i) Debts resulting from services furnished in error (§17.101(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§17.101(b) of this chapter).

(iii) Other claims arising in connection with transactions of the Veterans Health Administration (§17.103(c) of this chapter).

(iv) The Chief Financial Officer of the Consolidated Patient Account Center is authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c) of this chapter).

(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584).

(b) The Under Secretary for Benefits may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section.

[39 FR 26400, July 19, 1974, as amended at 44 FR 59905, Oct. 17, 1979; 60 FR 53276, Oct. 13, 1995; 66 FR 44053, Aug. 22, 2001; 69 FR 62201, Oct. 25, 2004; 80 FR 23241, April 27, 2015]

**Supplement *Highlights* references:** 9(2), 66(1), 115(2).

**Part 38**

**National Cemeteries of the  
Department of Veterans Affairs**

**Authority:** 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

**Source:** 70 FR 4769, January 31, 2005, unless otherwise indicated.

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**§38.621 Disinterments.**

(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)

*Next Section is §38.628*

**§38.629 Reimbursement for caskets and urns for unclaimed remains of veterans.**

(a) VA will reimburse any individual or entity for the actual cost of a casket or an urn, purchased by the individual or entity for the burial in a national cemetery of an eligible veteran who died on or after January 10, 2014, for whom VA:

(1) Is unable to identify the veteran's next-of-kin; and

(2) Determines that sufficient resources are otherwise unavailable to furnish the casket or urn.

(b) For purposes of satisfying the requirements of paragraph (a) of this section, VA will rely entirely on the requesting individual's or entity's certification as required under paragraphs (c)(2) and (3) of this section.

(c) An individual or entity may request reimbursement from VA under paragraph (a) of this section by completing and submitting VA Form 40-10088, and supporting documentation, in accordance with the instructions on the form. Prior to approving reimbursement VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery;

(2) The individual or entity has certified that they cannot identify the veteran's next-of-kin, or that an identified next-of-kin is unwilling or unable to assume responsibility for the deceased veteran's burial arrangements, and that the individual or entity has followed applicable state or local law relating to the disposition of unclaimed remains;

(3) The individual or entity has certified that, to the best of their knowledge, sufficient resources are otherwise unavailable to furnish the casket or urn;

(4) The invoice presented by the individual or entity clearly indicates the purchase price of the casket or urn purchased by the individual or entity; and

(5) The invoice presented by the individual or entity contains information sufficient for VA to determine, in conjunction with a visual inspection, that the casket or urn meets the following standards:

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, include a gasketed seal, and include external fixed rails or swing arm handles.

(ii) Urns must be of a durable construction, such as durable plastic, wood, metal, or ceramic, designed to contain cremated human remains, and include a secure closure to contain the cremated remains.

(d) Reimbursement for a claim received in any calendar year under paragraph (a) of this section will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year preceding the calendar year of the claim, as determined by VA and published annually in the *Federal Register*.

(e) If, before July 2, 2014, an individual or entity purchased a casket or urn for burial in a VA national cemetery of the remains of a veteran who died after January 10, 2014, and the burial receptacle is not at least a 20-gauge metal casket or a durable plastic urn, VA will reimburse the purchase price of the burial receptacle, providing all other criteria in this regulation are met. The reimbursement amount will be subject to the maximum reimbursement amount calculated for 2015. (Authority: 38 U.S.C. 2306, 2402, 2411)

[80 FR 19538, April 13, 2015]

**Supplement *Highlights* Reference:** 115 (1).

**§38.629 Outer Burial Receptacle Allowance.**

(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 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.