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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. 121  
Covering period of *Federal Register* issues  
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**GENERAL INSTRUCTIONS**

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. 121**

5 May 2016

Covering the period of Federal Register issues  
through May 1, 2016

When **Book A** was originally prepared, it was current through final regulations published in the *Federal Register* of 21 April 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which begins on page A-8 of Book A, *General*.

**To ensure accuracy and timeliness of your materials,  
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1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page A-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page A-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page A-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
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**FILING INSTRUCTIONS**

**Book A, Supplement No. 121**

**May 5, 2016**

*Remove these  
old pages*

*Add these  
new pages*

*Section(s)  
Affected*

**Do not file this supplement until you confirm that  
all prior supplements have been filed**

A-9 to A-10

A-9 to A-10  
(adds 9a & 9b)

Book A Lead  
Material

A-53 to A-54

A-53 to A-54

Book A Lead  
Material

(none)

Part 50  
(following Part 49)

Part 50 (New)

**Be sure to complete the  
*Supplement Filing Record* (page A-8)  
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## HIGHLIGHTS

### **Book A, Supplement No. 121 May 5, 2016**

**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 4 April 2016, the VA published a final rule effective that same day, to amend or establish their regulations regarding the participation of faith-based and other community organizations in programs that the Federal agencies administer. These regulations clarify those principles and add certain protections for beneficiaries of Federal social service programs. Changes:

- Added Part 50.

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# **Part 50**

## **RELIGIOUS AND COMMUNITY ORGANIZATIONS: PROVIDING BENEFICIARY PROTECTIONS TO POLITICAL OR RELIGIOUS AFFILIATION**



**Part 50**

**RELIGIOUS AND COMMUNITY ORGANIZATIONS:  
PROVIDING BENEFICIARY PROTECTIONS TO POLITICAL  
OR RELIGIOUS AFFILIATION**

**Authority:** 38 U.S.C. 501 and as noted in specific sections.

**Source:** 81 FR 19424, April 4, 2016, unless otherwise noted.

**— Section Title Index —**

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**§50.1 Religious organizations; general provisions**

(a) A faith-based organization that applies for, or participates in, a social service program (as defined in Executive Order 13279) supported with Federal financial assistance (as defined in Executive Order 13279) may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Direct Federal financial assistance may not be used to pay for equipment or supplies to the extent they are allocated to such activities. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(b)

(1) Direct Federal financial assistance or Federal financial assistance provided directly means that the government or an intermediary as defined in paragraph (d) of this section selects the provider and either purchases services from that provider (e.g., via a contract) or awards funds to that provider to carry out a service (e.g., via grant or cooperative agreement). Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance or Federal financial assistance provided indirectly in paragraph (b)(2) of this section.

(2) Indirect Federal financial assistance or Federal financial assistance provided indirectly means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment.

(3) Federal financial assistance provided to an organization is considered indirect when:

(i) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government funded payment is neutral toward religion;

(ii) The organization receives the Federal financial assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

(c) The recipients of sub-grants that receive Federal financial assistance through State-administered programs are not considered recipients of indirect Federal financial assistance (or recipients of Federal funds provided indirectly) as those terms are used in Executive Order 13559.

(d) Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. In these regulations, the terms intermediary and pass-through entity may be used interchangeably. (Authority: 2 CFR 200.74)

(e) If an intermediary, acting under a contract, grant, or other agreement with VA or with a State or local government that is administering a program supported by VA financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by VA, the intermediary must select any providers to receive direct financial assistance in a manner that does not favor or disfavor organizations on the basis of religion or religious belief and ensure compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance by the recipient of a contract, grant or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

(f) Any organization that participates in a program funded by Federal financial assistance shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

[81 FR 19424, Apr. 4, 2016]

**Supplement *Highlights* References:** 121(1)

**§50.2 Beneficiary protections; written notice**

(a) Faith-based or religious organizations providing social services to beneficiaries under a VA program supported by direct VA financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner prescribed by VA. The notice will state that:

(1) The organization may not discriminate against beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct VA financial assistance;

(4) If a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection; and

(5) Beneficiaries or perspective beneficiaries may report an organization's violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with, VA or an intermediary that awarded funds to the organization.

(b) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(c) Faith-based or religious organizations providing social services to beneficiaries under a VA program supported by indirect VA financial assistance are not required to give written notice to beneficiaries and prospective beneficiaries of the protections specified in subsection (a).

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0828.)

[81 FR 19424, Apr. 4, 2016]

**Supplement *Highlights* References:** 121(1)

**§50.3 Beneficiary protections; referral requirements.**

(a) If a beneficiary or prospective beneficiary of a social service programs supported by VA objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection.

(b) A referral may be made to another faith-based organization if the beneficiary has no objection to that provider. If the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(c) Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional clients.

(d) If the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify VA or the intermediary. If the organization is unable to identify an alternative provider, VA shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from VA.

[81 FR 19424, Apr. 4, 2016]

**Supplement *Highlights* References:** 121(1)

**§50.4 Political or religious affiliation**

Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

[81 FR 19424, Apr. 4, 2016]

**Supplement *Highlights* References:** 121(1)

[Reserved]