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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. 95

Covering period of *Federal Register* issues  
through September 3, 2010

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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. 95

5 September 2010

Covering the period of Federal Register issues  
through September 3, 2010

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<b>FILING INSTRUCTIONS</b>
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**Book A, Supplement No. 95  
September 5, 2010**

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1.INDEX-7 to 1. INDEX -8	1.INDEX-7 to 1. INDEX -8	Index to Part 1
<b>1.893-1 to 1.900-1</b>	<b>1.893-1 to 1.900-1</b>	<b>Auth. cite</b>
<b>1.936-1 to 1.940-1</b>	<b>1.936-1 to 1.940-1</b>	<b>§1.940</b>
<b>1.944-1 to 1.950-1</b>	<b>1.944-1 to 1.950-1</b>	<b>§1.945 (added)</b>

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## HIGHLIGHTS

### Book A, Supplement No. 95 September 5, 2010

**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 31 August 2010, the VA published a final rule, effective 30 September 2010, to amend VA regulations to implement certain statutory provisions that grant limited authority to the Secretary of Veterans Affairs to terminate collection action on certain debts arising from a VA benefit program when the indebted individual is a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001, and to refund amounts collected after the individual’s death; and implement statutory provisions that grant the Secretary discretionary authority to suspend or terminate collection of debts owed to VA by individuals who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy, and to refund amounts collected after the individual’s death. Changes:

- Revised the authority citation preceding §1.900;
- In §1.940, added introductory text; and
- Added new §1.945.



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**§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)

[44 FR 55172, Sept. 25, 1979, as amended at 61 FR 38571, July 25, 1996]

**§1.894 Annual goals and timetables.**

A department-wide 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)

[44 FR 55172, Sept. 25, 1979, as amended at 61 FR 38571, July 25, 1996]

**§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)

[44 FR 55172, Sept. 25, 1979, as amended at 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)

[44 FR 55172, Sept. 25, 1979, as amended at 61 FR 38571, July 25, 1996]

**§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)

[44 FR 55172, Sept. 25, 1979, as amended at 61 FR 38571, July 25, 1996]

*Next Section is §1.900*

**Standards for Collection, Compromise,  
Suspension or Termination of Collection Effort, and  
Referral of Civil Claims for Money or Property**

**Authority:** Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, 5302, 5302A, 5314, and as noted in specific sections.

**Source:** Sections 1.900 to 1.906 appear at 32 FR 2613,  
Feb. 8, 1967, unless otherwise noted.

**Supplement *Highlights* reference for §§1.900–1.995:** 66(1), unless otherwise indicated.

**§1.900 Prescription of standards.**

(a) The standards contained in §§1.900 through 1.953 are issued pursuant to the Federal Claims Collection Standards, issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) in parts 900 through 904 of 31 CFR, as well as other debt collection authority issued by Treasury in part 285 of 31 CFR, and apply to the collection, compromise, termination, and suspension of debts owed to VA, and the referral of such debts to Treasury (or other Federal agencies designated by Treasury) for offset and collection action and to DOJ for litigation, unless otherwise stated in this part or in other statutory or regulatory authority, or by contract.

(b) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables." (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[32 FR 2613, Feb. 8, 1967, as amended at 52 FR 42104, Nov. 3, 1987; 69 FR 62191, Oct. 28, 2004]

**§1.936 Mutual releases of the debtor and VA.**

In all appropriate instances, a compromise that is accepted by VA shall be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and VA and its officials, past and present, are released and discharged from any and all claims and causes of action that the debtor may have arising from the same transaction. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against VA and its officials related to the transaction giving rise to the compromised debt. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501, 3720).

[32 FR 2614, Feb. 8, 1967. Redesignated at 52 FR 42110, Nov. 3, 1987. Amended at 57 FR 47264, Oct. 15, 1992]

*Next Section is §1.940*

**Standards for Suspending or Terminating Collection**

**Source:** Sections 1.940 to 1.943 appear at 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

**§1.940 Scope and application.**

Except as otherwise provided in §1.945:

(a) The standards set forth in §§1.940 through 1.944 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, VA may suspend or terminate collection under this part with respect to the debt.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If VA believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, it shall refer the debt to the Civil Division or other appropriate division in DOJ, using the Claims Collection Litigation Report (CCLR). The referral should specify the reasons for VA's recommendation. If, prior to referral to DOJ, VA determines that a debt is plainly erroneous or clearly without legal merit, VA may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[52 FR 42110, Nov. 3, 1987, as amended at 57 FR 47264, Oct. 15, 1992; 69 FR 62199, Oct. 25, 2004; 75 FR 53201, Aug. 31, 2010]

**Supplement *Highlights* reference:** 95(1)

**§1.944 Discharge of indebtedness; reporting requirements.**

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), VA shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under §§1.940 through 1.943 and is governed by the Internal Revenue Code (see 26 U.S.C. 6050P). When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in §§1.900 through 1.953. When VA discharges a debt in full or in part, further collection action is prohibited. Therefore, VA should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, VA must terminate debt collection action.

(b) Upon discharge of an indebtedness, VA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. VA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on VA's behalf.

(c) When discharging a debt, VA must request that any liens of record securing the debt be released.

(d) 31 U.S.C. 3711(i)(2) requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), VA may not discharge a debt until the requirements of §3711(i)(2) have been met. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[69 FR 62200, Oct. 25, 2004]

**§1.945 Authority to suspend or terminate collection action on certain benefit indebtedness; authority for refunds.**

(a) The Secretary of Veterans Affairs (Secretary) may suspend or terminate collection action on all or any part of an indebtedness owed to VA by a member of the Armed Forces who dies while on active duty, if the Secretary determines that such suspension or termination of collection is appropriate and in the best interest of the United States.

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary, other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an individual is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001.

(c) For purposes of this section:

(1) *Theater of combat operations* means the geographic area of operations where the Secretary in consultation with the Secretary of Defense determines that combat occurred.

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

(d) The Secretary may refund amounts collected after the death of a member of the Armed Forces or veteran in accordance with this paragraph and paragraph (e) of this section.

(1) In any case where all or any part of a debt of a member of the Armed Forces, as described under paragraph (a) of this section, was collected, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been suspended or terminated under authority of 31 U.S.C. 3711(f). The member of the Armed Services must have been serving on active duty on or after September 11, 2001. In any case where all or any part of a debt of a covered member of the Armed Forces was collected, the Secretary may refund the amount collected, but only if the Secretary determines that, under the circumstances applicable with respect to the deceased member of the Armed Forces, it is appropriate to do so.

(2) In any case where all or any part of a debt of a covered member of the Armed Forces or veteran, as described under paragraph (b) of this section, was collected on or after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been terminated under authority of 38 U.S.C. 5302A. In addition, the Secretary may refund the amount only if he or she determines that the deceased individual is equitably entitled to the refund.

(e) Refunds under paragraph (d) of this section will be made to the estate of the decedent or, in its absence, to the decedent's next-of-kin in the order listed below.

- (1) The decedent's spouse.
- (2) The decedent's children (in equal shares).
- (3) The decedent's parents (in equal shares).

(f) The authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts collected on certain indebtedness is reserved to the Secretary and will not be delegated.

(g) Requests for a determination to suspend or terminate collection action and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans' Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans' Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

(h) The provisions of this section concerning suspension or termination of collection actions and the refunding of moneys previously collected do not apply to any amounts owed the United States under any program carried out under 38 U.S.C. chapter 37. (Authority: 38 U.S.C. 501, 5302A; 31 U.S.C. 3711(f)).

[75 FR 53201, Aug. 31, 2010]

**Supplement *Highlights* reference:** 95(1)

*Next Section is §1.950*

**Referrals to G.A.O., Department of Justice or I.R.S.**

**Source:** Sections 1.950 to 1.954 appear at 52 FR 42111, 42112, Nov. 3, 1987, unless otherwise noted.

**§1.950 Prompt referral.**

(a) VA shall promptly refer debts to Department of Justice (DOJ) for litigation where aggressive collection activity has been taken in accordance with §§1.900 through 1.953, and such debts cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§1.930 through 1.936 and §§1.940 through 1.944. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and other late payment charges, shall be referred to the Civil Division or other division responsible for litigating such debts at DOJ. Debts for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in §§1.900 through 1.953, and, in any event, well within the period for initiating timely lawsuits against the debtors. VA shall make every effort to refer delinquent debts to DOJ for litigation within 1 year of the date such debts last became delinquent. In the case of guaranteed or insured loans, VA should make every effort to refer these delinquent debts to DOJ for litigation within 1 year from the date the loan was presented to VA for payment or reinsurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. VA shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. VA should advise DOJ of the collection activities that have been utilized to date, and their result. VA shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. VA shall immediately notify DOJ of any payments credited to the debtor's account after referral of a debt under this section. DOJ shall notify VA, in a timely manner, of any payments it receives from the debtor. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[52 FR 42111, Nov. 3, 1987, as amended at 69 FR 62200, Oct. 25, 2004]