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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. 91

Covering period of *Federal Register* issues
through January 4, 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. 91

5 January 2010

Covering the period of Federal Register issues
through January 4, 2010

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*.

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FILING INSTRUCTIONS

**Book A, Supplement No. 91
January 5, 2010**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
Do not file this supplement until you confirm that all prior supplements have been filed		
1.911-1 to 1.911-2	1.911-1 to 1.911-2	§1.911
14.index-1 to 14.index-4	14.index-1 to 14.index-4	Index to Part 14
14.500-1 to 14.501-1	14.500-1 to 14.501-1	Authority citation
14.600-1 to 14.600-2	14.600-1 to 14.600-2	§14.600

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HIGHLIGHTS

Book A, Supplement No. 91 January 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 18 December 2009, the VA published a final rule, effective that same date, to amend regulations concerning the delegation of authority to the Secretary of Veterans Affairs to consider, ascertain, adjust, determine, compromise, and settle claims under the Federal Tort Claims Act where the amount of settlement does not exceed \$300,000, and the Secretary’s redelegation of such authority to certain personnel within the Office of the General Counsel. Changes:

- In §14.600, revised paragraphs (c)(2)–(3) and (d)(2), and removed notes (1)–(3).



§1.911 Collection of debts owed by reason of participation in a benefits program.

(a) *Scope.* This section applies to the collection of debts resulting from an individual's participation in a VA benefit or home loan program. It does not apply to VA's other debt collection activities. Standards for the demand for payment of all other debts owed to VA are set forth in §1.911a. School liability debts are governed by §21.4009 of this title.

(b) *Written demands.* When VA has determined that a debt exists by reason of an administrative decision or by operation of law, VA shall promptly demand, in writing, payment of the debt. VA shall notify the debtor of his or her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.

(c) *Rights and remedies.* Subject to limitations referred to in this paragraph, the debtor has the right to informally dispute the existence or amount of the debt, to request waiver of collection of the debt, to a hearing on the waiver request, and to appeal the Department of Veterans Affairs decision underlying the debt. These rights can be exercised separately or simultaneously. Except as provided in §1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding.

(1) *Informal dispute.* This means that the debtor writes to the Department of Veterans Affairs and questions whether he or she owes the debt or whether the amount is accurate. The Department of Veterans Affairs will, as expeditiously as possible, review the accuracy of the debt determination. If the resolution is adverse to the debtor, he or she may also request waiver of collection as indicated in paragraphs (c)(2) and (3) of this section.

(2) *Request for waiver; hearing on request.* The debtor has the right to 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.* In accordance with parts 19 and 20 of this title, the debtor may appeal the decision underlying the debt.

(d) *Notification.* The Department of Veterans Affairs shall notify the debtor in writing of the following:

- (1) The exact amount of the debt;
- (2) The specific reasons for the debt, in simple and concise language;
- (3) The rights and remedies described in paragraph (c) of this section, including a brief explanation of the concept of, and requirements for, waiver;
- (4) That collection may be made by offset from current or future VA benefit payments (see §1.912a). In addition, the debtor shall be advised of any policies with respect to

the use of credit bureaus, debt collection centers, and collection agencies; any other remedies to enforce payment of the debt, including administrative wage garnishment, Federal salary offset, tax refund offset, and litigation; and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for administrative offset or collection.

(5) That interest and administrative costs may be assessed in accordance with §1.915, as appropriate;

(6) That the debtor shall have the opportunity to inspect and copy records; and

(7) That the debtor shall have the opportunity to enter into a repayment agreement.

(e) *Sufficiency of notification.* Notification is sufficient when sent by ordinary mail directed to the debtor's last known address and not returned as undeliverable by postal authorities.

(f) *Further explanation.* Further explanation may be found for:

(1) Appellate rights, in parts 19 and 20 of this title;

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

(3) Right to appeal a waiver decision, in §1.958;

(4) Refund to a successful waiver applicant of money already collected, in §1.967;
and

(5) The assessment of interest and administrative costs, in §1.915. (Authority: 38 U.S.C. 501, 5302, 5314).

[48 FR 1055, Jan. 10, 1983; 48 FR 6336, Feb. 11, 1983. Redesignated and amended at 52 FR 42105, Nov. 3, 1987; 54 FR 34980, Aug. 23, 1989; 69 FR 62193, Oct. 25, 2004; 74 FR 29430, June 22, 2009]

Next Section is §1.911a

Part 14 — Legal Services, General Counsel, and Miscellaneous Claims

Authority: 5 U.S.C. 301; 28 U.S.C. 2671-2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901-5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

Source: 19 FR 5552, Aug. 31, 1954,
unless otherwise noted.

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Part 14 — Legal Services, General Counsel, and Miscellaneous Claims

Authority: 5 U.S.C. 301; 28 U.S.C. 2671-2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901-5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

Source: 19 FR 5552, Aug. 31, 1954,
unless otherwise noted.

§14.500 Functions and responsibilities of General Counsel.

The General Counsel is responsible to the Secretary for the following:

(a) All litigation arising in, or out of, the activities of the Department of Veterans Affairs or involving any employee thereof in his or her official capacity.

(b) All interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.

(c) All legal services, advice and assistance required to implement any law administered by the Department of Veterans Affairs.

(d) All delegations of authority and professional guidance required to meet these responsibilities.

(e) Maintenance of a system of field offices capable of providing legal advice and assistance to all Department of Veterans Affairs field installations and acting for the General Counsel as provided by Department of Veterans Affairs Regulations and instructions, or as directed by the General Counsel in special cases. This includes cooperation with U.S. Attorneys in all civil and criminal cases pertaining to the Department of Veterans Affairs and reporting to the U.S. Attorneys, as authorized, or to the General Counsel, or both, criminal matters coming to the attention of the Regional Counsel.

(f) Other matters assigned.

[42 FR 41410, Aug. 17, 1977, as amended at 61 FR 7216, Feb. 27, 1996]

§14.501 Functions and responsibilities of Regional Councils.

(a) Functions and responsibilities of the Regional Councils are those set forth in this part and all other matters assigned by the General Counsel.

(b) In any matter within the jurisdiction of the General Counsel, delegated or otherwise assigned, the Regional Council and designated staff attorneys are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents.

(c) The Regional Council is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to Department of Veterans Affairs installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the Regional Council may delegate to staff members or other Department of Veterans Affairs attorneys authority to perform, to the extent specified, any legal function under the professional direction of the Regional Council. Conversely, the Regional Council may modify, suspend, or rescind any authority delegated hereunder.

(d) The Regional Council is authorized to cooperate with affiliated organizations, legislative committees, and with local and State bar associations to the end that any State law deficiencies relating to Department of Veterans Affairs operations may be removed. No commitment as to proposed legislation will be made without the approval of the General Counsel.

(e) In any case wherein the Regional Council is authorized to take legal action and payment of costs and necessary expenses incident thereto are involved, the administration requesting such action will pay such cost and expenses. Where it is impractical for the Regional Council to perform the legal service because of cost, distance, etc., the customary fee for the service rendered by a local attorney employed by the Regional Council will be borne by the administration requesting such action.

(f) The jurisdictions and addresses of Regional Councils are as follows:

(1) Region 1: (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) VAMC, 200 Springs Road, Bldg. 61, Bedford, MA 01730.

(2) Region 2: (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.

(3) Region 3: (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 3900 Loch Raven Blvd., Bldg. 4, Baltimore, MD 21218.

(4) Region 4: (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) University & Woodland Avenues, Philadelphia, PA 19104.

Federal Tort Claims Act

§14.600 Federal Tort Claims Act—general.

(a) *Federal Tort Claims Act—overview.* The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) *Applicable regulations.* The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14.

(c) *Delegations of authority concerning claims.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority to consider, ascertain, adjust, determine, compromise, and settle claims asserted under the Federal Tort Claims Act (including the authority to execute an appropriate voucher and other necessary instruments in connection therewith) is delegated as follows:

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any claim for \$2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim; provided that any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of \$100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(3) To the Regional Counsels and the Deputy Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim, provided that:

(i) Any award, compromise, or settlement in excess of \$150,000 but not more than \$300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); provided further that whenever a settlement is effected in an amount in excess of \$100,000, a

memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice; and

(ii) Any award where, for any reason, the compromise of a particular claim, as a practical matter, will, or may control the disposition of a related claim in which the amount to be paid may exceed \$150,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(iii) Any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) *Delegations of authority to reconsider final denial of a claim.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority under 28 CFR 14.9 to reconsider final denials of claims under the Federal Tort Claims Act is delegated as follows:

(1) To the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, with respect to any claim for \$2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of \$100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice. (Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671-80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671-2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[38 FR 5470, Mar. 1, 1973, as amended at 42 FR 41414, Aug. 17, 1977; 54 FR 34982, Aug. 23, 1989; 61 FR 27784, June 3, 1996; 64 FR 47111, Aug. 30, 1999; 74 FR 67076, Dec. 18, 2009]

Supplement *Highlights* references: 15(5), 36(1), 91(1).