

This document provides early notification of our specific plans and actions for this program.

#### *Regulatory Flexibility Act*

**Certification:** The Secretary certifies that the proposed priority would not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

#### *Paperwork Reduction Act of 1995*

The proposed priority contains information collection requirements that are approved by OMB under OMB control number 1820–0028. The proposed priority does not affect the currently approved data collection.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Glenna Wright-Gallo,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2024–25862 Filed 11–6–24; 8:45 am]

**BILLING CODE 4000–01–P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Parts 14 and 36**

**RIN 2900–AS05**

#### **Legal Services, General Counsel, and Miscellaneous Claims**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing Legal Services, the Office of General Counsel, and Miscellaneous Claims to reflect nomenclature changes regarding employees and groups within the Office of General Counsel as well as to make other changes intended to further clarify and explain various functions and

procedures within the Office of General Counsel.

**DATES:** Comments must be received on or before January 6, 2025.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on [www.regulations.gov](http://www.regulations.gov) as soon as possible after they have been received. VA will not post on [www.regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at [Regulations.gov](http://Regulations.gov), under RIN 2900–AS05.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael Gibbs, Executive Director, Management, Planning and Analysis, Office of General Counsel (026), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–4995. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Title 38 of the Code of Federal Regulations, chapter I, part 14, governs Legal Services, General Counsel, and Miscellaneous Claims. Executive Order 13563 requires agencies to carry out retrospective analyses of rules that “may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Exec. Order No. 13563, section 6, 76 FR 3821, 3822 (Jan. 21, 2011). After a review of 38 CFR part 14, VA’s Office of General Counsel (OGC) is proposing revisions to reflect nomenclature changes to the names of certain Office of General Counsel offices and the employees in those offices. The proposed revisions would also make changes in certain policies, procedures, and authorities. In the amendatory text

of this proposed rule, OGC is removing 38 CFR 14.503 through 14.504 and revising 38 CFR 14.500 through 14.502, 14.505 through 507, 14.514 through 14.518, 14.560 through 14.561, 14.600 through 14.605, 14.615 through 14.619, 14.664 through 14.669, and 14.800 through 14.810, when necessary to (1) decrease the likelihood of introducing errors, (2) improve efficiency during the publication process, and (3) meet Office of the Federal Register drafting and formatting requirements for publication. The substantive individual changes to the affected CFR units are detailed elsewhere in this preamble.

As a result of a reorganization, the Office of General Counsel changed its organizational structure from regions to districts, and further changed the names of the leadership in those districts from Regional Counsel to Chief Counsel or District Chief Counsel. To reflect those changes, the following sections are proposed to be amended to reflect the change in position titles from “Regional Counsel” to “Chief Counsel:”

§§ 14.500(e), 14.501’s title and paragraphs (a) and (c) through (e), 14.514(a), (b), and (e), and 14.516. The Regulation’s Table of Contents is also proposed to be amended to reflect the new “Chief Counsel” language in § 14.501.

Multiple sections are proposed to be amended to reflect a nomenclature change from “Regional Counsel” to “District Chief Counsel.” The sections proposed to be amended to reflect the new language of “District Chief Counsel” are §§ 14.517, 14.518(a) and (b)(1) through (4), 14.560, 14.561, 14.605(b), 14.709(a) through (c), and 14.807(b). Additional sections are proposed to be amended to reflect a nomenclature change from “his or her” to “their” in §§ 14.500(a), 14.514(b) and (c), 14.518(a), 14.600(a), (c) and (d), 14.605(b) through (e), 14.615(b) and (c), 14.618(a), 14.619(a), 14.560, 14.665(a), 14.667(a), 14.807(a), and 14.810(f). Proposed amendments are included in §§ 14.605(a), 14.665(a), and 14.807(a) to change “he or she” to “they.”

Multiple sections in part 14 are proposed to be amended with various other nomenclature changes as well as changes intended to clarify the meaning of the regulations. The language in § 14.500, “Functions and responsibilities of General Counsel” and specifically paragraph (e) is proposed to be amended to remove “field” from the phrase “system of field offices” and substitute the word “organizations” for the phrase “field installations.” This amendment is proposed as the current language in the regulation is outdated and is no longer used to describe the

Agency’s various offices, locations, and organizations. In § 14.500(e), the last phrase is proposed to be changed from “the Regional Counsel” to “a Chief Counsel” for consistency in reference to the updated title for these positions and to reflect that these matters may be reported to different Chief Counsels, depending on the type of case. Finally, in paragraph (f), the word “as” is proposed to be inserted in the existing phrase so that it now states: “Other matters as assigned.”

Additional amendments are proposed in § 14.501 which is proposed to be renamed to “Functions and Responsibilities of Chief Counsels” to reflect the new position titles of employees formerly referred to as Regional Counsels. Specifically, paragraph (b) is proposed to be amended to include the phrase “Deputy Chief Counsels” before the phrase “and designated staff attorneys” to provide a more comprehensive list of the Office of General Counsel employees who are authorized to perform the tasks listed in this paragraph. Paragraph (c) includes an additional proposed amendment to replace the phrase “installations within the district assigned” with the phrase “organizations within their geographic area of responsibility and/or legal practice area of responsibility.” This amendment is proposed as the term “installations” is outdated and is no longer used to describe the Office of General Counsel’s areas of responsibility. Additional changes are proposed in paragraph (b) to correct the spelling of “affidavits” and in paragraph (c) to change the word “authority” to “authorized” for readability.

The language in § 14.501(e) is proposed to be amended to remove the sentence “Where it is impractical for the Regional Counsel 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 Counsel will be borne by the administration requesting such action.” This sentence is proposed to be removed as the process described does not have a corresponding statutory authority.

Additional amendments are proposed in paragraph (f), including the removal of the phrase “addresses of Regional Counsels are as follows” and the removal of the list of regions within the Office of General Counsel, the Regional Counsel’s physical addresses, and the states over which those Regional Counsel offices had jurisdiction. This information is proposed to be replaced with the following statement: “locations and jurisdictions of the District Chief Counsels can be found here: [https://](https://www.va.gov/OGC/DistrictOffices.asp)

[www.va.gov/OGC/DistrictOffices.asp](https://www.va.gov/OGC/DistrictOffices.asp).” This web page link and the new language in § 14.501(f) are proposed to reflect the updated office names, jurisdictions, and locations of the District Chief Counsels.

The language in § 14.502, “Requests for legal opinions from Central Office” describes the Department officials who may make a request for formal legal advice from the Office of General Counsel. This rulemaking proposes to update this section to reflect grammatical and nomenclature changes. Specifically, the phrase “requests for” is proposed to be replaced with “A request for” at the beginning of the paragraph for readability. To reflect updated titles for individuals who hold various leadership positions in the Department, the following nomenclature changes have been proposed: the phrase “an Under Secretary” will be inserted after “Deputy Secretary” and the phrases “Assistant Secretaries” and “Deputy Assistant Secretaries” will be updated to “an Assistant Secretary” and “a Deputy Assistant Secretary.” The phrase “administration head or top staff office” is proposed to be removed as the individuals described with that language are now referred to more specifically. Finally, the word “and” will be replaced with the word “or” after the phrase “Deputy Assistant Secretary” to indicate that any one of the individuals listed may submit a request for formal legal advice from the Office of General Counsel.

The Office of General Counsel proposes to remove certain regulations in their entirety as they contain outdated procedures, do not reflect current Office of General Counsel operations, and describe communications between offices and teams within the Office of General Counsel that do not require reference in Federal regulations. Specifically, this rulemaking proposes to remove § 14.503, “Requests for legal advice and assistance in other than domestic relations matters” and § 14.504, “Domestic relations questions, authority and exceptions” in their entirety for these reasons. Reference to these regulations is also proposed to be removed from the Table of Contents in part 14.

Further amendments are proposed to § 14.505, “Submissions” which describes how certain Department officials can request formal legal advice from the Office of General Counsel. Specifically, it is proposed that the language in this section be amended to clarify that it refers to requests for legal opinions pursuant to § 14.502. For clarity and coherence in the paragraph’s

first sentence, it is proposed that the phrase “on which the opinion is desired” be replaced with “underlying the opinion requested.” In the paragraph’s second sentence, the rulemaking proposes to replace the phrase “original papers will not be submitted unless pertinent portions thereof cannot practicably be summarized or copies made and attached as exhibits” with the phrase “relevant documents should be attached as exhibits to the submission.” This proposed replacement is intended to further clarify and simplify these instructions and to remove the outdated term of “original papers.”

The language and structure in § 14.507, “Opinions” is proposed to be revised to clarify that it relates only to those things that the General Counsel has designated as precedent, conclusive, or advisory opinions and does not apply to most of the guidance written by the General Counsel or the Office of General Counsel. The section is proposed to be further amended to clearly delineate and describe the three categories of opinions.

The newly proposed paragraph (a) in § 14.507 would provide a general overview and introduction of the three types of legal opinions described in this section that may be requested under § 14.502 or issued when determined necessary or appropriate. Under this rulemaking, all of the existing language in paragraph (a) is proposed to be removed or moved to paragraph (b) and the newly proposed paragraph (f).

The proposed changes to paragraph (b) in § 14.507 include inserting the title “*Precedent Opinions*” to clarify the subject of this paragraph and inserting the word “Principal” before the phrase “Deputy General Counsel acting as or for the General Counsel” to reflect that the Principal Deputy General Counsel is the individual who may be acting as or for the General Counsel. Proposed revisions to the second sentence in (b) include the addition of the phrase “The designated holdings in written legal opinions” at the beginning of the sentence to clarify that OGC will affirmatively designate certain holdings or conclusions as precedent opinions in a written legal opinion. Paragraph (b) includes a proposed revision to add the phrase “The holdings in an opinion designated as a precedent opinion are binding” at the beginning of the third sentence to further clarify that only holdings in an opinion that has been affirmatively designated as a “precedent opinion” are the subject of this section. The third sentence includes another proposed addition where the phrase “or the opinion has been withdrawn” has

been added at the end of the sentence. This proposed language is intended to further clarify that the withdrawal of an opinion which has been designated as a precedent opinion is another action which will reverse the status of the opinion such that the holdings in that opinion are no longer binding on Department officials and employees in subsequent matters involving a legal issue decided in that opinion. Finally, the third sentence includes two proposed revisions for grammatical reasons and specifically, the replacement of “is” with the word “are” and removal of the word “or” before the phrase “the opinion has been overruled.”

This rulemaking proposes to re-write paragraph (c) in its entirety to provide additional information and explanation for the category of opinions designated as “conclusive opinions” which is mentioned in paragraph (a) but not fully described in the existing regulation. To provide additional description and guidance on “conclusive opinions,” the current language in paragraph (c) is proposed to be removed as it is outdated and references procedures for legal opinions that are no longer followed. The existing text in paragraph (c) is proposed to be replaced with the following language: “*Conclusive opinions*. The designated holdings in written legal opinions designated as conclusive opinions under this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). The holdings in an opinion designated as a conclusive opinion are binding as to all Department officials and employees with respect to the particular matter at issue, unless there has been a material change in controlling statute or regulation; the opinion has been overruled or modified by a subsequent precedent opinion, applicable conclusive opinion, or judicial decision; or the opinion has been withdrawn.” This proposed language is intended to describe conclusive opinions and clearly delineate this type of opinion from the others listed in the section.

The Office of General Counsel proposes to include a new paragraph in paragraph (d) to describe “advisory opinions” which are mentioned in the current version of the regulation in paragraph (a) but were not specifically defined. The new proposed language in paragraph (d) describes advisory opinions as opinions that are not binding but are issued to provide legal guidance or recommendations to Department officials.

Two additional paragraphs are proposed to be added to § 14.507 to

provide further guidance on the scope of this section and to include language from the existing paragraph (a) which describes where conclusive opinions are maintained. A proposed new paragraph (e) would include language to clarify that this regulation applies to the specific types of legal opinions issued by the General Counsel or designee as described in paragraphs (a) through (d) and acknowledges that employees in the Office of General Counsel provide other types of informal legal opinions or legal guidance in accordance with existing policies and practice.

Finally, a proposed new paragraph (f) would describe where opinions from this regulation are maintained. Except for the newly proposed phrase “described in paragraphs (a) through (d),” the language in the proposed paragraph (e) is included in the current version of the regulation in paragraph (a). The Office of General Counsel proposes to move this language to paragraph (e) to clarify that it applies to all opinions described in this section. For grammatical and consistency reasons, it is proposed that the word “the” be inserted before the phrase “Department of Veterans Affairs” in multiple locations throughout the section.

#### **Litigation (Other Than Under the Federal Tort Claims Act); Indemnification**

The Office of General Counsel proposes to amend § 14.514, “Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees” with additional nomenclature changes. This section outlines the procedures to be followed when lawsuits are filed against the Department, the Secretary, and individual Department employees. In paragraphs (a) and (b), the word “petition” is proposed to be replaced with “complaint” to correct outdated language. In paragraph (b), the phrase “(or equivalent position)” is proposed to be included in the second sentence after “facility Director” to clarify that the official who completes an affidavit regarding an employee’s scope of employment may hold a position other than facility Director. The phrase “two copies of” is proposed to be removed from the last sentence as it refers to an outdated process for transmitting paper copies. In paragraph (c)(4), the word “advice” is proposed to replace the word “view” in the third sentence such that it now reads: “Where the Department of Veterans Affairs determines it appropriate, the Agency shall seek the advice of the Department

of Justice.” Additional proposed changes to paragraph (e) include revisions to the second sentence where the phrase “two copies of such report” is proposed to be replaced with “will forward a copy of such report . . .” This proposed change is intended to reflect that the language of “two copies” is outdated as most communications and reports are sent electronically within VA. Paragraph (e) is further revised to change the last sentence to reflect OGC’s current organizational structure and direct Chief Counsels to send a copy of the report to their Deputy General Counsel, rather than directly to the General Counsel.

The language in § 14.515, “Suits involving loan guaranty matters” is proposed to be revised in its entirety to reflect the language in 38 U.S.C. 3730(a). Under 38 U.S.C. 3730(a), Congress authorized VA to use the services of both VA and non-VA attorneys to protect VA’s interests in home loans arising from or related to VA’s home loan benefit programs. The authority is subject to the direction and supervision of the United States Attorney General and to such terms and conditions as the United States Attorney General may prescribe, and nothing in section 3730 derogates from the authority of the Attorney General under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party. 38 U.S.C. 3730(a), (b).

Proposed § 14.515(a) would essentially restate the statute. It would provide that attorneys employed by the Office of General Counsel may exercise the right of the United States to bring suit in any court of competent jurisdiction for the limited purposes authorized under 38 U.S.C. 3730. The first limited purpose would be to foreclose a loan made or acquired by the Secretary under any home loan program administered by the Veterans Benefits Administration. The second would be to recover possession of any property conveyed to the Secretary after the foreclosure of a home loan previously described.

Proposed § 14.515(b) and (c) would clarify the scope of the section. Paragraph (b) would provide that to carry out the activities described in § 14.515(a), the Office of General Counsel may acquire, or oversee the acquisition and performance of, legal services provided by attorneys other than those who are employees of the Department of Veterans Affairs. Paragraph (c) would provide that the authority to bring suit also means representation in bankruptcy

proceedings, as well as other activities necessary to preserve the Secretary’s interest in a loan guaranteed, insured, or made under 38 U.S.C. chapter 37, or in a property acquired under such chapter. The clarifications would codify, without change, the longstanding policies and procedures VA implemented in coordination with, and subject to the supervision of, the Department of Justice.

Proposed § 14.515(d) would restate the element of the statute requiring that the activities described in § 14.515 are subject to the direction and supervision of the United States Attorney General and to such terms and conditions as the United States Attorney General may prescribe. Proposed § 14.515(e) would provide that in any legal or equitable proceeding to which the Secretary is a party (including probate and bankruptcy proceedings) related to any home loan program administered by the Veterans Benefits Administration, original process and any other process prior to appearance that may be served on the Secretary must be delivered to the Office of General Counsel, 810 Vermont Ave. NW (02), Washington, DC 20420. Additionally, proposed § 14.515(e) would provide that copies of such process must also be served on the United States Attorney General and the United States Attorney having jurisdiction over that area, and that failure to comply with the requirements of proposed § 14.515(e) renders the service improper. The proposed change is necessary to reflect the Office of General Counsel’s restructure, help the public understand whom to contact with questions about service of process related to the home loan programs, and further ensure timely responses to service of process. Because proposed § 14.515(e) would render 38 CFR 36.4321 obsolete, VA proposes to remove § 36.4321.

The language in § 14.516 “Escheat and post fund cases” includes minimal proposed edits. This section describes procedures to be followed when the Department receives assets or property under escheat, gift, or General Post Fund authorities. This section’s proposed amendments include the addition of the phrase “where the assets or property are not surrendered upon entitlement” after the citation “38 U.S.C. Ch. 85” to further clarify when the Department of Veterans Affairs is entitled to possession of assets or property under the listed escheat, gifts, and General Post Fund provisions. Additionally, another amendment proposed throughout the section is to include the phrase “or entity” after “person” to clarify that the assets or

property described in this section may be in possession of an entity and not a singular person in every case.

The language in § 14.517 “Cases affecting the Department of Veterans Affairs generally” is proposed to be amended to add the phrase “and related State and Federal agencies” to expand the entities with which the Office of General Counsel will liaise to ensure the Agency is notified of all cases involving the Department of Veterans Affairs. Additional proposed amendments include replacement of the word “insure” with “ensure” to correct a typographical error in the existing regulation and replacement of the phrase “Such information” with “Cases affecting substantial interest of the Department of Veterans Affairs.” This proposed amendment is intended to specify the types of cases that will be forwarded to the General Counsel.

The Office of General Counsel proposes to amend § 14.518 “Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity” to reflect nomenclature changes. In paragraph (a), the phrase “field facility” is proposed to be replaced with “Department of Veterans Affairs medical facility” and in paragraphs (b)(1) and (3), the word “hospital” is proposed to be replaced with “medical facility.” In paragraph (b)(4), the Office of General Counsel proposes to replace the words “installations” and “installation” with the words “facilities” and “facility” respectively. These terminology changes are proposed to reflect the updated and most commonly used terms for medical facilities within the Department.

Paragraph (b) in § 14.518 describes procedures for when Department employees are served with a writ of habeas corpus involving a VA beneficiary. Explanatory language is proposed to be added to paragraph (b)(3) for clarity and comprehensiveness. The term “or other representative” is proposed to be included after the phrase “Veteran’s attorney” to explain that the medical facility can notify representatives other than attorneys when a Veteran is to be discharged. The addition of the phrase “subject to existence of an appropriate release authority” is proposed at the end of the second sentence to ensure that authority to release the patient has been received prior to discharge in the context of involuntary confinement of a mentally ill patient. Additional proposed amendments include the addition of hyphens to the word “self-protection” in paragraph (a) and to the word “self-

injury” in paragraph (b)(3) for grammatical reasons.

### Prosecution

The title of 38 CFR 14.560 is proposed to be updated to reflect the plural of the word “crimes” so that it matches the name of the statute it is referencing. Specifically, the proposed new title will now read “Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crimes Act (18 U.S.C. 13).” This section includes additional proposed nomenclature changes, including to correct the spelling of the word “warrant” and, in the third sentence, to substitute “the Chief Counsel” for “he or she.”

The language in § 14.561 “Administrative action prior to submission” is proposed to be amended to reflect updated citations. Specifically, the parenthetical citation in § 14.561 is proposed to be replaced with “38 U.S.C. 6103” to reflect the correct current citation.

### Federal Tort Claims

The Office of General Counsel proposes multiple amendments throughout the “Federal Tort Claims” section of the regulations. Proposed amendments to § 14.600 are intended to remove outdated citations and language. This regulation provides an overview of the Federal Tort Claims Act and describes various delegations of authority for the settlement of any claim and the authority to reconsider the final denial of a claim. One proposed edit to § 14.600 is to update the title of the regulation from “Federal Tort Claims Act—general” to “Federal Tort Claims Act generally.” An additional proposed amendment in paragraph (a) is the revision of the first sentence to remove reference to 28 U.S.C. 2402, 2411 and 2412 as these citations are not helpful. Specifically, the first sentence is now proposed to state: “The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401(b)), and 2671 through 2680).” In paragraph (c), the phrase “and other necessary instruments in connection therewith” is proposed to be removed as it is outdated and vague language. The phrase “or stipulation for settlement” is proposed to replace the removed language to provide more explanation regarding the authority for settlement that is delegated to the individuals listed in this paragraph. In paragraph (c)(3), the phrase “General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group” is proposed to be replaced with “Deputy Chief Counsels, Torts Law Group” to clarify that Torts Law Group’s Deputy Chief

Counsels are authorized to act regarding claims, subject to the parameters described in paragraphs (c)(3)(i) through (iii). Additionally, the phrase “but not more than \$500,000” is proposed to be removed from paragraph (c)(3)(i) as it is redundant to the language in paragraph (c)(3) which describes the approval required for awards, settlements, and compromises in excess of \$500,000.

The Office of General Counsel proposes significant amendments to § 14.601 “Investigation and development,” a section which describes the processes for the submission, investigation, and processing of tort claims. The proposed amendments include new language to provide clearer descriptions regarding the processing of tort claims and the removal of language that exists in other regulations, is no longer applicable, or is outdated. First, the title of paragraph (a) is proposed to be changed to replace the phrase “untoward incidents” with the phrase “general tort claims” to reflect the updated language that is used by the Office of General Counsel to describe this category of tort claims.

In paragraph (a)(1), the phrase “Department of Veterans Affairs” is proposed to be inserted before phrase “Government-owned vehicle” in the first sentence to specify that the procedures in this section relate to government-owned vehicles used by the Department. In the second sentence of paragraph (a)(1), additional nomenclature changes are proposed, including the replacement of the word “said” with the word “the” so that the beginning of the sentence now reads “A copy of the report.” This sentence is proposed to be amended to clarify that the SF 91 and VA Form 2162 should initially be sent to the Director of the facility involved in the motor vehicle accident.

Additional amendments are proposed for paragraph (a)(2) in § 14.601 and specifically, the existing paragraphs (a)(2)(i) and (ii) are proposed to be combined and streamlined to comprise a new single paragraph in (a)(2) which outlines procedures for all property damage or loss, including that which relates to patients’ personal effects. Proposed amendments to the first sentence in the newly combined paragraph (a)(2) include the insertion of the phrase “non-medical malpractice” before the term “incident” and replacement of the phrase “other than” with “including” prior to the phrase “personal effects of the patient” in the new paragraph (a)(2). The phrase “to the facility Director or designee” is added to the end of the first sentence to clarify where incidents described in this

paragraph should be reported. Nomenclature changes are also proposed to reduce extraneous language, including replacement of the phrase “due apparently or allegedly to the” with the phrase “due to alleged” and replacement of the phrase “an employee of the Department of Veterans Affairs acting within the scope of his or her office of employment, or damage to or loss of Government-owned property caused by other than a Department of Veterans Affairs employee acting within the scope of his or her office” with “a VA employee acting within the scope of their employment will be immediately reported to the facility Director or designee”

The newly edited paragraph (a)(2) also includes a proposed new sentence which states: “If a claim is filed seeking damages of \$5,000 or less, it will be adjudicated by the facility.” This sentence is proposed to be included to reflect the same information provided in § 14.600(c)(1) which was amended via rulemaking on October 20, 2022. To further clarify the parameters of the \$5,000 settlement authority for VA facility Directors, this section is proposed to be amended to include the additional phrase: “If the claim seeks damages in excess of \$5,000” prior to the phrase “the Director of the facility where such occurrence took place will promptly transmit a copy of the report.” Finally, this sentence is proposed to be amended to replace the phrase “Regional Counsel who will authorize such additional investigation as the circumstance of the case may warrant” with the phrase “Office of General Counsel Torts Law Group for investigation and adjudication.” This proposed replacement is intended to consistently reiterate that the Torts Law Group manages the investigation and adjudication of these claims.

Additionally, a sentence is being added to clarify that the Office of General Counsel, Torts Law Group will investigate and adjudicate non-medical malpractice claims brought against the Veterans Benefits Administration and National Cemetery Administration. As these proposed amendments ensure that all of the relevant information related to the investigation and development of these types of tort claims is described in the newly proposed paragraph (a)(2), the existing paragraphs (a)(2)(ii) and (a)(3) and (4) are proposed to be removed.

The Office of General Counsel proposes to revise paragraph (b) of § 14.601 to remove language that describes outdated procedures. The existing language regarding referral to the Under Secretary for Health via the Director, Medical-Legal Affairs and the

language stating that the responsible Regional Counsel involved and the General Counsel will be guided by the views of the Under Secretary for Health does not accurately describe current procedures for the investigation and development of medical malpractice claims. As a result, these sentences are proposed to be replaced with the following statement which concisely summarizes the current process for medical malpractice claims: “All medical malpractice claims will be referred to the Office of General Counsel, Torts Law Group for investigation and adjudication.”

The procedures described in § 14.602, “Requests for medical information” include proposed amendments as the information in the existing regulation does not accurately reflect current processes. Specifically, the following statement in paragraph (a): “Where there is indication that a tort claim will be filed, medical records or other information shall not be released without approval of the Regional Counsel” is proposed to be removed from this regulation as it is outdated and does not accurately reflect current procedures. The statement in paragraph (b) will remain and comprise the only language in this regulation and is intended to reflect that the Department follows the Freedom of Information Act (FOIA) and its implementing regulations in the release of documents.

The language in § 14.603, “Disposition of claims” includes proposed amendments. This regulation section generally describes that a claimant’s indebtedness to the Government will be included in a tort claim award. The proposed amendments include the removal of the last two sentences: “The amount of the indebtedness is for credit to the appropriation account from which the services were provided. The voucher prepared for settlement of the claim will specify the amount to be deposited to the credit of the designated account and the balance of the award be paid to the claimant.” These statements are proposed to be removed as they include extraneous language that describes outdated procedures regarding the settlement of tort claims with debt related to unauthorized medical treatment.

The Office of General Counsel proposes to amend § 14.604, “Filing a claim” to reflect nomenclature changes and to specifically describe certain procedures regarding the filing of administrative tort claims and the processing of tort claims immediately after their receipt. In the first sentence of paragraph (a), the phrase “an alleged”

before negligent or wrongful act or omission is proposed to be included to convey that the acts or omissions at issue in the claim have not been fully adjudicated by this point in the tort claim process. The phrase “a Standard Form 95 (SF 95)” is proposed to replace the phrase “SF 95” to explain the abbreviation for this document. In the second sentence in paragraph (a), the phrase “Office of General Counsel, Torts Law Group” is proposed to replace “Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place” to reflect that after a reorganization, the Torts Law Group handles administrative tort claims for the Office of General Counsel. Language has also been added to this sentence to provide a link to a website with further instructions for submitting a claim.

Additional nomenclature changes are proposed in the third and fourth sentence of § 14.604(a), including the replacement of “He or she” with “The claimant” and the replacement of “Department of Veterans Affairs” with “VA” for readability. Finally, the proposed amendment in the fourth sentence in paragraph (a) will replace the phrase “it will be forwarded to the Department of Veterans Affairs General Counsel, for appropriate action” with “the Office of General Counsel will immediately transfer the claim to the appropriate agency in accord with 28 CFR 14.2(b)(1).” This substitution is intended to accurately describe current practice when other Federal agencies may be involved in a claim.

In paragraph (b) of § 14.604, the phrase “an executed SF 95” is proposed to be replaced with the phrase “a signed SF 95” for clarity. Additionally, the phrase “written notification of an incident” is proposed to be replaced with “detailed written statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or” in order to provide a detailed explanation to the previously vague phrase of “notification.” This section also proposes to remove the final sentence regarding the receipt of an SF-95 as it is outdated and no longer describes current procedures.

Several amendments are proposed throughout § 14.605 “Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration” to replace outdated language and procedures. In paragraph (a)(2)(ii), the phrase “property damage” is proposed to be removed because paragraph (a)(2)

describes the applicability of 38 U.S.C. 7316 which applies to personal injury, including death, and medical malpractice but does not apply to property damage. Throughout paragraph (b), the phrase “or to the Office of General Counsel, Torts Law Group” is proposed to be added to clarify that employees can provide a copy of all papers received regarding a Federal lawsuit to their local Chief Counsel or to the Torts Law Group. Additionally, the phrase “he or she” is proposed to be replaced with “the employee” in two places in this paragraph for grammatical consistency.

Paragraphs (c) and (d) in § 14.605 are proposed to be amended to use the term “immunity”, rather than “representation”, “protection”, or “immunization” to clarify the protection of employees acting within the scope of their employment. Paragraph (c) is further amended to remove language that describes outdated procedures that are no longer followed when a lawsuit has been filed against a VA employee. The first sentence includes a proposed amendment to replace the phrase “the Regional Counsel having jurisdiction over the place where the employee works” with the phrase “Office of General Counsel, Torts Law Group” as the Torts Law Group is the group within the Office of General Counsel that conducts preliminary investigations when a lawsuit against a VA employee is filed. Additionally, the sentences which describe the submission of a preliminary report to the General Counsel, the Regional Counsel investigation, and the submission of the investigation report to the General Counsel and to the appropriate U.S. Attorney are proposed to be removed from this paragraph. These procedures are no longer followed as the Office of General Counsel, Torts Law Group manages the process by which a VA employee requests representation from the U.S. Attorney’s Office and handles all communications with the U.S. Attorney’s office. For consistency, the phrase “Regional Counsel” is proposed to be replaced with “Torts Law Group” throughout paragraph (c).

In paragraph (d), the phrase “local Regional Counsel” is proposed to be replaced with “Office of General Counsel, Torts Law Group” and the last two sentences in this paragraph are proposed to be combined for nomenclature changes and readability. In paragraph (e), the phrase “specifically excluded under the provisions of 28 U.S.C. 2680(h)” is proposed to be replaced with “otherwise not actionable under the

Federal Tort Claims Act” for readability and clarity. A misspelling in paragraph (e) is proposed to be corrected to read “cognizable.” Finally, the term “immunization” is proposed to be replaced with “immunity” in both paragraphs (c) and (d) for grammatical reasons.

#### *Administrative Settlement of Tort Claims Arising in Foreign Countries*

The Office of General Counsel proposes amendments to §§ 14.615 through 14.617, “Administrative Settlement of Tort Claims Arising in Foreign Countries” to remove or correct outdated or inaccurate information. The language in § 14.615 “General” provides general information for filing tort claims involving the Department that arise in foreign countries. One amendment is proposed in paragraph (a) to remove the word “abroad” from the end of the sentence due to redundancy.

Significant amendments are proposed in § 14.616, “Form and place of filing claim.” This section outlines specific instructions for how claimants can submit a tort claim when the events described in the claim arose in a foreign country and involve the Department. Paragraph (a) includes a proposed amendment to combine the first two sentences and to remove the redundant phrase “sworn statement,” the outdated language of “submitted in duplicate” and “original copy of the claim,” and the vague phrase “at least.” Additional new language is proposed to provide guidance regarding the submission of a Standard Form 95 as the way to submit a claim in compliance with the instructions in the regulation. As a result of these revisions, the proposed new combined sentence in paragraph (a) will now read: “Claims arising under 38 U.S.C. 515(b) will be submitted on a Standard Form 95 or prepared in the form of a statement sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information . . .”

Additional nomenclature changes are proposed for § 14.616(a)(8) for readability and clarity purposes. The specific proposed edits include the removal of the word “official,” the addition of “(s)” to the word “employee,” and the addition of the phrase “Department of Veterans Affairs” after United States. The paragraph (a)(10) is proposed to be removed to reflect that claimants do not need to indicate the law applicable to a tort claim when they file a claim. As a result of the proposed removal of paragraph (a)(10), paragraph (a)(9) will now conclude this section.

Amendments in paragraph (b) of § 14.616 include the proposed addition of the phrase “or submitted directly to the Office of General Counsel, Torts Law Group” at the end of the first sentence to provide an additional option for submission of claims as the Torts Law Group handles the processing and investigations of tort claims for the Department. Paragraph (c)(1) is proposed to be amended by replacing the phrase “the like will, if possible, be obtained from disinterested parties” with the phrase “documented evidence of the damages must accompany the claim.” This proposed amendment is intended to remove the vague phrase “the like” and to clarify the specific documents that should be submitted for this type of claim. The Office of General Counsel also proposes to amend the second and third sentences of paragraph (c)(1) for readability and to remove outdated terms that reflect procedures related to the processing of paper copies of claims that are no longer utilized. Specifically, paragraph (c)(1) is proposed to be amended to replace the existing phrases “All evidence will be submitted in duplicate” and “Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim” with the newly proposed sentence: “All evidence and certified copies must be attached to the original claim.” Finally, the last sentence of this section is proposed to be amended to replace the word “will” with the word “must” to clarify that English translations are required to be included with the claim so that there is no dispute regarding the language that describes the claim.

The only proposed amendment in paragraph (c)(2) of § 14.616 is the replacement of the phrase “the like” with the phrase “any other relevant evidence” for clarity and nomenclature reasons. The Office of General Counsel also proposes to delete paragraph (c)(5) “Damage to crops” as it is redundant to the prior paragraphs which outline procedures related to claims for property damage.

The Office of General Counsel proposes to amend § 14.617 “Disposition of Claims” to clarify the requirements of administrative tort claims in the Philippines and in countries other than the Philippines. This section provides guidance for how claims in foreign countries should be routed when received by employees of the Department or other employees of the Federal Government. Paragraph (a) includes a proposed amendment to remove the phrases “including a complete investigation report and a brief

resume of applicable law” and “together with a recommendation as to disposition” to clarify that the facility does not need to send an investigation report, a summary of applicable law, or a recommendation of a disposition of the claim. These amendments are proposed to more accurately reflect the current process and procedures which describe the Office of General Counsel’s Torts Law Group as the entity which prepares the investigation report, researches the applicable law, and proposes a disposition for the claim. The phrase “Office of General Counsel, Torts Law Group” is proposed to be included after the existing phrase “will be forwarded directly by the Director to the” to clarify the central role of the Torts Law Group in this process.

Further amendments are proposed for paragraph (b) to include the removal of the phrase “including a resume of applicable law and a recommendation regarding allowance or disallowance of the claim” as this language is outdated and does not reflect current procedures or practice. As stated previously, current practice does not involve the submission of a review of applicable law and a recommendation regarding the disposition of the claim by staff at the relevant American Embassy or Consulate. Finally, this section is amended to include “Torts Law Group, Office of” prior to “General Counsel, Department of Veterans Affairs, Washington, DC” as the Torts Law Group is the group within the Office of General Counsel that coordinates administrative tort claims from foreign countries other than the Philippines.

#### **Claims for Damage to or Loss of Government Property**

The Office of General Counsel proposes multiple amendments to the section of regulations that govern claims for damage to or loss of government property. Specifically, § 14.618 “Collection action” includes proposed amendments to reflect nomenclature changes and other minor edits. Proposed amendments to paragraph (a) include replacement of the phrase “Regional Counsel” with “Office of General Counsel” and inclusion of the phrase “or appropriate VA designee” before the phrase “will request payment in full.” This proposed amendment is intended to reflect that individuals other than those employed by the Office of General Counsel may request payment or other appropriate relief from the individual responsible for the damage to or loss of Government property. An additional proposed amendment includes the replacement of the phrases “amount of” and “liable



therefore or such person's insurer" with new language to clarify available relief. Specifically, the proposed new language after the comma would read: "the Office of General Counsel or appropriate VA designee will request payment in full or other appropriate relief for the damage or loss from the responsible person or entity." The proposed language is intended to clearly describe in plain terms that the Office of General Counsel or designee will seek reimbursement or other relief from the person responsible for damage to or loss of Government property.

Paragraph (b) of § 14.618 includes additional proposed amendments. The proposed edits include the replacement of "Regional" with "Office of General" and the addition of the phrase "or designee" after Counsel to indicate individuals other than those in the Office of General Counsel may collect, compromise, suspend, or terminate a collection action. This sentence is further proposed to be amended to update outdated citations and specifically, replace "§ 2.6(e)(4)(ii)" with "§ 2.6(e)(4)" and replace "§ 1.900 series" with "§ 1.900 *et seq.*" The second sentence is proposed to be amended to replace the phrase "and does not exceed \$100,000, will be referred by the Regional Counsel" with the language "may be referred" to reflect that not all of these cases are automatically referred to the United States Attorney's Office. The phrase "U.S. attorney along with the information required by §§ 1.951" is proposed to be replaced with "United States Attorney's Office, in accordance with § 1.950" to spell out the abbreviation for United States and to correct an outdated citation. Finally, the last sentence in paragraph (b) that begins with "Any claim in excess of \$100,000" and the entirety of paragraphs (c) and (d) are proposed to be removed. This language is proposed to be removed as it is redundant with existing language in § 2.6 and § 14.619 and does not reflect current practices or procedures.

#### **Claims for the Costs of Medical Care and Services**

This rule proposes to revise § 14.619, "Collection Action" to update references to other offices, remove obsolete material and references, and clarify and streamline policies and procedures. The Federal Medical Care Recovery Act ("FMCRA"), 42 U.S.C. 2651 *et seq.*, and 38 U.S.C. 1729 authorize the Department to recover from third parties the costs of medical care or services furnished or to be furnished to an individual by the

Department or paid for or to be paid for on behalf of an individual by the Department. In the proposed rule, the Office of General Counsel would revise § 14.619, which establishes the Office of General Counsel's ability to assert a claim, and authorize the Office of the General Counsel to collect, compromise, suspend, or terminate collection activity as well as to refer cases to the Department of Justice to protect the government's interest. This rulemaking proposes to amend § 14.619 to clarify VA's right of recovery under 42 U.S.C. 2651 and 38 U.S.C. 1729, as well as to further clarify individual's duty to notify and cooperate with VA, and to describe legal remedies to effect recovery. Paragraph (a) is proposed to be amended to include definitions of the terms "Responsible Official", "third party" and "individual" as well as to define medical care or services for which the Department may recover.

Paragraph (b) is proposed to be amended to clarify the duty of Veterans, Veteran beneficiaries and those individuals acting on their behalf to furnish requested information, notify VA of settlements and offers of settlement and cooperate with prosecution of all claims and actions by the United States against third persons under the authority delegated by the Secretary to the Office of General Counsel. *See*, 38 CFR 2.6(e)(3) and (9) as well as the authority under 28 CFR 43.1 and 43.2. A new paragraph (c) is proposed to be added to clarify assertion of claims on behalf of the United States, and the calculation of charges in accordance with Federal law and the implementing regulations cited. A new paragraph (d) is proposed to be added to clarify the authority to collect, compromise, settle, or waive any claim, and defines the information necessary for a request to compromise or waive a claim. This new paragraph (d) also clarifies that claims cannot be compromised in consideration of private attorneys' fees. Finally, a new paragraph (e) is proposed to provide a non-exhaustive list of legal remedies to effect recovery of a claim asserted under this section.

#### **Personnel Claims**

Additional amendments are proposed for the regulations in the "Personnel Claims" section to reflect nomenclature changes and substantive updates. These regulations describe procedures for managing claims made by Department employees for damage to or loss of employees' personal property incident to their employment. The language in § 14.664 "Scope of authority and effective date" is proposed to be

amended to replace the reference to "Pub L. 88 558 (78 Stat. 767)", approved August 31, 1964, as amended" with the updated citation of "The Military Personnel and Civilian Employees' Claims Act (MPCECA) of 1964, 31 U.S.C. 3721". The phrase "for not more than" is proposed to be replaced with "not to exceed" for clarity and the phrase "civilian officer or" is proposed to be removed as the differentiation between civilian and non-civilian officers is not applicable to VA. This section is also proposed to be amended to replace the phrase "Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), and the Deputy Assistant General Counsel, of said staff group and the Regional Counsel" with the new phrase "the Principal Deputy General Counsel, the Deputy General Counsel for Legal Operations, and the Chief Counsel, Torts Law Group." This amendment is proposed to reflect the updated names of positions in the Office of General Counsel and to clarify where these claims should be investigated. Additionally, this proposed amendment is intended to reflect that OGC's Torts Law Group handles MPCECA claims as a result of a recent reorganization. Similar amendments are proposed throughout this section to reflect that change, including elimination of the reference to "appropriate Regional Counsel" in what was 14.665(c), and substitution of the phrase "Torts Law Group" for "Regional Counsel having jurisdiction" in 14.666(a) and in other references to "Regional Counsel" in the Title and paragraphs (a) and (b) in 14.666.

In § 14.665 "Claims," the phrase "in writing" is proposed to be removed from the first sentence as it is outdated. Additionally, the phrase "or VA Form 4629, Claim for Reimbursement for Damaged or Destroyed Personal Property for property destroyed or damaged by a patient while the employee was engaged in the performance of official duties" is proposed to be added to the first sentence to explain that an additional form can be used to submit a claim under MPCECA. The second sentence is proposed to be revised to state that "The form will be submitted to the facility Director or designee of the VA facility where the claim originates within 2 years after the incident that caused the loss or damage, or after the employee discovers the loss or damage." These revisions are intended to remove an outdated reference to "personnel" and to remove reference to language regarding armed conflicts and other



military-related language that is not applicable to VA. This section includes further proposed revisions to remove reference to officer in the third sentence and to replace the phrases “the surviving spouse, children, father or mother or both, or brothers or sisters or both” with the phrase “the employee’s survivors in the following order of precedence: spouse, child, parent, or sibling” for clarity. As a result of this revision, the sentence “Claims of survivors shall be settled and paid in the order named” is proposed to be removed as it is redundant to the prior phrase “order of precedence.”

Paragraphs (b) and (c) are proposed to be combined into one new paragraph (b), which would include multiple proposed revisions to explain responsibility for investigation and evaluation of the merits of these claims. The newly combined paragraph (b) includes edits to the first sentence which is proposed to begin with the following phrase: “The VA facility Director or designee receiving the claim will ascertain if such claim is complete.” The last sentence in the newly combined paragraph (b) starting with the phrase “The completed investigation” is proposed to be removed as it describes an outdated process that does not reflect current procedures. Finally, this section is proposed to be revised to update the citation to 38 U.S.C. 703(e) in paragraph (a)(4).

Significant revisions are proposed in § 14.666 to reflect that Torts Law Group is the OGC office which now handles or may be consulted regarding these claims. The first paragraph is revised to include the new language of: “Torts Law Group is available for consultation if requested and as needed by the facility’s human resources office.” The second sentence is proposed to be revised to explain when additional investigation by Torts Law Group may be necessary by including the following proposed additional language at the beginning of the second sentence: “If, after consultation from the investigating facility or with the Torts Law Group, it is determined by the Torts Law Group that the facts or amount in controversy requires further input or investigation from the Torts Law Group.” The sentence beginning with the phrase “If the claimant has a potential claim for indemnification” is proposed to be removed as the description of the potential claims against “other than the United States” appears to relate to military personnel and is not applicable to VA. The last sentence is proposed to be revised to include the phrase “Torts Law Group may be consulted to” before

the phrase “ascertain that the claimant has filed a timely proper claim” to clarify that Torts Law Group’s involvement is not required unless requested by the relevant facility.

Finally, the language in paragraph (b) is proposed to be removed as not all MPCECA claims are sent to Torts Law Group for review and thus, input regarding payments of claims is not needed.

In § 14.667 “Claims payable,” the phrase “and does not exceed \$40,000” is proposed to be added to the end of the sentence in paragraph (a)(1) to reflect the maximum amount that can be paid for an MPCECA claim per the statutory language in 31 U.S.C. 3721. The language in paragraph (a)(3) “Did not occur at quarters occupied within the 50 States or the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States” is proposed to be removed as this language is applicable to military quarters and is not relevant to VA. New replacement language in paragraph (a)(3) is proposed to state “The claim is substantiated by proper and convincing evidence” as this language is specifically mentioned in the current policy on MPCECA claims. Paragraph (a)(4) includes nomenclature changes for clarity and consistency including adding the phrase “or wrongful” before the phrase “act of the claimant” and deleting “or employee.” Finally, reference to 38 U.S.C. 703(a)(5) (§ 17.78 of this chapter) is proposed to be replaced with 38 U.S.C. 703(e) to reflect the accurate citation.

Amendments are proposed for § 14.668 “Disposition of claims,” including in paragraph (b)(1) to add the phrase “(where applicable)” after the “Reimbursement in kind” as Torts Law Group is not authorized to process or permit “in kind” reimbursements. This paragraph is further proposed to be revised to replace the phrase “request the Director, Supply Service, Veterans Health Services and Research Administration, to procure” with the phrase “facilitate the procurement of” as the position references in the current regulation are outdated. Paragraph (b)(2) is proposed to be revised to replace outdated phrases and terms including substituting the word “payment” for the word “check,” the phrase “Fiscal office” for “Finance activity,” and the phrase “facility” for “installation.” Similarly, the phrases “on SF 1166, Voucher and Schedule of Payments” and “Regional Disbursing Office” are proposed to be removed from paragraph (b)(2) as these terms are outdated and do not reflect current processes. The last phrase of the section is proposed to read

“forwarded to the appropriate office for payment” to concisely describe this part of the process.

The language in § 14.669 “Fees of agents or attorneys; penalty” is proposed to include significant revisions including a new phrase at the beginning of the section which states, “Notwithstanding a contract, the representative of a claimant may not receive more than” to replace the prior redundant phrasing starting with “The Military Personnel and Civilian Employees’ Claims Act of 1964.” Additional nomenclature changes are proposed in this sentence for clarity and readability to include replacement of the phrase “amount paid in settlement” with the word “payment,” and removal of the phrases “each individual” and “and settled.” Further, the phrase starting with “the Act shall be paid” is proposed to be replaced with the citation for the Act “31 U.S.C. 3721” and the phrase “rendered in connection with that claim” is proposed to be replaced with the phrase “related to the claim.” Finally, the last sentence is proposed to be replaced with the following sentence “A person violating this provision shall be fined not more than \$1,000” for readability and clarity.

#### **Testimony of Department Personnel and Production of Department Records in Legal Proceedings**

The Office of General Counsel also proposes amendments to the set of regulations which govern the testimony of Department employees and production of Department records in certain legal proceedings as defined in the regulations.

In § 14.801 “Applicability,” the regulation which defines who these procedures apply to and in which situations, multiple changes are proposed to improve readability. Specifically, the following changes are proposed: (1) in paragraph (b)(2)(i), the word “or” is replaced with “and”; (2) in paragraph (b)(3), the word “personnel’s” is replaced with the word “individual’s;” (3) in paragraph (c)(2), the phrase “in appropriate cases” is removed as it is vague and undefined language; and (4) in paragraph (c)(3), the phrase “as to them” is deleted in the parenthetical to remove extraneous and confusing language.

Additional amendments are proposed to § 14.802 “Definitions,” which defines terms that are used throughout this regulation. Specifically, in paragraph (c), the phrase “official of the VA” is proposed to be replaced with “VA official” to reduce extraneous language. The proposed change to paragraph (f) will update the reference to “televised

or videotaped testimony” to “video or video recorded testimony.” Additionally, the Office of General Counsel proposes to include a new definition in paragraph (h) to define “Designated VA Official.” The new language is proposed to state: “(h) Designated VA Official. VA official authorized to make the determinations provided in § 14.807. Other than for personnel in the Office of the Inspector General (OIG), the General Counsel or their designee is the Designated VA Official. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the Designated VA Official authorized to make the determinations provided in § 14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.” The proposed addition of this definition in paragraph (h) is intended to ensure that the official authorized to make determinations provided in § 14.807 is specifically named and described. The use of this specific title of “Designated VA Official” is intended to promote uniformity and consistency throughout this set of regulations.

The Office of General Counsel proposes to amend § 14.803 “Policy” for readability, coherence, and consistency. This regulation establishes the Department’s policy regarding requests for documents and testimony. That policy is to comply with the requests as authorized in accordance with these regulations and not otherwise inhibit employees’ access to the courts as citizens or in their private capacities or to deny Veterans’ access to the courts. Specifically, in paragraph (a), the phrase “the determining official” is proposed to be replaced with “Designated VA Official” as this is the individual defined and referred to in § 14.802(h). This paragraph includes additional proposed amendments including modifying and moving the phrase “testifying or producing records will have on the ability of the agency or VA personnel to perform their official duties” from the end of the sentence to the middle of the sentence. As a result of this proposed amendment, the sentence will now end with the phrase “as well as in future cases generally, based on the factors set forth in § 14.804.”

The language in § 14.804, “Factors to consider” includes one proposed nomenclature amendment for consistency purposes. This regulation lists the specific factors that the Designated VA Official uses when determining whether to approve or deny

a request for documents or testimony made under these regulations. The first sentence is proposed to be amended to replace the phrase “VA personnel responsible for making the decision” with “the Designated VA Official” for consistency with the rest of the regulations in this section.

Additional proposed amendments are included in § 14.805 “Contents of a demand or request,” a regulation which addresses the information that should be included in any demand or request for testimony or documents sent to the Department under these regulations. Specifically, the phrase “if that is not feasible, in, or accompanied by” is proposed to be removed as it is extraneous language and the phrase “a summary” is proposed to be replaced with the word “summarizing.” This section is proposed to be further amended to insert a period after the phrase “legal proceedings” and the new proposed sentence after the period will start with the phrase “The affidavit or written statement shall contain.” These proposed changes are intended to improve readability and coherence.

The language in § 14.807 “Procedure when demand or request is made” is proposed to be amended for readability, coherence, and nomenclature. This section describes the procedures that VA employees should follow when a demand or request for testimony or records is received and includes instructions for notifying leadership, the Designated VA Official, and the Department of Justice, and guidelines for interacting with a court of competent jurisdiction or other appropriate authority. In paragraph (a), the phrase “is made” is proposed to be moved to before “in connection with legal proceedings” for readability. The second sentence proposes to replace “responsible VA official designated in § 14.807(b)” with “Office of General Counsel” to reflect current procedures that involve the Office of General Counsel as the central point of contact responsible for managing these types of requests and demands.

In paragraph (b) of § 14.807, the phrase beginning with “In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG)” is proposed to be replaced with “The Designated VA Official shall” as that is the individual specifically designated in § 14.802(h) to make the determinations regarding testimony provided or documents produced in these matters. The second sentence beginning with “For personnel in the OIG” is proposed to be removed as this information is

now addressed in the proposed definition for “Designated VA Official” in § 14.802(h).

Additional changes are proposed in § 14.807(f). The last sentence in paragraph (e) is proposed to be amended to begin with the phrase “However, if directed by the Designated VA Official.” As a result of this new language, the word “however” is proposed to be deleted before the phrase “the affected VA personnel” to avoid redundancy. The word “however” in paragraph (f)(1) and the word “then” in paragraph (f)(2) are proposed to be removed for readability.

The language in § 14.808 is proposed to be amended for nomenclature, clarity, and consistency purposes. This regulation provides procedures for the approval of testimony, the management of court orders for testimony, and the appropriate responses for expert or opinion testimony about official VA information, subjects, or activities, when such testimony was not previously approved. The specific proposed amendments include changing the title of § 14.808 to include the phrase “or fact” so that the new title would read “Expert, opinion, or fact testimony.” This amendment is intended to describe the contents of this section more accurately. In the second sentence in paragraph (a), the phrase “responsible VA official designated in § 14.807(b)” is proposed to be replaced with the term “Designated VA Official” as that is the individual defined in the proposed § 14.802(h) who authorizes testimony or the production of documents under this regulation. The word “however” is proposed to be moved from the middle of the last sentence to the beginning of the sentence such that the last sentence would start with the phrase: “However, if directed by.”

A new paragraph (e) is proposed to be included in § 14.808 to address fact testimony and it would state: “If an employee is authorized to give fact witness testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the employee that are not classified, privileged, or protected from disclosure under applicable law or regulation. If asked to provide factual testimony that the employee believes may be classified, privileged, or protected from disclosure under applicable law or regulation, then the witness shall: (1) Respectfully decline to answer on the grounds that such testimony is prohibited; and (2) Request an opportunity to consult with the Designated VA Official.” This proposed

language is intended to provide more specific guidance regarding the scope of fact testimony that VA employees are authorized to provide and instructions on how to handle questions that may solicit fact testimony that is unauthorized due to an applicable law or regulation.

The Office of General Counsel proposes to amend the language in § 14.810, “Fees,” which provides guidance regarding the fees VA may charge when testimony is authorized and provided under these regulations. In paragraph (a), the phrase “particularly as expert witnesses” is proposed to be removed from the first sentence to reduce confusion regarding the applicability of this section as it applies to all testimony and not just expert testimony. The third sentence is proposed to be amended to remove the extraneous phrasing of “establish a” and “for providing.” The newly proposed sentence states: “Consequently, these are the sort of services for which VA may charge under 31 U.S.C. 9701.”

The next sentence in § 14.810(a) is also proposed to be re-written to remove extraneous words and improve clarity by referencing fees associated with the Department’s FOIA regulation at 38 CFR 1.561. Specifically, the existing sentence “The responsible VA official will determine all fees associated with §§ 14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance” is proposed to be replaced with: “Where a determination is made to comply with the demand, order or request pursuant 38 CFR 14.807(e) or 14.808, the Designated VA Official will calculate fees consistent with 38 CFR 1.561(d), (f) through (l) and shall timely notify the requester of the fees, particularly those which are to be paid in advance.” An additional new sentence is proposed in this paragraph to provide specific guidance for how fees should be calculated for requesters in the context of the FOIA and the Department’s corresponding regulations. That proposed new sentence would state: “For purposes of calculating fees all requesters under §§ 14.800 through 14.810 will be considered Commercial Use Requesters as defined by 38 CFR 1.561(c)(1).”

Additional amendments are proposed for paragraph (b)(1) which specifically outlines the types of costs that may be included in the fees charged to the requester under these regulations. Specifically, paragraph (b)(1) is proposed to be amended to delete the phrase “in whole or in part as to expert, opinion or policy matters” as this language is now redundant to language

in prior sections. More language is proposed to be added in this paragraph to clarify that fees may be assessed for preparing the witness for testimony. Specifically, the phrase “preparing and” and the phrase “for testimony” are proposed to be added so that the proposed new sentence now reads: “When a request is granted under § 14.808 to permit VA personnel to testify, the requester shall pay to the government a fee calculated to reimburse the cost of preparing and providing the witness for testimony.”

Additional amendments are proposed for the lower-level paragraphs within paragraph (b)(1). One proposed amendment, in paragraph (b)(1)(i), is the addition of the word “order” after “demand” to reference the potential for court orders for testimony which may be managed in accordance with these regulations. Paragraph (b)(1)(ii) is proposed to be removed in its entirety as its description of charges for attorney time expended in reviewing the demand or request is redundant to the information provided in paragraph (b)(1)(i). The existing language in paragraph (b)(1)(iii) regarding expenses generated by materials and equipment used to search for and copy responsive information is also proposed to be removed as it is redundant to the information provided in paragraph (b)(1)(i) and is also covered in the newly proposed language in paragraph (a) regarding the calculation of fees in accordance with § 1.561. Due to the proposed removal of the existing language in paragraphs (b)(1)(ii) and (iii), amended language from the existing paragraph (b)(1)(iv) is proposed to be moved to (b)(1)(ii) so that the new paragraph (b)(1)(ii) now reads “the cost of the time expended to prepare the witness to testify.” The existing language in paragraph (b)(1)(v) is also proposed to be amended to change sentence structure and be moved to paragraph (b)(1)(iii). The language in paragraph (b)(1)(iii) is proposed to read: “Travel costs for VA personnel associated with providing testimony.”

In paragraph (b)(2), the phrase “necessary for such expert testimony” is proposed to be removed as the scope of this section applies to all requested testimony and not just expert testimony. Paragraph (f)(3) is proposed to be amended to add the phrase “in accordance with General Services Administration (GSA) policy” to clarify that GSA policy must be followed with regard to the rates for travel and per diem that will be funded by the requesting party.

Finally, the phrase “responsible VA official” has been replaced with

“Designated VA Official” throughout §§ 14.805 through 14.810. In §§ 14.802, 14.807, and 14.810, the word “the” is proposed to be deleted before “VA” for consistency. In §§ 14.800 through 14.810, the phrase “this part” has been replaced with “§§ 14.800 through 14.810” for specificity.

### **Paperwork Reduction Act**

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is because this proposed rulemaking is merely internal to VA and does not involve any actions and/or processing by small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

### **Executive Orders 12866, 13563 and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a

supporting document at [www.regulations.gov](http://www.regulations.gov).

### Assistance Listing

There are no Assistance Listing numbers and titles for the programs affected by this document.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and Tribal governments, or on the private sector.

### List of Subjects

#### 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign Relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

#### 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Veterans.

### Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 8, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

#### Luvenia Potts,

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR parts 14 and 36 as follows:

## PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 3730, 5502,

5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Revise and republish §§ 14.500 through 14.502 to read as follows:

### § 14.500 Functions and responsibilities of the 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 their 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 offices capable of providing legal advice and assistance to all Department of Veterans Affairs organizations 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 a Chief Counsel.

(f) Other matters as assigned.

### § 14.501 Functions and responsibilities of Chief Counsels.

(a) Functions and responsibilities of the Chief Counsels 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 Chief Counsel, Deputy Chief Counsels, 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 Chief Counsel is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice, and assistance to Department of Veterans Affairs organizations within their geographic area of responsibility and/or legal practice area of responsibility. In any area of regulatory, assigned, or delegated responsibility, the Chief Counsel may delegate to staff

members or other Department of Veterans Affairs attorneys authorized to perform, to the extent specified, any legal function under the professional direction of the Chief Counsel.

Conversely, the Chief Counsel may modify, suspend, or rescind any authority delegated hereunder.

(d) The Chief Counsel 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 Chief Counsel 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.

(f) Chief Counsels whose responsibilities are defined by the geographic area served by their offices are “District Chief Counsels”. The locations and jurisdictions of the District Chief Counsels can be found here: <https://www.va.gov/OGC/DistrictOffices.asp>.

### § 14.502 Requests for legal opinions from Central Office.

A request for formal legal advice, including interpretation of law or regulations, shall be made only by the Secretary, the Deputy Secretary, an Under Secretary, an Assistant Secretary, a Deputy Assistant Secretary, or the official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.

### §§ 14.503 and 14.504 [Removed]

■ 3. Remove §§ 14.503 and 14.504.

■ 4. Revise and republish §§ 14.505 to read as follows:

### § 14.505 Submissions.

All submissions for formal legal advice described in § 14.502 will set forth the question of law underlying the opinion requested, together with a complete and accurate summary of relevant facts. Files, correspondence, and other relevant documents should be attached as exhibits to the submission.

■ 5. Revise and republish § 14.507 to read as follows:

### § 14.507 Opinions.

(a) *General.* When requested under § 14.502 or when determined necessary or appropriate, the General Counsel, another official so authorized by the General Counsel, or the Principal Deputy General Counsel when acting as

or performing the duties of the General Counsel, may issue a written legal opinion designated as a “precedent opinion,” a “conclusory opinion,” or an “advisory opinion” regarding any issue of law affecting programs or operations of the Department of Veterans Affairs.

(b) *Precedent opinions.* A written legal opinion of the General Counsel involving Veterans’ benefits under laws administered by the Department of Veterans Affairs which, in the judgment of the General Counsel or the Principal Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a “precedent opinion” for purposes of such benefits. The designated holdings in written legal opinions designated as precedent opinions under this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(1). The holdings in an opinion designated as a precedent opinion are binding on Department officials and employees in subsequent matters involving a legal issue decided in the precedent opinion, unless there has been a material change in a controlling statute or regulation, the opinion has been overruled or modified by a subsequent precedent opinion or judicial decision, or the opinion has been withdrawn.

(c) *Conclusive opinions.* The designated holdings in written legal opinions designated as conclusive opinions under this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). The holdings in an opinion designated as a conclusive opinion are binding as to all Department officials and employees with respect to the particular matter at issue, unless there has been a material change in controlling statute or regulation; the opinion has been overruled or modified by a subsequent precedent opinion, applicable conclusive opinion, or judicial decision; or the opinion has been withdrawn.

(d) *Advisory opinions.* An advisory opinion is not binding on Department personnel, but generally is issued to provide legal guidance or recommendations to Department officials.

(e) *Scope of this section.* This section pertains only to opinions issued by the General Counsel or designee as described in paragraphs (a) through (d) of this section. Nothing in this section is intended to preclude the Office of

General Counsel or any employees thereof from issuing informal legal opinions or providing legal guidance within the Department in any appropriate format.

(f) *Other matters.* Written legal opinions described in paragraphs (a) through (d) of this section that are executed by the General Counsel will be maintained by the Office of General Counsel. Where such opinions involve Veterans’ benefits under laws administered by the Department of Veterans Affairs and pertain to a particular individual’s claim, such opinions will be filed in the individual claim folder in addition to being maintained by the Office of General Counsel.

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

■ 6. Revise and republish § 14.514 through 14.518 to read as follows:

**§ 14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees.**

(a) *Suits against United States or Department of Veterans Affairs officials.* When a suit involving any activities of the Department of Veterans Affairs is filed against the United States or the Secretary or a suit is filed against any employee of the Department of Veterans Affairs in which is involved any official action of the employee, not covered by the provisions of §§ 14.600 through 14.617, a copy of the complaint will be forwarded to the General Counsel, who will take necessary action to obtain the pertinent facts, cooperate with or receive the cooperation of the Department of Justice and, where indicated, advise the Chief Counsel of any further action required.

(b) *Counsel and representation of employees.* The Department of Justice may afford counsel and representation to Government employees who are sued individually as a result of the performance of their official duties. A civil action commenced in a State court against an employee, as the result of an action under color of their office, may be removed to the applicable Federal District Court. If a suit is filed against an employee as the result of the performance of their official duties, where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable (see § 14.610), and the employee desires to be represented by the U.S. Attorney, the Chief Counsel will obtain a written request to this effect from the employee and will also obtain an affidavit of the facility Director (or equivalent position) describing the incident in sufficient

detail to enable a determination to be made as to whether the employee was in the scope of their employment at the time. These statements, together with a copy of the complaint and a summary of pertinent facts, will be sent to the General Counsel, who will transmit copies thereof to the Department of Justice for appropriate action.

(c) *Indemnification.* (1) The Department of Veterans Affairs may indemnify a Department of Veterans Affairs employee who is personally named as a defendant in any civil suit in State or Federal court or an arbitration proceeding or other proceeding seeking damages against the employee personally, where either 28 U.S.C. 2679 or 38 U.S.C. 7316 is not applicable, for any verdict, judgment, or other monetary award which is rendered against such employee; provided that: the alleged conduct giving rise to the verdict, judgment, or award was taken within the scope of their employment and that such indemnification is in the interest of the Department of Veterans Affairs, as determined by the Secretary or their designee.

(2) The Department of Veterans Affairs may settle or compromise a personal damage claim against a Department of Veterans Affairs employee, in cases where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable, by the payment of available funds, at any time; provided that: the alleged conduct giving rise to the personal damage claim was taken within the employee’s scope of employment and that such settlement or compromise is in the interest of the Department of Veterans Affairs, as determined by the Secretary or their designee.

(3) Absent exceptional circumstances as determined by the Secretary or their designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(4) A Department of Veterans Affairs employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Department of Veterans Affairs General Counsel, who shall make a recommended disposition of the request. Where the Department of Veterans Affairs determines it appropriate, the Agency shall seek the advice of the Department of Justice. The

General Counsel shall forward the employee request for indemnification, and the accompanying documentation, with the General Counsel's recommendation to the Secretary for decision.

(5) Any payment under this section either to indemnify a Department of Veterans Affairs employee or to settle or compromise a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of Veterans Affairs.

*(d) Attorney-client privilege.*

Attorneys employed by the Department of Veterans Affairs who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to a Department employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Department of Veterans Affairs should provide assistance in the representation of such a Department employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Department of Veterans Affairs attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department of Veterans Affairs, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee.

(e) *Suits by the United States.* In any instance wherein direct submission to a U.S. Attorney for institution of civil action has been authorized by the Department of Justice, the Chief Counsel will furnish the U.S. Attorney a complete report of the facts and applicable law, documentary evidence, names and addresses of witnesses and, in cases wherein Department of Veterans Affairs action has been taken, a copy of any pertinent decision rendered. The Chief Counsel will forward a copy of such report and of any proposed pleading to the Deputy General Counsel to whom the Chief Counsel reports and will render any practicable assistance requested by the U.S. Attorney.

**§ 14.515 Suits involving loan guaranty matters (where the Secretary is a party to the action).**

(a) Attorneys employed in the Office of General Counsel may exercise the right of the United States to bring suit in any court of competent jurisdiction to—

(1) Foreclose a loan made or acquired by the Secretary under any home loan program administered by the Veterans Benefits Administration, or

(2) Recover possession of any property conveyed to the Secretary after the foreclosure of a home loan described in paragraph (a)(1) of this section.

(b) To carry out the activities described in paragraph (a) of this section, the Office of General Counsel may acquire, or oversee the acquisition and performance of, legal services provided by attorneys other than those who are employees of the Department of Veterans Affairs.

(c) For the purpose of this section, the authority to bring suit also means representation in bankruptcy proceedings, as well as other activities necessary to preserve the Secretary's interest in a loan guaranteed, insured, or made under 38 U.S.C. chapter 37, or in a property acquired under such chapter.

(d) The activities described in this section are subject to the direction and supervision of the United States Attorney General and to such terms and conditions as the United States Attorney General may prescribe.

(e) In any legal or equitable proceeding to which the Secretary is a party (including probate and bankruptcy proceedings) related to any home loan program administered by the Veterans Benefits Administration, original process and any other process prior to appearance that may be served on the Secretary must be delivered to the Office of General Counsel, 810 Vermont Ave. NW (02), Washington, DC 20420. Copies of such process must also be served on the United States Attorney General and the United States Attorney having jurisdiction over that area. Failure to comply with the requirements of this paragraph (e) renders the service improper.

(Authority: 38 U.S.C. 3730)

**§ 14.516 Escheat and post fund cases.**

In any case in which the Department of Veterans Affairs is entitled to possession of assets or property under the escheat provisions of 38 U.S.C. 5502(e), the gifts provisions of 38 U.S.C. chapter 83 or the General Post Fund provisions of 38 U.S.C. chapter 85, where the assets or property are not surrendered upon entitlement, the Chief Counsel will endeavor to obtain

possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person or entity having custody or possession of the assets or property for the purpose of determining whether the person or entity would be willing to turn over the property to the Department of Veterans Affairs without litigation. If unsuccessful in this effort, a complete report will be submitted by the Chief Counsel to the Deputy General Counsel to whom the Chief Counsel reports so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

**§ 14.517 Cases affecting the Department of Veterans Affairs generally.**

District Chief Counsels will establish and maintain such close liaison with the State and Federal courts and related State and Federal agencies as to ensure that notice will be afforded the Department of Veterans Affairs on all cases affecting the Department of Veterans Affairs. Cases affecting substantial interest of the Department of Veterans Affairs will be forwarded to the Deputy General Counsel to whom the Chief Counsel Reports promptly in every case.

**§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.**

(a) *Service of process generally.* An employee, at a Department of Veterans Affairs medical facility, served with a writ of habeas corpus involving a beneficiary of the Department of Veterans Affairs in the employee's custody will immediately notify the District Chief Counsel of the region in addition to taking such steps as in their judgment are necessary for self-protection.

(b) *Habeas corpus writs.* (1) If a Director of a Department of Veterans Affairs medical facility concerned advises that, according to current medical opinion, hospitalization is necessary for the Veteran's safety or the safety of others, the District Chief Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action will be taken unless so instructed by the General Counsel.

(2) If the medical opinion is that hospitalization is not required for the Veteran's safety or the safety of others but continued treatment is clearly indicated in the Veteran's interest, the District Chief Counsel will assure that

the court issuing the writ is so informed and will abide by the court's decision.

(3) If the medical opinion is that there is no danger of self-injury to the Veteran or others and the need for continued treatment is not clearly demonstrated, the District Chief Counsel will advise the Director of the medical facility concerned that the Veteran should be released and will notify the Veteran's attorney or other representative of the planned discharge, subject to existence of an appropriate release authority. These cases will be handled informally to the extent practicable.

(4) Involuntary confinement of mentally ill patients in Department of Veterans Affairs facilities is predicated upon the law of the State in which the facility is located. In the event the writ is filed in Federal Court, the District Chief Counsel will cooperate with the U.S. Attorney to the end that the case is removed to the appropriate State court. ■ 7. Revise and republish § 14.560 to read as follows:

**§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crimes Act.**

The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the Chief Counsel will cooperate as may be requested. The Chief Counsel will promptly bring to the attention of the Deputy General Counsel to whom the Chief Counsel Reports any case wherein the Chief Counsel is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety.

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

■ 8. Revise and republish § 14.562 to read as follows:

**§ 14.562 Collections or adjustments.**

When it is determined that a submission is to be made to the U.S. Attorney, no demand for payment or adjustment will be made without the advice of the U.S. Attorney. However, if, before or after submission, the potential defendant or other person tenders payment of the liability to the United States, payment will be accepted if the U.S. Attorney has no objection. If the

U.S. Attorney determines that prosecution is not indicated, or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken.

■ 9. Revise and republish §§ 14.600 through 14.605 to read as follows:

**§ 14.600 Federal Tort Claims Act generally.**

(a) *Federal Tort Claims Act—overview.* The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401(b), 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 their 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 supplement the regulations at 28 CFR part 14.

(c) *Delegations of authority concerning claims.* Subject to the limitations in 28 CFR 14.6(c) through (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 or stipulation for settlement) 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 non-medical malpractice claim for \$5,000 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Principal Deputy General Counsel, Deputy General Counsel for Legal Operations, and Chief Counsel, Torts Law Group or those authorized to act for them with respect to any claim; provided that any award, compromise, or settlement in excess of \$500,000 shall be effected only with the prior written approval of the Attorney General or their designee; provided further that whenever a settlement is effected in an amount in excess of \$200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(3) To the Deputy Chief Counsels, Torts Law Group or those authorized to act for them with respect to any claim, provided that:

(i) Any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the General Counsel, Principal Deputy General Counsel, Deputy General Counsel for Legal Operations, or Chief Counsel, Torts Law Group; provided further that whenever a settlement is effected in an amount in excess of \$200,000, 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 exceeds \$300,000 shall be effected only with the prior written approval of the General Counsel, Principal Deputy General Counsel, Deputy General Counsel for Legal Operations, or Chief Counsel, Torts Law Group; and

(iii) Any award, compromise, or settlement in excess of \$500,000 shall be effected only with the prior written approval of the General Counsel, Principal Deputy General Counsel, Deputy General Counsel for Legal Operations, or Chief Counsel, Torts Law Group; and with the prior written approval of the Attorney General or their designee.

(d) *Delegations of authority to reconsider final denial of a claim.* Subject to the limitations in 28 CFR 14.6(c) through (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 Torts Law Group, with respect to any claim for \$5,000 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Principal Deputy General Counsel, Deputy General Counsel for Legal Operations, and Chief Counsel, Torts Law Group with respect to any claim; provided that any award, compromise, or settlement in excess of \$500,000 shall be effected only with the prior written approval of the Attorney General or their designee; provided further that whenever a settlement is effected in an amount in excess of \$200,000, 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, 2671–80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)



**§ 14.601 Investigation and development.**

(a) *Development of general tort claims*—(1) A report of any collision involving a Department of Veterans Affairs Government-owned vehicle which results in property damage or personal injury or death will be made by the operator of the Government vehicle immediately following the accident, on SF 91, Operator's Report of Motor Vehicle Accident. A copy of the report, accompanied by an executed copy of VA Form 2162, Report of Accident, will be promptly submitted to the Director of the facility involved. Forms required by other agencies will continue to be used in addition to VA Form 2162.

(2) Any non-medical malpractice incident resulting in damage to, or loss of, property, including personal effects of a patient in a Department of Veterans Affairs facility, or in personal injury or death, due to alleged negligent or wrongful act or omission of a VA employee acting within the scope of their employment, will be immediately reported to the facility Director or designee. If a claim is filed seeking damages of \$5,000 or less, it will be adjudicated by the facility. If the claim seeks damages in excess of \$5,000, the Director of the facility where such occurrence took place will promptly transmit a copy of the report to the Office of General Counsel, Torts Law Group for investigation and adjudication. Non-medical malpractice claims brought against the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA) will also be referred to the Office of General Counsel, Torts Law Group, for investigation and adjudication.

(b) *Development of medical malpractice claims*. All medical malpractice claims will be referred to the Office of General Counsel, Torts Law Group for investigation and adjudication.

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

**§ 14.602 Requests for medical information.**

Request for medical records, documents, reports, or other information shall be handled in accordance with the provisions of 38 CFR 1.511(a)(2).

**§ 14.603 Disposition of claims.**

*Setoff for cost of unauthorized medical treatment*. In any tort claim administratively settled or compromised where the claimant owes the Department of Veterans Affairs for unauthorized medical treatment, there will be included in the tort claim award

the amount of the claimant's indebtedness to the Government.

**§ 14.604 Filing a claim.**

(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on an alleged negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of their employment, will be furnished a copy of a Standard Form 95 (SF 95), Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Office of General Counsel, Torts Law Group using the instructions located here: <https://www.va.gov/OGC/FTCA.asp>. The claimant will also be advised to submit the information prescribed by 28 CFR 14.4 to the extent applicable. If a claim is presented to VA which involves the actions of employees or officers of other agencies, the Office of General Counsel will immediately transfer the claim to the appropriate agency in accord with 28 CFR 14.2(b)(1).

(b) A claim shall be deemed to have been presented when the Department of Veterans Affairs receives from a claimant, or their duly authorized agent or legal representative, a signed SF 95, or other detailed written statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death.

(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Department of Veterans Affairs action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or their duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department of Veterans Affairs shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment.

(Authority: 28 U.S.C. 1346(b)(1), 2401(b), 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

**§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.**

(a)(1) Section 2679 of title 28 of the U.S. Code., provides that no suit will lie

against a Federal employee, or the employee's estate, for damage to property, personal injury, or death resulting from their wrongful act or omission while acting within the scope of their office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671–2680 is the exclusive remedy under these circumstances.

(2) Section 7316 of title 38 of the U.S. Code, provides that:

(i) Where there is remedy against the United States under 28 U.S.C. 2671–2680; or

(ii) Where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671–2680 (as is the case, for example, in the Federal Employees' Compensation Act, 5 U.S.C. 8101, *et seq.*), such recourse is the exclusive remedy for personal injury or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician's assistant, dentist's assistant, pharmacist or paramedical (for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Veterans Health Administration. Accordingly, a malpractice or negligence suit for personal injury or death will not lie against such personnel under the circumstances set forth in this paragraph (a)(2)(ii).

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a)(1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Department of Veterans Affairs as a result of a wrongful act or omission arising out of employment with the Government, or as a result of furnishing medical or dental care and treatment in or for the Veterans Health Administration, the employee shall immediately forward a copy of all papers served on them to the District Chief Counsel having jurisdiction over the area in which the employee works or to the Office of General Counsel, Torts Law Group. The employee will also promptly forward to the appropriate District Chief Counsel or the Office of General Counsel, Torts Law Group, a signed statement indicating whether the employee desires the Department of Justice to protect their interests as provided for by law. Even though there may not have been service,

if an employee learns that a suit arising from either of the above-described circumstances has been filed against them, the employee shall immediately so advise the appropriate District Chief Counsel or the Office of General Counsel, Torts Law Group, provide a brief description of the facts involved, and state whether the employee desires Federal intervention.

(c) Upon receipt of notice that suit has been filed against an employee of the Department of Veterans Affairs who is entitled to immunity under 28 U.S.C. 2679 or 38 U.S.C. 7316, the Office of General Counsel, Torts Law Group, will conduct a preliminary investigation, which will include an affidavit by the employee's supervisor as to whether the defendant-employee was acting in the scope of their employment at the time of the incident, and a request from the defendant-employee for representation. The affidavit will contain a factual description of the employee's duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the Torts Law Group will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316. The Torts Law Group will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for immunity under 28 U.S.C. 2679 or 38 U.S.C. 7316. The U.S. Attorney will decide whether the Department of Veterans Affairs employee is eligible for the immunity. The General Counsel, through the Torts Law Group, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunity pursuant to one of the aforementioned provisions, the General Counsel's office, through the Torts Law Group, will advise the employee and will call to their attention the discretionary conditional indemnification provisions of 38 U.S.C. 7316(e).

(d) Where a civil action is commenced in a State court against a Department of Veterans Affairs employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 7316, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit.

After such removal, the United States has available all defenses to which it would have been entitled if the action

had originally been commenced against the United States in the proper Federal District Court. Should a Federal District Court determine that the Department of Veterans Affairs employee whose acts or omissions gave rise to the suit was not acting within the scope of their office or employment, and therefore not eligible for immunity as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which they may have under 38 U.S.C. 7316(e), they shall immediately notify the Office of General Counsel, Torts Law Group, which will call the employee's attention to the discretionary conditional indemnification provisions of section 7316(e).

(e) Under the authority of 38 U.S.C. 7316(e), the Secretary of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or their estate) described in paragraph (a)(2) of this section, as the result of any suit instituted against such individual which is not cognizable under the provisions of 28 U.S.C. 2671–2680 because the individual was assigned to a foreign country, the said individual was detailed to a State or political division thereof, or the cause of action was otherwise not actionable under the Federal Tort Claims Act; *Provided*, That the amount of damages sustained is reasonable when compared with similar cases, litigated or settled, and the United States was given a reasonable opportunity to defend such individual and to participate in settlement negotiations.

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

■ 10. Revise and republish §§ 14.615 through 14.619 to read as follows:

#### § 14.615 General.

(a) *Authority.* Section 515(b) of title 38 of the U.S. Code., provides that the Secretary of Veterans Affairs may pay tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672, when such claims arise in foreign countries in connection with Department of Veterans Affairs operations.

(b) *Action by claimant.* Claims for property loss or damage may be filed by the owner of the property or their duly authorized agent or legal representative. If the property was insured and the

insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses they should join in one claim. Claims for personal injury may be filed by the injured person or their agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor/executrix, administrator/administratrix, guardian, or other fiduciary.

(c) *Time for filing.* A claim may not be allowed under 38 U.S.C. 515(b) unless it is presented to the Secretary or their designee within 2 years after the claim accrues.

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

#### § 14.616 Form and place of filing claim.

(a) *Form of claim.* Claims arising under 38 U.S.C. 515(b) will be submitted on a Standard Form 95 or prepared in the form of a statement sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information:

(1) The name and address of claimant;

(2) The amount claimed for injury or death, and for property loss or damage;

(3) If property was lost or damaged, the amount paid or payable by the insurer together with the name of the insurer;

(4) A detailed statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident;

(5) If property was involved, a description of the property and the nature and extent of the damage and the cost of repair or replacement based upon at least two impartial estimates;

(6) If personal injury was involved, the nature of the injury, the cost of medical and/or hospital services, and time and income lost due to the injury;

(7) If death is involved, the names and ages of claimants and their relationship to decedent;

(8) The name and position of the employee(s) of the United States Department of Veterans Affairs allegedly responsible for the accident or injury, or loss or damage of property; and

(9) The names and addresses of any witnesses to accident or incident.

(b) *Place of filing claim.* Claims arising in the Philippines under 38

U.S.C. 515(b) will be filed with the Director, Department of Veterans Affairs Regional Office, Manila, Republic of the Philippines or submitted directly to the Office of General Counsel, Torts Law Group using the instructions located here: <https://www.va.gov/OGC/FTCA.asp>. Claims arising in other foreign countries will be filed with the American Embassy or Consulate nearest the place where the incident giving rise to the claim took place.

(c) *Evidence to be submitted by claimant*—(1) *General*. The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and documented evidence of the damages must accompany the claim. All evidence and certified copies must be attached to the original claim. All documents in other than the English language must be accompanied by English translations.

(2) *Personal injury or death*. In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time and income lost from work; and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and any other relevant evidence.

(3) *Damage to personal property*. In support of claims for damage to personal property which has been repaired, the claimant will submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to cost, age of the property and salvage value.

(4) *Damage to real property*. In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant will submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before

and after the accident or incident and the cost of replacements.

(Approved by the Office of Management and Budget under control number 2900–0437)

#### **§ 14.617 Disposition of claims.**

(a) *Disposition of claims arising in Philippines*. All claims arising under 38 U.S.C. 515(b) in the Philippines, will be forwarded directly by the Director to the Office of General Counsel, Torts Law Group.

(b) *Disposition of claims arising in foreign countries other than the Philippines*. When a claim is received in an American Embassy or Consulate, the Embassy or Consulate receiving such claim shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, through regular channels of the Department of State to the Torts Law Group, Office of General Counsel, Department of Veterans Affairs, Washington, DC.

(c) *Payment of claims*. Upon determining that there is liability on the part of the United States under 38 U.S.C. 515(b), the General Counsel, or such other personnel as may be designated by the Secretary, will take the necessary action to effect payment.

#### **§ 14.618 Collection action.**

(a) In a case where the Office of General Counsel determines that damage to or loss of Government property under the jurisdiction of the Department of Veterans Affairs resulted from the negligence or other legal wrong of a person other than an employee of the United States, while acting within the scope of their employment, the Office of General Counsel or appropriate VA designee will request payment in full or other appropriate relief for the damage or loss from the responsible person or entity.

(b) The Office of General Counsel or VA designee may collect, compromise, suspend, or terminate collection action on any such claim as is authorized under 38 CFR 2.6(e)(4), in conformity with the standards in 38 CFR 1.900 *et seq.* Any such claim that has not been collected in full and which has not been compromised, suspended, or terminated may be referred to the appropriate United States Attorney's Office, in accordance with 38 CFR 1.950 through 1.953.

#### **§ 14.619 Collection action.**

(a) The Federal Medical Care Recovery Act ("FMCRA"), 42 U.S.C. 2651, *et seq.*, and 38 U.S.C. 1729

authorize the Department to recover from third parties the costs of medical care or services furnished or to be furnished to an individual by the Department, or paid for or to be paid for on behalf of an individual by the Department.

(1) The Chief Counsel, Revenue Law Group, or their designee ("Responsible Official") shall have the responsibility for taking action with respect to the rights described in this paragraph (a).

(2) For purposes of this section, the term "third party" refers to those from whom the United States may recover pursuant to the FMCRA and 38 U.S.C. 1729.

(3) For purposes of this section, the term "individual" refers to the person to whom the Department furnished, or will furnish, medical care or services or on whose behalf the Department paid, or will pay for, medical care or services. The term also includes those acting on behalf of such person.

(4) For purposes of this section, medical care, or services for which the Department may recover shall include medical care or services provided, paid for, to be provided, or to be paid for resulting from aggravation or exacerbation of a service-connected disability.

(b) Where the circumstances of the medical care or services may support a claim under the authorities described in paragraph (a) of this section, the individual is obligated to notify the Department of the circumstances underlying the medical care or services and to cooperate with the Department's efforts to pursue recovery incident to that treatment.

(1) The initial duty to notify is satisfied by fully completing a billing request and submitting the same to the Responsible Official. The form and instructions for completing and submitting this request are available at the Department's revenue recovery website. This constitutes the minimum information necessary for the Department to investigate a potential claim.

(2) There is a continuing duty to notify the Department of all significant developments regarding any claim or demand made by the individual against a third party, including but not limited to:

(i) The presentation of any formal or informal claim or demand against the third party;

(ii) The commencement and progress of any legal proceedings against the third party;

(iii) Any settlement or offer of settlement with the third party and the details of any such settlement or offer; and

(iv) Such other information as requested by the Responsible Official.

(3) The individual must cooperate with the Department's recovery efforts.

(i) The amounts specified in any claim asserted under this section constitute an asset of the United States. Accordingly, any assertion by the individual of the costs of medical care or services furnished or paid for by the Department is authorized only for the sole use and benefit of the United States, and the individual must ensure that the Department's interests are protected. Individuals who refuse to assert the Department's interests are not authorized to present the Department's treatment or billing information in support of any claim of the individual and must promptly notify the Responsible Official in writing of the refusal. Absent timely notice of refusal, assertion of the Department's interests is assumed and will be relied upon by the Department.

(ii) The Department's claim can be resolved only as described in this section. The Department's rights cannot be extinguished by an individual's settlement and release with the third party. Accordingly, individuals must contact the Responsible Official prior to the distribution of any settlement proceeds to confirm the amount of the Department's claim and to discuss the resolution of that claim.

(iii) Third parties must, when demanded by the Responsible Official, pay the Department separately and directly in satisfaction of the Department's interest and must do so contemporaneously with distribution to other stakeholders, including attorneys and beneficiaries.

(iv) Should any portion of the Department's claim reasonably be disputed, the Responsible Official must be notified, in writing, of the dispute and the reasons for it within 30 days of receipt of funds from the third party. Amounts not in dispute must be remitted to the Department, and the amounts in dispute must be held in trust, pending resolution of the dispute.

(4) Failure to meet the notification and cooperation duties associated with the Department's recovery interests may result in referral to the Department of Justice, as described in paragraph (e) of this section.

(c) Where the Responsible Official determines that a claim to recover the costs of medical care or services is appropriate under any of the authorities described in paragraph (a) of this

section, the Responsible Official will assert a claim against the third party, or the third party's insurer, to recover such costs.

(1) The claim shall consist of a Notice of Claim describing the legal basis of the claim, together with an explanation of the charges. This serves as notice that proceeds from the individual's claim/case must not be distributed without first satisfying the Department's claim.

(2) The charges sought shall be calculated and communicated pursuant to Federal law.

(i) The Department is not obligated to provide itemized billing.

(ii) The Department is not obligated to provide billing in any particular format.

(iii) The costs of medical care or services furnished by the Department shall be calculated according to the framework of 38 CFR 17.101.

(iv) The costs of medical care or services provided by non-Federal providers at Departmental expense shall be calculated consistent with the actual amounts that the Department paid for such care.

(v) The costs of medical care or services provided by the Department on a humanitarian basis pursuant to 38 U.S.C. 1784 shall be calculated according to the framework of 38 CFR 17.102.

(vi) No other authorities that purport to value the medical care or services for which the Department may recover, to include State fee schedules, are applicable, absent express agreement to that effect from the Responsible Official.

(3) The individual or other stakeholder must forward requests for medical records directly to the Release of Information Office of the treating facility. The provision of medical records is not a prerequisite to the Department's recovery.

(d) Subject to the limitations of this paragraph (d), the Responsible Official is authorized to resolve a claim pursuant to this section.

(1) The Responsible Official may collect, compromise, settle, or waive any claim asserted pursuant to this section, as is authorized under 38 CFR 2.6(e)(3) and (9). However, the Responsible Official is not authorized to resolve a claim arising under the FMCRA without approval of the Department of Justice, other than by payment in full, if such claim is in excess of the amount specified by the Department of Justice.

(2) The Responsible Official may suspend or terminate collection activity on any claim asserted pursuant to this section, as is authorized by 38 CFR 2.6(e)(4)(iii). However, the Responsible Official is not authorized to suspend or

terminate collection activity on such a claim arising under the FMCRA without approval of the Department of Justice if such claim is in excess of the amount specified by the Department of Justice.

(3) Requests for compromises and waivers should be in writing and should include:

(i) Copies of all settlement agreements, judgments, or offers of resolution,

reflecting the amount of settlement;

(ii) Amounts received from all sources;

(iii) A confirmation from the individual that no additional assets are available to satisfy the claim;

(iv) A draft distribution plan, which accounts for all amounts received under the settlement;

(v) The amount(s), if any, by which any non-Departmental stakeholders have agreed to reduce their claims against the settlement;

(vi) The amount of the proposed distribution to the Department; and

(vii) Any additional information that indicates a need for reasonableness and moderation in the exercise of the Department's rights.

(4) Pursuant to 5 U.S.C. 3106, the Responsible Official shall not

compromise a claim in consideration of private attorney fees.

(e) The Department may pursue all available legal remedies to effect recovery of a claim asserted under this section. These remedies include, but are not limited to the following.

(1) The Responsible Official may refer any such claim to the appropriate United States Attorney's Office for enforcement action.

(i) The United States may, at its discretion, file suit in an appropriate United States District Court, intervene in a State court action, or pursue removal of a State action to an appropriate United States District Court.

(ii) The amounts specified in any claim asserted under this section constitute an asset of the United States. Consequently, in the event that a party other than the United States comes into possession of any funds conveyed in contemplation of such a claim, such funds may not be distributed other than as authorized by the Responsible Official. Distribution of funds without such authorization may be referred to the Department of Justice for action under 31 U.S.C. 3729(a)(1)(D), which may result in treble damages and civil penalties against the party undertaking such unauthorized distribution.

(iii) Unless expressly authorized, claims asserted under this section cannot be satisfied other than by payment in full. Unauthorized payment

of less than the amounts asserted may be referred to the Department of Justice for action under 31 U.S.C. 3729(a)(1)(G), which may result in treble damages and civil penalties.

(2) The Responsible Official may refer any such claim to the Department of Treasury for debt collection.

(Authority: 38 U.S.C. 1729; 42 U.S.C. 2651 *et seq.*; 28 CFR 43.2)

■ 11. Revise and republish §§ 14.664 through 14.669 to read as follows:

**§ 14.664 Scope of authority and effective date.**

The Military Personnel and Civilian Employees' Claims Act (MPCECA) of 1964, 31 U.S.C. 3721, authorizes the Secretary or the Secretary's designee to settle and pay a claim not to exceed \$40,000 made by an employee of the Department of Veterans Affairs for damage to, or loss of personal property incident to such person's service.

Authority is delegated by 38 CFR 2.6(e)(5) to the General Counsel, the Principal Deputy General Counsel, the Deputy General Counsel for Legal Operations, and the Chief Counsel, Torts Law Group, and those acting for them to settle and pay such claims on behalf of the Secretary, and such settlement shall be final and conclusive.

(Authority: 31 U.S.C. 3721(b))

**§ 14.665 Claims.**

(a) The claim must be presented on VA Form 4760, Employee's Claim for Reimbursement for Personal Property Damaged or Lost Incident to Employment or VA Form 4629, Claim for Reimbursement for Damaged or Destroyed Personal Property for property destroyed or damaged by a patient while the employee was engaged in the performance of official duties. The form will be submitted to the facility Director or designee of the VA facility where the claim originates within 2 years after the incident that caused the loss or damage or within 2 years after the employee discovers the loss or damage. The claim must be executed and certified by the employee suffering the loss or damage, or in the event of their death, by the employee's survivors in the following order of precedence: Spouse, Child, Parent, or Sibling. All claims must contain the following:

(1) The date, time, and place the loss or damage occurred and the circumstances surrounding such loss or damage, together with the supporting statements of any witnesses who can verify such facts.

(2) In the event of damage, the date of acquisition, original cost, condition

before damage, and at least two estimates of the cost of repair or replacement. In the event of loss, the date of acquisition, the original cost, the condition, and an estimate of the reasonable market value of the article or articles.

(3) A statement as to any claim or potential claim they may have for indemnification of the loss or damage against other than the United States and whether they will assign such to the United States and cooperate in its prosecution. Where such claim or potential claim is against a carrier or insurer, evidence that a timely claim has been properly made. Where a recovery from the carrier or their insurer has been obtained or offered, such information shall be included.

(4) In cases involving damage or destruction of personal property by patients or domiciliary members, a statement as to whether a claim was filed pursuant to 38 U.S.C. 703(e) and whether such claim has been finally denied.

(b) The VA facility Director or designee receiving the claim will ascertain if such claim is complete in all respects and conduct such investigation as is necessary to establish all facts required to properly evaluate the claim both as to merit and the reasonable amount payable for the loss or damage or will refer the claim to the Office of General Counsel Torts Law Group for investigation if the claim seeks damages in excess of \$5,000. Where it is indicated that the claimant may have a potential claim against other than the United States, the employee designated will secure a suitable assignment of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim. If the potential claim is against a carrier or insurer, the employee designated will ascertain that the claimant has filed a timely proper claim and procure evidence thereof. The employee designated will also include information concerning any offer of settlement the carrier may have made.

**§ 14.666 Torts Law Group responsibility.**

Torts Law Group is available for consultation if requested and as needed by the facility's human resources office. If, after consultation from the investigating facility or with the Torts Law Group, it is determined by the Torts Law Group that the facts or amount in controversy requires further input or investigation from the Torts Law Group, the Torts Law Group will conduct such additional investigation as

it deems necessary to establish all facts required. If such potential claim is against a carrier or insurer, the Torts Law Group may be consulted to help to ascertain that the claimant has filed a timely proper claim against the carrier or insurer and review same for legal sufficiency.

**§ 14.667 Claims payable.**

(a) No claim shall be paid unless timely filed in proper form as provided in § 14.665 and the preponderance of the evidence establishes that the loss or damage:

(1) Actually occurred and the amount claimed is reasonable and does not exceed \$40,000;

(2) Was incident to the employee's service and their possession of the property was reasonable, useful, or proper under the circumstances;

(3) The claim is substantiated by proper and convincing evidence;

(4) Was not caused wholly or in part by the negligent or wrongful act of the claimant or the claimant's agent, and that the claimant has no right to indemnification for the loss or damage from other than the United States, except to the extent that the claimant assigns such right to the United States and agrees to furnish evidence required to enable the United States to enforce such right. In the event there is a right to recovery for the loss or damage from a carrier or insurer the claimant will be required to file a timely claim for such recovery before consideration of the claim against the United States.

(b) No claim for the cost of repair or replacement of personal property of employees damaged or destroyed by patients or domiciliary members while such employees are engaged in the performance of official duties shall be entertained under §§ 14.664 through 14.667, unless claim filed pursuant to 38 U.S.C. 703(e) has been finally denied for the reason that such claim did not meet the criteria established by that law.

**§ 14.668 Disposition of claims.**

(a) *Disallowed claims.* Claimants will be promptly notified of the disallowance of a claim and the reasons therefor.

(b) *Allowed claims—(1) Reimbursement in kind (where applicable).* Where a claim is allowed and it is determined to be advantageous to the Government, reimbursement will be made in kind. The official authorizing settlement will facilitate the procurement of the necessary article or articles and deliver same to the claimant.

(2) *Reimbursement by payment.* The official authorizing settlement will

forward allowed claims, other than those requiring reimbursement in kind, to the Fiscal office at the Department of Veterans Affairs facility where the claim arose. That activity will audit the claim, which if found proper for payment, will be scheduled and forwarded to the appropriate office for payment.

**§ 14.669 Fees of agents or attorneys; penalty.**

Notwithstanding a contract, the representative of a claimant may not receive more than 10 percent of the payment of a claim submitted under the authority of 31 U.S.C. 3721 for services related to the claim. A person violating this provision shall be fined not more than \$1,000.

■ 12. Revise and republish §§ 14.800 through 14.810 to read as follows:

**§ 14.800 Purpose.**

Sections 14.800 through 14.810 establish policy, assign responsibilities, and prescribe procedures with respect to:

(a) The production or disclosure of official information or records of the Department of Veterans Affairs (VA); and

(b) The testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in Federal, state, or other legal proceedings covered by §§ 14.800 through 14.810.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

**§ 14.801 Applicability.**

(a) Sections 14.800 through 14.810 apply to:

(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that §§ 14.800 through 14.810 apply, as well as the personnel of contractors and subcontractors.

(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.

(b) Sections 14.800 through 14.810 do not apply to:

(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2)(i) Legal proceedings in which the Department of Veterans Affairs, the Secretary of Veterans Affairs, or the United States is a party, is represented, and has a direct and substantial interest; or

(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.

(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any way to, the individual's official duties or to the functions and activities of VA or the United States.

(4) Official comments on matters in legal proceedings, where appropriate.

(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to Federal, state, local and foreign law enforcement or regulatory agencies.

(6) Congressional demands or requests for testimony or documents.

(7) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.

(9) Legal proceedings before or involving VA concerning a claim or dispute as to the rights of a beneficiary or obligations or liabilities of the United States under any law or program administered by the Department of Veterans Affairs.

(10) Requests by a Veteran or that Veteran's representative for access to the Veteran's records for use in an administrative or judicial claim for benefits administered by the Department of Veterans Affairs.

(11) Foreign legal proceedings covered by Department of State procedures governing the production of records or witnesses in response to requests or demands in connection with foreign legal proceedings.

(c) Sections 14.800 through 14.810 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States;

(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States;

(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under §§ 14.800 through 14.810. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality

statutes; absent disclosure authority granted by those statutes, information, and records subject to those laws may not be disclosed, or testimony given under the procedures established in §§ 14.800 through 14.810); or

(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

**§ 14.802 Definitions.**

(a) *Demand*. Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.

(b) *Request*. Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) *VA personnel*. All present and former officers and employees of VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another VA official, including nonappropriated fund activity employees, and other individuals hired through contractual agreements by or on behalf of VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

(d) *Legal proceedings*. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in § 14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in § 14.801(b).

(e) *Official VA information*. All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel

as part of their official duties or because of their official status.

(f) *Testimony.* Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, video or video recorded testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) *VA records.* All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term “record” as defined in 44 U.S.C. 3301, and implementing regulations.

(h) *Designated VA Official.* VA official authorized to make the determinations provided in § 14.807. Other than for personnel in the Office of the Inspector General (OIG), the General Counsel or the General Counsel’s designee is the Designated VA Official. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the Designated VA Official authorized to make the determinations provided in § 14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### § 14.803 Policy.

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§ 14.800 through 14.810 only as authorized in accordance with §§ 14.800 through 14.810. In determining whether to authorize testimony or the production of records, the Designated VA Official will consider the effect testifying or producing records will have on the ability of the agency or VA personnel to perform their official duties in this case, as well as in future cases generally, based on the factors set forth in § 14.804.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees’ private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation’s Veterans access to the courts.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### § 14.804 Factors to consider.

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, the

Designated VA Official should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning servicing the Nation’s Veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release *in camera*, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation, or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute’s prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701, 5705 and 7332;

(g) Whether the testimony or production of records, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances;

(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal Government favoring one litigant over another;

(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal Government endorsing or supporting a position advocated by a party to the proceeding;

(k) The need to prevent the public’s possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy;

(l) The need to minimize VA’s possible involvement in issues unrelated to its mission;

(m) Whether the demand or request is within the authority of the party making it;

(n) Whether the demand or request is sufficiently specific to be answered; and

(o) Other matters or concerns presented for consideration in making the decision.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### § 14.805 Contents of a demand or request.

The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit or a written statement by the party seeking the testimony or records, or by the party’s attorney, summarizing of the nature and relevance of the testimony or records sought in the legal proceedings. The affidavit or written statement shall contain sufficient information for the Designated VA Official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in § 14.807, the Designated VA Official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### § 14.806 Scope of testimony or production.

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the Designated VA Official. VA personnel may only testify concerning or comment upon official VA information, subjects, or activities, or produce records, that were specified in writing, submitted to and properly approved by the Designated VA Official.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### § 14.807 Procedure when demand or request is made.

(a) VA personnel upon whom a demand or request for testimony or the production of records is made in connection with legal proceedings as defined in § 14.802(d) shall notify the head of their field station, or if in Central Office, the head of the component for which they work. The field station or Central Office



component shall notify the Office of General Counsel.

(b) The Designated VA Official shall determine whether VA personnel may be interviewed, contacted, or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony, or production of records.

(c) In appropriate cases, the Designated VA Official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with VA component which employs or employed VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the Designated VA Official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The Designated VA Official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in § 14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the Designated VA Official in accordance with this section, a response to the request or demand is required before instructions from the Designated VA Official are received, the Designated VA Official shall furnish the requester or the court or other authority with a copy of §§ 14.800 through 14.810 and any other relevant documentation, inform the requester or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Designated VA Official.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to paragraph (d) of this section, or if such court or other authority orders that the demand or request be complied with notwithstanding the final decision of the Designated VA Official, VA personnel upon whom the demand or request was made shall notify the Designated VA Official of such ruling or

order. If the Designated VA Official determines that no further legal review of or challenge to the ruling or order will be sought, the affected VA personnel shall comply with the demand, order, or request. However, if directed by the Designated VA Official, after consultation with the appropriate United States Attorney's office, the affected VA personnel shall respectfully decline to comply with the demand, request, or order. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(f) Normally, written demands or requests allowing reasonable lead time for evaluation and processing are required. However, in emergency situations where response time is limited and a written demand or request is impractical, the following procedures should be followed:

(1) The Designated VA Official has the authority to waive the requirement of a written demand or request and may expedite a response in the event of an emergency under conditions which could not be anticipated in the course of proper planning or which demonstrate a good faith attempt to comply with §§ 14.800 through 14.810. Determinations on oral demands or requests should be reserved for instances where insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the legal proceeding for which the testimony or records are sought. No requester has a right to make an oral demand or request and receive a determination. Whether to permit such an exceptional procedure is a decision within the sole discretion of the Designated VA Official.

(2) If the Designated VA Official concludes that the demand or request, or any portion of it, should be granted (after considering the factors listed in § 14.804), the Designated VA Official will orally advise the requester of the determination in accordance with the procedures provided in paragraph (c) of this section, including any limitations on such testimony or production of records, and seek a written confirmation of the oral demand or request. The Designated VA Official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### **§ 14.808 Expert, opinion, or fact testimony.**

(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects, or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in § 14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the Designated VA Official may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the Designated VA Official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the Designated VA Official of such order. If the Designated VA Official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. However, if directed by the Designated VA Official after consultation with the appropriate United States Attorney's office, the affected VA personnel shall respectfully decline to comply with the demand, request, or order. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with §§ 14.800 through 14.810, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by §§ 14.800 through 14.810;

(ii) Request an opportunity to consult with the Designated VA Official mentioned in § 14.807(b) before giving such testimony;

(iii) Explain that, upon such consultation, approval for such testimony may be provided; and

(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201–209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information,

subjects, or activities without the opportunity to consult with the appropriate VA official, the witness respectfully shall refuse to do so. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects, or activities during § 14.802(d) legal proceedings, the Designated VA Official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of §§ 14.800 through 14.810 provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in § 14.802(d) in which the United States is not already represented, without consulting with the Designated VA Official, the witness, as soon after testifying as possible, shall inform the Designated VA official of the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(e) If an employee is authorized to give fact witness testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the employee that are not classified, privileged, or protected from disclosure under applicable law or regulation. If asked to provide factual testimony that the employee believes may be classified, privileged, or protected from disclosure under applicable law or regulation, then the witness shall:

(1) Respectfully decline to answer on the grounds that such testimony is prohibited; and

(2) Request an opportunity to consult with the Designated VA Official.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### **§ 14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.**

In addition to complying with the requirements of §§ 14.800 through 14.810, requests or demands in legal proceedings for the production of records, or for testimony of VA employees concerning information, protected by the Privacy Act, 5 U.S.C. 552a, or other confidentiality statutes, such as 38 U.S.C. 5701, 5705 and 7332, must satisfy the requirements for disclosure imposed by those statutes, and implementing regulations, such as 38 CFR 1.511, before the records may be provided or testimony given.

Accordingly, the Designated VA Official may first determine whether there is legal authority to provide the testimony or records sought under applicable confidentiality statutes before applying §§ 14.800 through 14.810. Where an applicable confidentiality statute mandates disclosure, §§ 14.800 through 14.810 will not apply.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

#### **§ 14.810 Fees.**

(a) The testimony of VA personnel as witnesses and the production of VA records in legal proceedings subject to §§ 14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which VA may charge under 31 U.S.C. 9701. Where a determination is made to comply with the demand, order or request pursuant to § 14.807(e) or 14.808, the Designated VA Official will calculate fees consistent with 38 CFR 1.561(d) and (f) through (l) and shall timely notify the requester of the fees, particularly those which are to be paid in advance. For purposes of calculating fees all requesters under §§ 14.800 through 14.810 will be considered Commercial Use Requesters as defined by 38 CFR 1.561(c)(1).

(b)(1) When a request is granted under § 14.808 to permit VA personnel to testify, the requester shall pay to the government a fee calculated to reimburse the cost of preparing and providing the witness for testimony. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand, order, or request;

(ii) The cost of the time expended to prepare the witness to testify; and

(iii) Travel costs for VA personnel associated with providing testimony.

(2) All costs for documents shall be calculated as provided in VA regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) When an individual testifies in legal proceedings covered by §§ 14.800 through 14.810 in any capacity other than as an expert witness, the requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule, such as a local Federal District Court rule, will apply. No additional fee will be prescribed for the time spent

while testifying or in attendance to do so.

(d) When a requester wishes to interview VA personnel as part of legal proceedings covered by §§ 14.800 through 14.810, and such interview has been approved in accordance with §§ 14.800 through 14.810, the requester shall pay a fee calculated upon the total hourly pay of the individual interviewed.

(e) When VA produces records in legal proceedings pursuant to §§ 14.800 through 14.810, the fees to be charged and paid prior to production of the records shall be the fees charged by VA under its regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(f) Fees shall be paid as follows:

(1) Fees for copies of documents, blueprints, electronic tapes, or other VA records will be paid to the VA office or station providing the records, and covered to the General Fund of the Department of the Treasury.

(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to their supervisor. It shall thereafter be deposited in the General Fund.

(3) The private party requesting a VA witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds in accordance with General Services Administration (GSA) policy.

(g) A waiver of any fees in connection with the testimony of an expert witness may be granted by the Designated VA Official at the official's discretion provided that the waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that VA or the United States favors one party or a position advocated by a party to the legal proceeding.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

## **PART 36—LOAN GUARANTY**

■ 13. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 3720.

#### **§ 36.4321 [Removed]**

■ 14. Remove § 36.4321.

[FR Doc. 2024-23840 Filed 11-6-24; 8:45 am]

**BILLING CODE 8320-01-P**