

Department of Veterans Affairs

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§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.

(a) Persons occupying or acting for the following positions in the Office of the General Counsel are authorized to certify copies of public documents, records, or papers belonging to or in the files of the Department of Veterans Affairs for the purposes of 38 U.S.C. 302: General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel, and the Regional Counsel for Puerto Rico.

(b) The person occupying or acting in the position of Chairman, Board of Veterans Appeals, is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Board for the purposes of 38 U.S.C. 302.

(Authority: 38 U.S.C. 302, 501, 512)

[46 FR 18978, Mar. 27, 1981, as amended at 49 FR 30692, Aug. 1, 1984; 60 FR 48029, Sept. 18, 1995; 72 FR 65462, Nov. 21, 2007]

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

Employees occupying or acting in the positions designated below are delegated authority as indicated:

(a) *Veterans Health Administration.* The Under Secretary for Health is delegated authority:

(1) To act on all matters assigned to the Veterans Health Administration by statute (38 U.S.C. Ch. 73) and by regulation, except such matters as require the personal attention or action of the Secretary.

(2) To revise, exceed, delete, increase, or decrease fees contained in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M-1, part I, appendix A (following agreement therefor as provided in the contract with the intermediary involved), in an approved State fee schedule, and to add additional fees when found to be necessary, provided such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(3) To designate the Deputy Under Secretary for Health, or other physi-

cian of the Veterans Health Administration, and authority is hereby delegated such designee to perform the functions prescribed in paragraph (a)(2) of this section.

(4) To revise, exceed, delete, increase or decrease dental fees established in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M-4, chapter 6, and any amendments thereto, and to add additional fees when found to be necessary, provided: such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(5) To designate the Assistant Chief Medical Director for Dentistry, and authority is hereby delegated such designee, to perform the functions prescribed in paragraph (a)(4) of this section.

(6) To supervise programs for grants to the Republic of the Philippines and medical care for Commonwealth Army veterans and Philippine Scouts in Veterans Memorial Medical Center, Manila, pursuant to the provisions of 38 U.S.C. ch. 17, subch. IV.

(7) To designate the Deputy Under Secretary for Health of the Veterans Health Administration and authority is hereby delegated such designee to designate a Department of Veterans Affairs full-time physician or nonmedical Director to serve *as an ex officio member* on advisory bodies to State Comprehensive Health Planning agencies and to individual Regional Medical Programs in those areas in which there is located one or more Department of Veterans Affairs hospitals or other health facilities, who shall serve on such advisory group as the representative of the Department of Veterans Affairs health facilities located in that area.

(8) To authorize Directors of Department of Veterans Affairs property and facilities under the charge and control of the Department of Veterans Affairs to appoint police officers with the power to enforce Federal laws and Department of Veterans Affairs regulations, to investigate violations of those

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laws and to arrest for crimes committed on Department of Veterans Affairs property to the full extent provided by Department policies and procedures.

(Authority: 38 U.S.C. 501 and 512)

(9) To develop and establish minimum safety and quality standards for adaptive equipment provided under chapter 39 of title 38, United States Code, or to appoint a designee to perform these functions.

(b) *Veterans Benefits Administration*—(1) *General*. The Under Secretary for Benefits is delegated authority to act on all matters assigned to the Veterans Benefits Administration except as provided in §1.771 of this chapter and to authorize supervisory or adjudicative personnel within his/her jurisdiction to perform such functions as may be assigned.

(2) *Philippines*. The Director, Department of Veterans Affairs Regional Office, Manila, Philippines, is delegated authority to exercise such authorities as are delegated to directors of regional offices in the United States, which are appropriate to the administration in the Republic of the Philippines of the laws administered by the Department of Veterans Affairs.

(c) *Office of Management*. (1) The Assistant Secretary for Management (Chief Financial Officer) is delegated authority to act on all matters assigned to his/her office, and to authorize supervisory personnel within his/her jurisdiction to perform such functions as may be assigned. Appropriate written notification will be furnished other Federal agencies concerning such authorizations.

(2) The Assistant Secretary for Management (Chief Financial Officer) is delegated authority under 31 U.S.C. 1553(c)(1), to approve, in a fixed appropriation account to which the period of availability for obligation has expired, obligational increases related to contract changes when such transaction will cause cumulative obligational increase for contract changes during a fiscal year to exceed \$4 million but not more than \$25 million; for this responsibility the Assistant Secretary for Management (Chief Financial Officer) shall act as a member of the Office of

the Secretary and shall report to and consult with the Secretary on these matters.

(d) *Assistant Secretary for Management (Chief Financial Officer); administration heads and staff office directors*. The Assistant Secretary for Management (Chief Financial Officer) is delegated authority to take appropriate action (other than provided for in paragraphs (e)(3) and (e)(4) of this section) in connection with the collection of civil claims by VA for money or property, as authorized in §1.900, *et seq.* The Assistant Secretary for Management (Chief Financial Officer) may redelegate such authority as he/she deems appropriate to administration heads and staff office directors.

(Authority: 38 U.S.C. 501, 512)

(e) *General Counsel*. (1) The General Counsel is delegated authority to serve as the Regulatory Policy Officer for the Department in accordance with Executive Order 12866. The General Counsel, Deputy General Counsel, and Director for Regulation Policy and Management are delegated authority to manage, direct, and coordinate the Department's rulemaking activities, including the revision and reorganization of regulations, and to perform all functions necessary or appropriate under Executive Order 12866 and other rulemaking requirements.

(Authority: 38 U.S.C. 501, 512)

(2) Under the provisions of 38 U.S.C. 515(b), the General Counsel, Deputy General Counsel, Assistant General Counsel and Regional Counsel, or those authorized to act for them, are authorized to consider, ascertain, adjust, determine, and settle tort claims cognizable thereunder and to execute an appropriate voucher and other necessary instruments in connection with the final disposition of such claims.

(3) Under the provisions of "The Federal Medical Care Recovery Act," 42 U.S.C. 2651, *et seq.* (as implemented by part 43, title 28, Code of Federal Regulations), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), Deputy Assistant General Counsel of said staff group,

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and Regional Councils or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of \$100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice.

(4) Under the Federal Claims Collection Act of 1966, 31 U.S.C. 3711, *et seq.*, authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel and Regional Counsel, or those authorized to act for them, to:

(i) Make appropriate determinations with respect to the litigative probabilities of a claim (§1.932 of this chapter), the legal merits of a claim (§1.942(e) of this chapter), and any other legal considerations of a claim.

(ii) Collect in full a claim involving damage to or loss of government property under the jurisdiction of the Department of Veterans Affairs resulting from negligence or other legal wrong of a person (other than an employee of the Government while acting within the scope of his or her employment) and to compromise, suspend, or terminate any such claim not exceeding \$100,000.

(iii) Collect a claim in full from an individual or legal entity who is liable for the cost of hospital, medical, surgical, or dental care and treatment of a person, and to compromise, suspend, or terminate any such claim not exceeding \$100,000.

(Authority: 31 U.S.C. 3711(a)(2); 38 U.S.C. 501, 512)

(iv) The delegations of authority set forth in paragraphs (e)(4)(ii) and (iii) of this section do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Such cases will be considered by the General Counsel, who will make the determination in all instances as to whether the case warrants referral to the Department of Justice. The delegations of authority

are applicable to those claims where the Department of Justice determines that action based upon the alleged fraud, false claim, or misrepresentation is not warranted.

(5) Pursuant to the provisions of the Military Personnel and Civilian Employees' Claim Act of 1964, 31 U.S.C. 3721, as amended, the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), Deputy Assistant General Counsel of said staff group, and Regional Counsel or those authorized to act for them, are authorized to settle and pay a claim for not more than \$40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of, personal property incident to his or her service. (Pub. L. 97-226)

(6) Under the provisions of 38 U.S.C. 7316(e), authority is delegated to the General Counsel, Deputy General Counsel, and the Assistant General Counsel (Professional Staff Group I) to hold harmless or provide liability insurance for any person to whom the immunity provisions of section 7316 apply, for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment in the exercise of his or her duties in or for the Veterans Health Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

(7) The General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations, and certify copies of public or private documents on all matters within the jurisdiction of the General Counsel. Pursuant to the provisions of §2.2(c), the General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to countersign VA Form 4505.

(8) The General Counsel, or the Deputy General Counsel acting as or for

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the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans' benefits under laws administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 512)

(9) Under the provisions of 38 U.S.C. 1729(c)(1), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), Deputy Assistant General Counsel of said staff group, and Regional Counsel, or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of \$100,000 may only be compromised, settled, or waived with the prior approval of the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or Deputy Assistant General Counsel of said staff group, or those authorized to act for them.

(Authority: 31 U.S.C. 3711(a)(2); 38 U.S.C. 501, 512).

(10) Except as prescribed in paragraph (g)(3) of this section, the General Counsel, Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701, 5705 and 7332.

(Authority: 38 U.S.C. 512)

(11) All authority delegated in this paragraph to Regional Counsels will be exercised by them under the supervision of and in accordance with instructions issued by the General Counsel.

(f) *National Cemetery Administration.* Under Secretary for Memorial Affairs is delegated authority:

(1) To act on all matters assigned to the National Cemetery Administration by statute (38 U.S.C. chapter 24) and by regulation except where specifically requiring the personal attention or action of the Secretary and to authorize supervisory personnel within the juris-

diction of the Under Secretary for Memorial Affairs, to perform such functions as may be assigned.

(2) To designate, as deemed necessary, Superintendents of National Cemeteries as special investigators under 38 U.S.C. 901, however, such law enforcement authority is limited to enforcement of rules and regulations governing conduct on property under the charge and control of the Department of Veterans Affairs, as those rules and regulations apply to the cemetery over which the individual Superintendent exercises control and jurisdiction. Such designation will not authorize the carrying of firearms by any Superintendent.

(3) To accept donations, except offers of land, made in any manner, for the beautification or benefit of national cemeteries.

(4) To name features in national cemeteries, such as, roads, walks, and special structures.

(5) To establish policies and specifications for inscriptions on Government headstones, markers, and private monuments.

(Authority: 38 U.S.C. 501, 512, 2404)

(g) *Inspector General.* (1) The Secretary delegates to the Inspector General, the authority, as head of the Department of Veterans Affairs, to make written requests under the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), for the transfer of records or copies of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the Office of Inspector General. This delegation is made pursuant to 38 U.S.C. 512. The Inspector General may redelegate the foregoing authority within the Office of Inspector General, but the delegation may only be to an official of sufficient rank to ensure that the request for the records has been the subject of a high level evaluation of the need for the information.

(2) The Inspector General delegates the authority under the Inspector General Act of 1978, and redelegates the authority under paragraph (a) of this section, to request Privacy Act-protected records from Federal agencies pursuant to subsection (b)(7) of the Privacy Act

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to each of the following Office of Inspector General officials: (i) Deputy Inspector General, (ii) Assistant Inspector General for Investigations, (iii) Deputy Assistant Inspector General for Investigations, (iv) Chief of Operations, and (v) Special Agents in Charge of Field Offices of Investigations. These officials may not redelegate this authority.

(3) The Office of Inspector General is authorized to make final decisions on appeals submitted pursuant to the Freedom of Information Act concerning any Office of Inspector General records.

(Authority: 38 U.S.C. 512)

(h) *Delegations to Office Resolution Management Officials (ORM)*. (1) The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO Discrimination Complaint Processing System within the Department.

(2) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and all Regional EEO Officers/Field Managers are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints based upon race, color, national origin, sex, religion, age, disability, or reprisal filed by employees, former employees, or applicants for employment.

(3) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to make agency decisions on all breach of settlement claims raised by employees, former employees, and applicants for employment.

(4) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to consider and resolve all claims raised by employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy

and Compliance are delegated authority to monitor compliance by Department organizational components with orders and decisions of the OEDCA and the EEOC.

(i) *Delegations to officials of the Office of Employment Discrimination Complaint Adjudication (OEDCA)*. (1) The Director and Associate Director, OEDCA, are delegated authority to make procedural decisions to dismiss, in whole or in part, any EEO discrimination complaint filed by any employee, former employee, or applicant for employment that may be pending before OEDCA, where administrative complaint processing efficiency may be best served by doing so.

(2) The Director and Associate Director, OEDCA, are delegated authority to dismiss, in whole or in part any EEO discrimination complaint based upon race, color, religion, sex, national origin, age, disability, or reprisal filed by any ORM employee, former employee, or applicant for employment.

(3) The Director and Associate Director, OEDCA, are delegated authority to make the agency decision on all breach of settlement claims raised by ORM employees, former employees, and applicants for employment.

(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) *Delegation to the Chairman, Board of Veterans' Appeals*. In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Veterans' Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole

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or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; to take final agency action following a decision by an EEOC Administrative Judge; and to make final agency decisions ordering appropriate remedies and relief where there is a finding of discrimination.

(k) *Processing complaints involving certain officials.* A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

(Authority: 38 U.S.C. 501, 512)

[25 FR 11095, Nov. 23, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 2.7 Delegation of authority to provide relief on account of administrative error.

(a) Section 503(a) of title 38 U.S.C., provides that if the Secretary determines that benefits administered by the Department of Veterans Affairs have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, the Secretary is authorized to provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom he determines equitably entitled thereto.

(b) Section 503(b) of title 38 U.S.C., provides that if the Secretary deter-

mines that any veteran, surviving spouse, child of a veteran, or other person, has suffered loss, as a consequence of reliance upon a determination by the Department of Veterans Affairs of eligibility or entitlement to benefits, without knowledge that it was erroneously made, the Secretary is authorized to provide such relief as the Secretary determines equitable, including the payment of moneys to any person equitably entitled thereto. The Secretary is also required to submit an annual report to the Congress, containing a brief summary of each recommendation for relief and its disposition. Preparation of the report shall be the responsibility of the General Counsel.

(c) The authority to grant the equitable relief, referred to in paragraphs (a) and (b) of this section, has not been delegated and is reserved to the Secretary. Recommendation for the correction of administrative error and for appropriate equitable relief therefrom will be submitted to the Secretary, through the General Counsel. Such recommendation may be initiated by the head of the administration having responsibility for the benefit, or of any concerned staff office, or by the Chairman, Board of Veterans Appeals. When a recommendation for relief under paragraph (a) or (b) of this section is initiated by the head of a staff office, or the Chairman, Board of Veterans Appeals, the views of the head of the administration having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.

(Authority: 38 U.S.C. 503, 512)

[37 FR 22864, Oct. 26, 1972, as amended at 49 FR 30693, Aug. 1, 1984; 54 FR 34981, Aug. 23, 1989; 68 FR 25504, May 13, 2003]

§ 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by