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Federal Regulations**

Title 38, Parts 0, 1, 2, 12, 14-16,
18-20, 25-26, 38-45, 48-49, 74-75

General

Veterans Benefits Administration

Supplement No. 112

Covering period of *Federal Register* issues
through December 1, 2014

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book A*

Code of Federal Regulations

Title 38, Parts 0, 1, 2, 12, 14-16, 18-20, 25-26, 38-45, 48-49, 74-75

General

Veterans Benefits Administration

Supplement No. 112

5 December 2014

Covering the period of Federal Register issues
through December 1, 2014

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

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

**Book A, Supplement No. 112
December 5, 2014**

*Remove these
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12.0-1 to 12.5-2

12.0-1 to 12.5-2

§§12.0, 12.1, 12.2,
12.3, 12.4 & 12.5

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HIGHLIGHTS

Book A, Supplement No. 112 December 5, 2014

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book A (*General*) was originally supplemented twice a year, in April and October. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 14 November 2014, the VA published a final rule effective 15 December 2014, to amend its regulation that governs a competent veteran's designation of a person to receive the veteran's funds and personal effects in the event that such veteran was to die while in a VA field facility. The change eliminates reference to an obsolete VA form, clarifies the role of a VA fiduciary for an incompetent veteran-patient, as well as restructures the current regulation for ease of readability. Changes:

- In §12.0, revised paragraph (b),
- Revised §12.1,
- In §12.2, revised paragraph (a),
- In §12.3, revised paragraph (a)(1),
- In §12.4, revised paragraphs (a) and (b), and
- In §12.5, revised paragraphs (c) and (d).

Part 12—Disposition of Veteran’s Personal Funds and Effects

Authority: 72 Stat. 1114, 1259, as amended;
38 U.S.C. 501, 8501-8528.

Disposition of Veteran’s Personal Funds and Effects on Facility Upon Death, or Discharge, or Unauthorized Absence, and of Funds and Effects Found on Facility

§12.0 Definitions.

(a) As used in respect to the disposition of property of veterans dying at Department of Veterans Affairs medical centers or other field facilities, or who are discharged or who elope, or are absent without leave therefrom, and in respect to property found thereat, the term *funds* means all types of United States currency and coin, checks payable to the decedent except checks drawn on the Treasurer of the United States which have never been negotiated, and includes deposits to the credit of the veteran in the account “Personal Funds of Patients,” and each competent veteran will be so advised. The term *effects* means and embraces all other property of every description, including insurance policies, certificates of stock, bonds and notes the obligation of the United States or of others, and all other papers of every character except checks drawn on the Treasurer of the United States, as well as clothing, jewelry and other forms of property, or evidences of interest therein. Checks drawn on the Treasurer of the United States which have never been negotiated will be returned to the issuing office for disposition.

(b) *Field facilities* as used in §§12.1 to 12.13 includes hospitals, centers, domiciliary activities, supply depots, and other offices over which the Department of Veterans Affairs has direct and exclusive administrative jurisdiction, and excludes State, county, city, private, and contract hospitals and hospitals or other institutions operated by the United States through agencies other than the Department of Veterans Affairs. At institutions other than field facilities as herein defined funds or effects as defined in paragraph (a) of this section, except for funds derived from VA benefits and deposited by the Department of Veterans Affairs in the account Personal Funds of Patients for incompetent veterans, will be disposed of under the laws governing such institutions. In any case where the veteran died intestate without heirs or next of kin his or her personal property vests in the United States. Disposition of the property will be made in accordance with the provisions of §§12.19 to 12.23.

[13 FR 7127, Nov. 27, 1948, as amended at 25 FR 1612, Feb. 25, 1960; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).

§12.1 Designee cases; competent veterans.*(a) Designees—general.*

(1) Upon admission to a VA field facility, VA will request and encourage a competent veteran to designate in writing, on the relevant VA form, an individual to whom VA will deliver the veteran's funds and effects in the event of the veteran's death in such VA field facility. The individual named by the veteran is referred to in this part as the designee.

(2) The veteran may change or revoke a designation in writing, on the relevant VA form, at any time.

(3) If the veteran does not name a designee or if a designee is unable or unwilling to accept delivery of funds or effects, § 12.5 Nondesignee cases, applies.

(4) The designee may not be a VA employee unless such employee is a member of the veteran's family. For purposes of this section, a family member includes the spouse, parent, child, step family member, extended family member or an individual who lives with the veteran but is not a member of the veteran's family.

(5) To be effective, a completed form must be received by the facility head or facility designee prior to the veteran's death.

(b) Delivery of funds and effects. The delivery of the veteran's funds or effects to the designee is only a delivery of possession. Such delivery of possession does not affect in any manner:

(1) The title to such funds or effects; or

(2) The person legally entitled to ownership of such funds or effects.

(c) Veteran becomes incompetent. If a veteran is determined to be incompetent pursuant to an order of a state court or is determined to be unable to manage monetary VA benefits by a VA clinician after the veteran is admitted to a VA field facility, the VA field facility staff will contact the Veterans Benefits Administration for the application of 38 CFR 3.353, regarding an incompetency rating as to whether the veteran is able to manage monetary VA benefits, and, if appropriate, 38 CFR 13.55, regarding VA fiduciary appointments. If the Veterans Benefits Administration determines that a veteran is incompetent to manage monetary VA benefits, any designation by the veteran under paragraph (a) of this section will cease with respect to VA benefits that are deposited by VA into the Personal Funds of Patients. The veteran's designation will not change with respect to disposition of funds and personal effects derived from non-VA sources, unless a court-appointed guardian or conservator changes or revokes the existing designation.

(d) *Retention of funds and effects by a veteran.* Upon admission to a VA field facility, VA will encourage a competent veteran to:

(1) Place articles of little or no use to the veteran during the period of care in the custody of a family member or friend; and

(2) Retain only such funds and effects that are actually required and necessary for the veteran's immediate convenience.

(The information collection is pending Office of Management and Budget approval.)

(Authority: 38 U.S.C. 8502)

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1612, Feb. 25, 1960; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).

§12.2 Designee cases; incompetent veterans.

(a) An incompetent veteran will not be informed concerning the designation of a person to receive funds or effects; but if he or she has a guardian the guardian will be requested to make such designation of himself or herself or another person to receive possession of the funds and effects (other than funds deposited by VA in Personal Funds of Patients that were derived from VA benefits) upon the incompetent's death. The guardian will sign the letter designating himself or herself or another person with the veteran's name "By _____, guardian of his or her estate".

(b) No effort will be made to obtain a designation by or on behalf of an incompetent veteran who has no guardian.

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1613, Feb. 25, 1960; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).

§12.3 Deceased veteran's cases.

(a) Immediately upon the death or the absence without leave of any beneficiary at a field facility, as defined in §12.0(b), a survey and inventory of the funds and effects of such beneficiary will be taken in the following manner:

(1) If the death or absence without leave occurred during hospitalization, a complete inventory (VA Form 10-2687, Inventory of Funds and Effects) will be made of all personal effects (including those in the custody of the hospital, jewelry being worn by the deceased person, or jewelry and other effects in pockets of clothing he or she may have been wearing) and all funds found and moneys on deposit in Personal Funds of Patients. In the case of death of incompetent veterans after November 30, 1959, the inventory will be completed to show separately those funds deposited by VA in Personal Funds of Patients that were derived from VA benefits. For purpose of determining the source of funds, expenditures from the account will be considered as having been made from VA benefits, not to exceed the extent of deposits of such benefits. In the event death occurred during other than official working hours, the officer of the day and/or a representative of Nursing Service will collect and inventory all funds and personal effects on the person of the deceased beneficiary and on the ward, will carefully safeguard such property and, upon completion of the tour of duty, will turn the funds and effects over to the properly designated employees.

(2) If the death or absence without leave occurred while the beneficiary was assigned to a domiciliary section, or while receiving hospitalization and at time of death or absence without leave any effects are in the section, a like inventory will be made by representatives of the Chief, Domiciliary Operations and/or Medical Administration Division.

(3) The inventory report will be executed in triplicate, original and two copies. All will be signed by the employee making the inventory, and disposed of as provided for in pertinent procedural instructions.

(4) Personally owned clothing or other effects (such as tooth brushes, false teeth not containing gold, etc.), which are unserviceable by reason of wear or tear or insanitary condition, and clothing that had been supplied by the Government, will not be included in this inventory; instead, the unserviceable personally owned articles will be listed on a separate list, with their condition briefly described, and their disposition recommended in a separate report to the facility head. The facility head, if approving this recommendation, will order destruction or utilization in occupational therapy, or as wipe rags, etc., of such unserviceable articles and, when they are so destroyed or utilized, will have entered on the papers the date and nature of the disposition. The completed papers will then be placed in the correspondence file of the beneficiary. Clothing that had been supplied by the Government will be reconditioned if possible and returned to stock for issue to other eligible beneficiaries. When Government-owned clothing cannot be reconditioned it will be disposed of.

(5) When the nearest relative requests that the deceased beneficiary be clad for burial in clothing he or she personally owned, instead of burial clothing to be supplied under the contract for mortuary services, such request will be honored. A receipt in such cases will be

obtained from the undertaker, specifying the articles of clothing so used. Adjustment of the undertaker's bill in the case will correspondingly be made.

(6) In accomplishing such inventories, detailed description will be given of items of material value or importance, for example:

Watch—Yellow metal (make, movement, and case number, if available without damage to watch).

Ring—Yellow metal (probably gold-plated or stamped 14-K., setting if any).

Discharge certificate.

Adjusted service certificate (number).

Bonds or stocks (name of company, registered or nonregistered, identifying number, recited par value, if any).

Bank books or other asset evidence (name of bank or other obligor, apparent value, identifying numbers, etc.).

Clothing (brief description and statement of condition). Etc.

(b) Upon completion of the survey and inventory, the effects will be turned over to the designated employee for safekeeping. Any funds found in excess of \$100 which apparently were the property of the deceased will be turned over to the details clerk and delivered immediately to the agent cashier, who shall deposit same in the account "Personal Funds of Patients." Unendorsed checks other than Treasury checks and funds not in excess of \$100 will be considered personal effects and not funds and will be handled accordingly.

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1613, Feb. 25, 1960; 29 FR 17904, Dec. 17, 1964; 36 FR 5911, Mar. 31, 1971; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).

§12.4 Disposition of effects and funds to designee; exceptions.

(a) Upon authorization by the facility head or his or her designated representative, all funds, as defined in §12.0 (except funds deposited by VA in Personal Funds of Patients that were derived from VA benefits where the veteran was incompetent at time of death), and effects will be delivered or sent to the designee of the deceased veteran if request therefor be made after death and within 90 days following the mailing of notice to such designee (see §12.9(a)), unless:

(1) The executor or administrator of the estate of the deceased veteran shall have notified the facility head or his or her designated representative of his or her desire and readiness to receive such funds or effects, in which event the facility head or his or her designated representative will authorize delivery of all funds and effects to such executor or administrator upon receipt of appropriate documentary evidence of his or her qualifications and in exchange for appropriate receipts, or

(2) An heir capable of inheriting the personal property of the veteran makes claim for the funds and effects prior to delivery to the designee.

(3) Subsequent to the naming of a designee the veteran became incompetent and his or her guardian revoked such designation, in which event the facility head or his or her designated representative will deliver all funds and effects to his guardian in exchange for appropriate receipts subject to the limitation contained in paragraph (d) of this section, or

(4) Designee was the wife (or husband) of the veteran at the time of designation, and information at the disposal of the field facility indicates that she (or he) was thereafter divorced and the veteran was incompetent at or subsequent to the time of divorce, or

(5) Notwithstanding there is a designee, it is probable that title would pass to the United States under the provisions of §§12.19 to 12.23 issued pursuant to 38 U.S.C. 5502(e) and 38 U.S.C. 8520(a), or

(6) The facility head or his or her designated representative determines that there is reasonable ground to believe that the transfer of such possession to the designee probably would be contrary to the interests of the person legally entitled to the personal property, or there are any other special circumstances raising a serious doubt as to the propriety of such delivery to the designee.

In any case in which the facility head does not deliver the funds and effects, because of the provisions of paragraphs (a)(3), (4), and (5) of this section, he or she will develop all facts and refer the matter to the Chief Attorney of the regional office having jurisdiction over the area where the hospital is located, for advice as to the disposition which legally should be made of such funds and effects.

(b) When authorized by the facility head or his or her designated representative, the effects will be delivered or shipped to the designee. If shipped at Government expense, the shipment shall be made in the most economical manner but in no case at a cost in excess of \$25. If such expenses will exceed \$25, the excess amount shall be paid by the consignee to the facility head in advance. There will be no obligation on the Government, initially or otherwise, to pay such expenses in excess of \$25.

(c) When possession of funds or effects is transferred to a designee, the attention of the designee will again be directed to the fact that possession only has been transferred to him or her and that such transfer does not of itself affect title thereto and that such designee will be accountable to the owner of said funds and effects under applicable laws.

(d) Upon receipt from the proper Chief Attorney of an appropriate certification that the guardianship was in full force and effect at the time of the veteran's death and that the guardian's bond is adequate, funds (other than funds deposited by VA in Personal Funds of Patients that were derived from VA benefits) and effects of an incompetent veteran may be immediately delivered or sent to such guardian, inasmuch as the guardian had a right to possession, and he or she will be accountable therefor to the party entitled to receive the decedent's estate. If, however, it appears probable that decedent died without a valid will and left no person surviving entitled to inherit, the funds will not be paid to the former guardian but will be disposed of as provided in §12.19(a). The effects will be sold, used, or destroyed, at the discretion of the facility head or his designated representative.

[25 FR 1613, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).

§12.5 Nondesignee cases.

(a) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent or the designee fails or refuses to claim the funds and effects as defined in §12.0(a) within 90 days following the mailing of notice to such designee, the facility head will take appropriate action to dispose of the effects to the person or persons legally entitled thereto, i.e., the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in the order named. Subject to the applicable provisions of §§12.3 and 12.4, such delivery may be made at any time before the sale contemplated by §12.9 to the designee or other person entitled under the facts of the case. Delivery will be made to the person entitled to priority as prescribed in this paragraph, unless such person waives right to possession, in which event delivery will be to the person, if any, in whose favor such prior entitled person waives right to possession. If the waiver is not in favor of a particular person or class, delivery will be to the person or persons next in order of priority under this paragraph. If in any case there be more than one person in the class entitled to priority, initially or by reason of waiver, delivery will be made only to their joint designated agent (who may, but need not, be one of the class), or to one of such class in his or her own behalf upon written waiver of all others of the class entitled thereto. The guardian of a minor or incompetent may waive his or her ward's prior right to possession.

(b) Except where delivery is made to a designee, executor, or administrator, funds of veterans who were competent at time of death will be released to the person or persons who would ultimately be entitled to distribution under the laws of the State of the decedent's domicile. The person or persons entitled may waive in writing his or her right to the funds in favor of another heir or next of kin.

(c) Funds of veterans who were incompetent at time of death occurring after November 30, 1959, if derived from sources other than funds deposited by VA in Personal Funds of Patients that were derived from VA benefits, will be disposed of in the same manner as for competent veterans.

(d) Funds deposited by the Department of Veterans Affairs in Personal Funds of Patients, at any office, for veterans who were incompetent at time of death occurring after November 30, 1959, and which were derived from VA benefits, will be paid upon receipt of proper application to the following persons living at the time of settlement, and in the order named: the surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. Any funds derived from VA benefits not disposed of in accordance with this paragraph shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such funds as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses.

(e) No payment shall be made under paragraph (d) of this section unless claim therefor is filed with the Department of Veterans Affairs within 5 years after the death of the veteran, except that, if any person so entitled under such regulation is under legal disability at the time of death of the veteran, such 5-year period of limitation shall run from the termination or removal of the legal disability.

[18 FR 1854, Apr. 3, 1953, and 25 FR 1614, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964; 79 FR 68129, Nov. 14, 2014]

Supplement *Highlights* references: 112(1).