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

*General*

**Veterans Benefits Administration**

Supplement No. 87

Covering period of *Federal Register* issues  
through December 2, 2008

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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, 39-45, 48-49, 75

*General*

## Veterans Benefits Administration

Supplement No. 87

5 December 2008

Covering the period of Federal Register issues  
through December 2, 2008

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**Book A, Supplement No. 87  
December 5, 2008**

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## HIGHLIGHTS

**Book A, Supplement No. 87  
December 5, 2008**

**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 5 November 2008, the VA published a final rule, effective 5 December 2008, to launch an initiative for accelerated claims and appeals processing at four VA facilities, based on voluntary participation by eligible claimants. Changes:

- Added a new Subpart P to Part 20 (§§20.1500–20.1510); also added new §3.161 cross-reference.



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## Part 20

### Board of Veterans' Appeals: Rules of Practice

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**Source:** 57 Fed. Reg. 4109, Feb. 3, 1992

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Reserved

**§20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.**

(a) *General.* A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) *Discontinuance or reduction of benefits.* Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment. (Authority: 38 U.S.C. 7111(b))

**§20.1407 Rule 1407. Motions by the Board.**

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion. (Authority: 38 U.S.C. 501(a), 7111)

**§20.1408 Rule 1408. Special rules for simultaneously contested claims.**

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice. (Authority: 38 U.S.C. 501(a))

**§20.1409 Rule 1409. Finality and appeal.**

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§20.1404(a) of this part), Rule 1404(b) (§20.1404(b)), or Rule 1404(f) (§20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart. (Authority: 38 U.S.C. 501(a); Pub. L. 105-111)

[57 FR 4109, February 3, 1992, as amended at 66 FR 35903, July 10, 2001; 67 FR 46869, July 17, 2002]

**Supplement *Highlights* reference:** 44(1)

**§20.1410 Rule 1410. Stays pending court action.**

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion. (Authority: 38 U.S.C. 501(a))

**§20.1411 Rule 1411. Relationship to other statutes.**

(a) The “benefit of the doubt” rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring “well-grounded” claims and imposing a duty to assist). (Authority: 38 U.S.C. 501(a))

*Next Section is §20.1500*



**Subpart P — Expedited Claims Adjudication Initiative – Pilot Program**

*Source:* 73 Fed. Reg. 65732, November 5, 2008, unless otherwise indicated.

**Supplement *Highlights* reference:** 87(1)

**§20.1500 Rule 1500. Expedited Claims Adjudication Initiative.**

(a) *Purpose.* The Expedited Claims Adjudication Initiative is a pilot program designed to streamline the claims adjudication and appeals process. This subpart establishes procedures governing this Initiative.

(b) *Outline of Initiative.* This Initiative allows eligible claimants to voluntarily participate in an alternative claims adjudication program as set forth in this subpart, which is predicated on the claimant's waiver of certain identified statutory and regulatory time limits, procedural rights, and processing issues that may arise.

(c) *Scope.* Except as specifically provided in this subpart, claims processed under this Initiative will be adjudicated according to the procedures outlined in part 3 of this chapter, and appeals will be processed according to the Appeals Regulations and Rules of Practice, as outlined in parts 19 and 20 of this chapter. Any matter not otherwise covered by this subpart will be governed by existing rules in this title.

(d) *Duration.* The Secretary will accept an executed Agreement and Waiver of Rights as provided in §20.1503 of this part for a period not to exceed 2 years from December 5, 2008. (Authority: 38 U.S.C. 501(a))

**§20.1501 Rule 1501. Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Initiative* means the Expedited Claims Adjudication Initiative as promulgated by this subpart.

(b) *Participant* means any eligible claimant who elects to participate in the Initiative by executing, with his or her representative, an Expedited Claims Adjudication Initiative Agreement and Waiver of Rights as provided in §20.1503 of this part.

(c) *Covered claim or covered claims* means any claim or claims, as described in §20.1502(c) of this part, that a participant elects to have processed under the rules governing the Initiative, including any downstream element of the claim(s), such as assignment of a disability rating and effective date, and any claim that is inextricably intertwined with a covered claim.

(d) *Representative* means an accredited representative of a recognized Veterans Service Organization or an accredited attorney or agent, as set forth in part 14 of this chapter, for whom a claimant has properly executed and filed a VA Form 21-22, “Appointment of Veterans Service Organization as Claimant’s Representative,” or a VA Form 21-22a, “Appointment of Individual as Claimant’s Representative,” as required by §14.631 of this chapter.

(e) *Participating VA regional office* means one of the following four VA regional offices: Nashville, Tennessee; Lincoln, Nebraska; Seattle, Washington; and Philadelphia, Pennsylvania. The jurisdiction of the Nashville, Lincoln, and Seattle regional offices extends to residents of Tennessee, Nebraska, and Washington, respectively. The jurisdiction of the Philadelphia regional office extends to residents of the 40 easternmost counties of Pennsylvania and residents of the seven southernmost counties of New Jersey. For purposes of this Initiative only, the jurisdiction of these regional offices extends only to a covered claim, as described in §20.1502(c) of this part. (Authority: 38 U.S.C. 501(a))

**§20.1502 Rule 1502. Eligibility.**

To participate in the Initiative, a claimant must:

(a) At the time the Agreement and Waiver of Rights is executed, have a representative, as defined in §20.1501(d) of this part;

(b) Reside within the jurisdiction of a participating VA regional office, as defined in §20.1501(e) of this part; and

(c) File one of the following types of claims for VA disability compensation as outlined in parts 3 and 4 of this chapter at a participating VA regional office:

(1) Original claim;

(2) Claim for an increased rating;

(3) Claim to reopen a previously-denied claim based on the submission of new and material evidence as provided in §3.156 of this chapter; or

(4) Requests for revision of a decision of an agency of original jurisdiction under §3.105 of this chapter based on clear and unmistakable error. (Authority: 38 U.S.C. 501(a))

**§20.1503 Rule 1503. Election, identification of evidence, and representation.**

(a) *When and how election made.* Upon the filing of a claim described in §20.1502(c) of this part, VA will promptly notify the claimant in writing of the opportunity to participate in the Initiative and provide the claimant with an Agreement and Waiver of Rights. A claimant may elect to participate in the Initiative by filing an executed Agreement and Waiver of Rights as provided in paragraphs (b) and (c) of this section within 30 days of the date of the notice of the opportunity to participate in the Initiative. An election to participate in the Initiative can be revoked at any time in accordance with §20.1509 of this part.

(b) *Execution of agreement.* To participate in the Initiative, a claimant and his or her representative must execute an Agreement and Waiver of Rights on a form prescribed by the Secretary. The claimant will specifically identify in the Agreement and Waiver of Rights all claims he or she wishes to have processed under the Initiative.

(c) *Where to file.* The executed Agreement and Waiver of Rights must be filed with the participating VA regional office that has jurisdiction over the claim.

(d) *Identification of relevant evidence.* Upon executing the Agreement and Waiver of Rights, the participant will respond, within the time period prescribed in §20.1504(a)(1), to VA notice regarding the information and evidence necessary to substantiate the claim by identifying all relevant evidence in support of his or her claim(s), providing the requested evidence, or notifying VA that no such evidence exists. Relevant evidence may include any VA records, non-VA Federal records (such as Social Security disability records), and any private records (such as treatment records from a family physician). If the participant requires assistance from VA in obtaining any identified records, the participant will provide VA, upon request, the appropriate release form so VA may attempt to promptly obtain the records on behalf of the participant. VA must receive the necessary information and evidence requested from the participant within 1 year of the date of the notice, in accordance with §3.159(b)(1) of this chapter.

(e) *Effect of change in representation on the election.* If a participant changes or terminates representation after having made a valid election to participate in the Initiative, participation in the Initiative will continue under the terms of the signed Agreement and Waiver of Rights, unless the participant indicates, in writing, pursuant to §20.1509(b) of this part, that he or she wishes to revoke participation. (Authority: 38 U.S.C. 501(a))

**§20.1504 Rule 1504. Time limits.**

The following time limits will be applicable to all covered claims:

(a) *Time limits to be observed by the participant.* The participant will comply with the following time limits for all covered claims:

(1) *Response to initial notice letter.* The time limit for responding to the notification regarding the information and medical or lay evidence necessary to substantiate a claim in the manner required by §20.1503(d) will be 30 days.

(2) *Subsequent requests by VA for additional information and evidence.* The time limit for responding to any subsequent request by VA for additional information or evidence, either by notifying VA of the existence of such information or evidence, providing such evidence, or notifying VA that no such evidence exists, will be 30 days.

(3) *VA request for waiver.* The time limit for responding to a VA request for waiver as set forth in §20.1508 of this part, will be 30 days.

(4) *Notice of Disagreement.* The time limit for filing a Notice of Disagreement pursuant to §20.302(a) of this part will be 60 days.

(5) *Substantive Appeal.* The time limit for filing a Substantive Appeal pursuant to §20.302(b) of this part will be 30 days.

(6) *Following certification of appeal to the Board.* Following the issuance of notification that the appeal has been certified and transferred to the Board, the time limit for taking the following actions pursuant to §20.1304 of this part will be 30 days:

- (i) Request a hearing before the Board,
- (ii) Request a change in representation, or
- (iii) Submit additional evidence or argument.

(b) *Time limit to be observed by the participating VA regional office.* The participating VA regional office shall certify covered claims and transfer the appellate record to the Board as set forth in §§19.35 and 19.36 of this chapter within 30 days of the receipt of the Substantive Appeal, or within 30 days of receipt of any additional submissions following the Substantive Appeal, but no later than 60 days from the receipt of the Substantive Appeal. However, if, after issuance of the Statement of the Case, additional assistance in obtaining evidence is required in order to comply with §3.159(c) of this chapter, the participating VA regional office shall certify covered claims and transfer the appellate record to the Board within 60 days after the requisite action is completed. (Authority: 38 U.S.C. 501(a) and 5103A)

**§20.1505 Rule 1505. Review of initial benefits claim decision.**

If a participant files a Notice of Disagreement as to a covered claim, the decision of the participating VA regional office will be reviewed by a Decision Review Officer under the provisions set forth in §3.2600 of this chapter. (Authority: 38 U.S.C. 501(a))

**§20.1506 Rule 1506. Board review of cases.**

(a) The Board will screen cases that are certified and transferred to the Board under the Initiative to determine whether the record is adequate for decisional purposes. If the Board determines that the record is inadequate, the Board will take appropriate action pursuant to §19.9 of this chapter.

(b) A case screened by the Board for purposes of determining the adequacy of the record will be decided in docket order and will not be advanced on the Board's docket except as provided in §20.900(c) of this part. (Authority: 38 U.S.C. 7107(a), (f))

**§20.1507 Rule 1507. Hearings.**

(a) *Before the participating VA regional office.* Upon request, a participant is entitled to a hearing by a Decision Review Officer before the participating VA regional office as provided in §§3.103(c) and 3.2600(c) of this chapter, subject to the following limitations:

(1) No hearing will be conducted prior to the initial adjudication of the claim by the participating VA regional office.

(2) Only one hearing on a claim will be conducted at the participating VA regional office and the hearing will be conducted by a Decision Review Officer in accordance with §3.2600 of this chapter.

(b) *Before the Board.* Upon request, a participant is entitled to a hearing before the Board as provided in §§20.700 through 20.717, and 20.1304, subject to the following limitations:

(1) Only one hearing before the Board will be conducted.

(2) After consultation with the participant and his or her representative, the Board will determine whether the hearing will be conducted in person in Washington, DC, at the participating VA regional office with jurisdiction over the claim, or by electronic equipment as set forth in §20.700(e) of this part. The Board's determination will be based primarily on the type and place of hearing which will allow for scheduling at the earliest possible date. An in-person hearing will be conducted in Washington, DC, only if geographically convenient for the participant and his or her representative, or if the participant agrees to travel to Washington, DC, at his or her own expense. (Authority: 38 U.S.C. 501(a))



**§20.1508 Rule 1508. Waiver.**

(a) *General.* When requested by VA, a participant will waive, in writing, identified procedural processing issues and actions relating to covered claims. VA will provide the participant with a clear explanation, in writing, as to what rights he or she may be waiving. If a hearing on appeal is conducted, the waiver may be formally and clearly entered on the record at the time of hearing. A response to a written waiver request from VA must be filed within the 30-day period prescribed in §20.1504(a)(3) of this part. Such waiver is not required for matters that have already been waived by virtue of electing participation in the Initiative.

(b) *Evidence obtained or submitted after the Statement of the Case.*

(1) *Evidence obtained by VA.* If new evidence is obtained by VA following issuance of a Statement of the Case under §§19.29 and 19.30 of this chapter, and the claim(s) is not otherwise granted in full based on this new evidence, VA will provide a copy of such evidence to the participant and representative, and request a waiver of review by the agency of original jurisdiction of such evidence and issuance of a Supplemental Statement of the Case pursuant to the provisions set forth in §20.1304(c) of this part. A response to a written waiver request from VA must be filed within the 30-day period prescribed in §20.1504(a)(3) of this part. The failure of the participant to agree to a waiver of initial consideration by the agency of original jurisdiction of any evidence obtained by VA will constitute an implied revocation of participation in the Initiative, as provided by §20.1509(c)(2).

(2) *Evidence submitted by participant or representative.* If new evidence is submitted by the participant or representative following issuance of a Statement of the Case under §§19.29 and 19.30 of this chapter, the participant, by virtue of executing a valid Agreement and Waiver of Rights, is deemed to have knowingly and voluntarily waived agency of original jurisdiction review of such evidence and issuance of a Supplemental Statement of the Case, which permits the Board to review such evidence in the first instance. (Authority: 38 U.S.C. 501(a))

**§20.1509 Rule 1509. Compliance and revocation of participation.**

(a) Unless the participant revokes his or her participation in the Initiative as provided in paragraphs (b), (c) or (d) of this section, all covered claims will continue to be processed by VA or the Board in accordance with the provisions of this subpart until a final decision of the agency of original jurisdiction or the Board has been issued.

(b) *Express revocation.* A participant may revoke participation in the Initiative at any time by submitting a revocation request in writing. The revocation request must be filed with the participating VA regional office unless the case has been certified and transferred to the Board, in which case the revocation request should be filed with the Board. As of the date of receipt of the revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative.

(c) *Implied revocation.* The failure of a participant to meet the terms of these rules, as outlined in the executed Agreement and Waiver of Rights, will have the same result as if the participant had expressly revoked his or her participation in the Initiative. As of the date of the action constituting such implied revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative. Grounds for implied revocation of participation include, but are not limited to:

(1) The failure of the participant or representative, as appropriate, to comply with any of the time limits set forth in §20.1504(a) of this part;

(2) The failure to waive initial consideration by the agency of original jurisdiction of any evidence obtained by VA that was not considered in the Statement of the Case;

(3) A request by a participant or representative for an extension of any of the time limits set forth in §20.1504(a) of this part, unless a motion for good cause is granted, as described by paragraph (e) of this section; and

(4) Any other failure on the part of the participant to comply with the terms of the Agreement and Waiver of Rights, as determined by VA.

(d) *Death of participant.* If a participant dies while his or her claim is being processed, participation in the Initiative will be deemed revoked.

(e) *Extensions.* Extensions of any of the time limits described in this subpart may only be granted when the participant demonstrates on motion that there is good cause for the extension request. At no time may time periods be extended beyond those provided by law to all claimants and appellants. Examples of good cause include, but are not limited to, illness of the participant or the representative of such severity that precludes action during the period; death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been

certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made. (Authority: 38 U.S.C. 501(a))

**§20.1510 Rule 1510. Termination of the Initiative.**

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative. (Authority: 38 U.S.C. 501(a))

*End of Subpart P*