

§ 1.511

38 CFR Ch. I (7-1-04 Edition)

such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Secretary of Veterans Affairs, or the head of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Department of Veterans Affairs may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Department of Veterans Affairs.

[32 FR 10848, July 25, 1967]

§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.

(a)(1) Where a suit (or legal proceeding) has been threatened or instituted against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his or her duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in Central Office, or the Regional Counsel for the field facility, who shall determine the action to be taken with respect thereto. Where the records have been sent to the Department of Justice in connection with any such suit (or legal proceeding), the request will be referred to the Department of Justice, Washington, DC, through the office of the General Counsel, for attention. Where the records have been sent to an Assistant U.S. Attorney, the request will be referred by the appropriate Regional Counsel to the Assistant U.S. Attorney. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit (or legal proceeding), whether in a Federal court or any other, such copies shall be disclosed as provided in paragraphs (b) and (c) of

this section where the request is accompanied by court process, or paragraph (e) of this section where the request is not accompanied by court process. A court process, such as a court order or subpoena duces tecum should be addressed to either the Secretary of Veterans Affairs or to the head of the field facility at which the records desired are located. The determination as to the action to be taken upon any request for the disclosure of claimant records received in this class of cases shall be made by the component having jurisdiction over the subject matter in Central Office, or the division having jurisdiction over the subject matter in the field facility, except in those cases in which representatives of the component or division have determined that the records desired are to be used adversely to the claimant, in which event the process will be referred to the General Counsel in Central Office or to the Regional Counsel for the field facility for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed, or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be disclosed except through the Regional Counsel having jurisdiction, who will limit the disclosure of information to that which would be available under discovery proceedings, if the matter were in litigation. Any other information may be disclosed only after concurrence in such disclosure is provided by the General Counsel.

(b) *Disclosures in response to Federal court process*—(1) *Court order*. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a Federal court order is the process necessary for the disclosure of such records. Upon receipt of a Federal court order directing disclosure of claimant records, such records will be disclosed. Disclosure of records protected under 38 U.S.C. 7332 will be made

in accordance with provisions of paragraph (g) of this section.

(2) *Subpoena.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for the disclosure of such records and such records will not be disclosed, unless the claimant is deceased, or either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a Federal court subpoena, such records will be disclosed. Additionally, where the subpoena is accompanied by authorization from the claimant, disclosure will be made. Regarding the disclosure of medical records pertaining to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) A disclosure of records in response to the receipt of a Federal court process will be made to those individuals designated in the process to receive such records, or to the court from which the process issued. Where original records are produced, they must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if offered and received in evidence, permission should be obtained to substitute a copy so that the original may remain intact in the record. Where a court process is issued by or on behalf of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by § 1.526(i) and any other costs incident to producing the records.

(c) *Disclosures in response to state or local court process*—(1) *State or local court order.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act

system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a State or local court order is the process necessary for disclosure of such records. Upon receipt of a State or local court order directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3) of this section. Disclosure of records protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph (g) of this section.

(2) *State or local court subpoena.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for disclosure of such records and such records will not be disclosed unless the claimant is deceased, or, either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a State or local court subpoena directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3), of this section. Regarding the disclosure of 7332 records, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) Where the disclosure provisions of paragraph (c) (1) or (2) of this section apply, disclosure will be made as follows:

(i) When the process presented is accompanied by authority from the claimant; or,

(ii) In the absence of claimant disclosure authority, the Regional Counsel having jurisdiction must determine whether the disclosure of the records is necessary to prevent the perpetration of fraud or other injustice in the matter in question. To make such a determination, the Regional Counsel may

§ 1.511

38 CFR Ch. I (7-1-04 Edition)

require such additional documentation, *e.g.*, affidavit, letter of explanation, or such other documentation which would detail the need for such disclosure, set forth the character of the pending suit, and the purpose for which the documents or records sought are to be used as evidence. The claimant's record may also be considered in the making of such determination. Where a court process is received, and the Regional Counsel finds that additional documentation will be needed to make the foregoing determination, the Regional Counsel, or other employee having reasonable knowledge of the requirements of this regulation, shall contact the person causing the issuance of such court process, and advise that person of the need for additional documentation. Where a court appearance is appropriate, and the Regional Counsel has found that there is an insufficient basis upon which to warrant a disclosure of the requested information, the Regional Counsel, or other employee having reasonable knowledge of the requirement of this regulation and having consulted with the Regional Counsel, shall appear in court and advise the court that VA records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and to further advise the court of such regulatory requirements and how they have not been satisfied. Where indicated, the Regional Counsel will take appropriate action to have the matter of disclosure of the affected records removed to Federal court.

(4) Any disclosure of records in response to the receipt of State or local court process will be made to those individuals designated in the process to receive such records, or to the court from which such process issued. Payment of the fees as prescribed by § 1.526(i), as well as any other cost incident to producing the records, must first be deposited with the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if there is an offer and admission of any record or document contained therein, permission should be

obtained to substitute a copy so that the original may remain intact in the record.

(d) Notice requirements where disclosures are made pursuant to court process. Whenever a disclosure of Privacy Act protected records is made in response to the process of a Federal, State, or local court, the custodian of the records disclosed will make reasonable efforts to notify the subject of such records that such subject's records were disclosed to another person under compulsory legal process. Such notice should be accomplished when the process compelling disclosure becomes a matter of public record. Generally, a notice sent to the last known address of the subject would be sufficient to comply with this requirement.

(e) Disclosures in response to requests when not accompanied by court process. Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a court process, will be handled by the component or division having jurisdiction over the subject matter. If the request can be complied with under § 1.503 or § 1.504, and under the Privacy Act (to the extent that such records are protected by the Privacy Act), the records requested will be disclosed upon receipt of the required fee. If, however, the records cannot be furnished under such authority, the applicant will be advised of the procedure to obtain copies of records as set forth in paragraphs (b) and (c) of this section.

(f) Suits by or against the Secretary under 38 U.S.C. 3720. Records pertaining to the loan guaranteed, insured, or made by the Department of Veterans Affairs may be made available by the General Counsel or the Regional Counsel subject to the usual rules of evidence, and where authorized under the Privacy Act, after clearance with the Department of Justice or U.S. Attorney if appropriate.

(g) Disclosure of drug abuse, alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment or related records under court process. Disclosure of these types of records, which are protected from unauthorized disclosure under 38 U.S.C. 7332, may be made

Department of Veterans Affairs

§ 1.512

only in response to an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. The court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. As to a Federal court order satisfying the requirements of this paragraph, the records will be disclosed as provided in such order. As to a State or local court order satisfying the requirements of this subsection, the disclosure of the records involved is conditioned upon satisfying the provisions set forth in paragraph (c)(3) of this section. If the aforementioned section is satisfied, and a disclosure of records is to be forthcoming, the records will be disclosed as provided in the court order.

(Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 38 U.S.C. 5701 and 38 U.S.C. 7332)

[56 FR 15833, Apr. 18, 1991]

§ 1.512 Disclosure of loan guaranty information.

(a) The disclosure of records or information contained in loan guaranty files is governed by the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the confidentiality provisions of 38 U.S.C. 5701, and the provisions of 38 CFR 1.500-1.584. In addition, the release of names and addresses and the release of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems provided that the individual identifiers of the veteran-purchaser(s) or dependents are deleted prior to release of such documents. However, individual identifiers

may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier.

(Authority: 38 U.S.C. 5701(a), (c))

(2) Individual identifiers of veteran purchasers or dependents may be disclosed when disclosure is made to the following:

(i) The individual purchasing the property;

(ii) The current owner of the property;

(iii) The individual that requested the appraisal or report;

(iv) A person or entity which is considering making a loan to an individual with respect to the property concerned; or

(v) An attorney, real estate broker, or any other agent representing any of these persons.

(Authority: 38 U.S.C. 5701(c), (h)(2)(D))

(c)(1) The Secretary may release the name, address, or both, and may release other information relating to the identity of an applicant for or recipient of a Department of Veterans Affairs-guaranteed, insured, or direct loan, specially adapted housing grant, loan to finance acquisition of Department of Veterans Affairs-owned property, release of liability, or substitution of entitlement to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies for any of the purposes specified in paragraph (c)(2) of this section.

(2) A release may be made under paragraph (c)(1) of this section:

(i) To enable such parties to provide the Department of Veterans Affairs with data which assists in determining the creditworthiness, credit capacity, income or financial resources of the applicant for or recipient of loan guaranty administered benefits, or verifying whether any such data previously received is accurate; or