

**38 CFR Part 14****2900-AR72****Delegated Authority to Settle Federal Tort Claims Act Administrative Tort Claims**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation governing delegated authority to settle administrative tort claims pursuant to the Federal Tort Claims Act (FTCA) to \$500,000. This regulation also amends the delegated authority to the Veterans Health Administration (VHA) to \$5,000 to settle non-medical malpractice claims pursuant to the FTCA.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: The provisions of this final rule shall apply to all VA FTCA settlements on or after the date of publication of this final rule in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Michael Newman, Chief Counsel, Office of the General Counsel (021), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-4900. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Title 28 of the Code of Federal Regulations, chapter 1, governs the Department of Justice (DOJ) and part 14 covers administration of claims under the Federal Tort Claims Act. The regulations in 28 CFR part 14, appendix A, Delegations of Settlement Authority, were amended by DOJ effective March 23, 2020 (85 FR 10267). The amendment increases the authority delegated to the Secretary of Veterans Affairs to settle administrative tort claims where the amount of

settlement does not exceed \$500,000. Previously delegated authority was limited to claims not exceeding \$300,000. Presently, 38 CFR 14.600 reflects the delegated authority prior to March 23, 2020, which no longer applies to the Secretary's delegated authority. As a result of the DOJ delegation increasing the Secretary's settlement authority under the FTCA, 38 CFR 14.600 no longer accurately reflects the settlement authority of the General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group or those authorized to act for them. Therefore 38 CFR 14.600 is amended to reflect this increase in delegated settlement authority.

In addition, effective May 21, 2020, VHA Directive 1093, *Delegation of Authority to Process Tort Claims*, was revised to increase delegated settlement authority for VISN and VA medical facility Directors. The Directive allows resolution of non-medical malpractice (personal injury or property damage) claims ("small claims") asserting damages of \$5,000 or less to be settled within the Directors' authority. Presently, 38 CFR 14.600 reflects the maximum delegated authority to the Directors as \$2,500. Therefore 38 CFR 14.600 is amended to reflect this increase in VHA's delegated settlement authority.

Administrative Procedure Act

This final rule is a procedural rule that does not impose new rights, duties, or obligations on affected individuals but, rather, eliminates duplicate filings under the statutory requirement that agents and attorneys file a copy of a fee agreement "with the Secretary." See 38 U.S.C. 5904(c)(2). Therefore, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. See 5 U.S.C. 553(b)(A) and (d)(3). This rule merely acknowledges settlement authority increases of: (1) VA to settle FTCA administrative claims without DOJ approval; and (2) VHA to settle small claims.

Paperwork Reduction Act

This final 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 initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. At a minimum, this rule will affect only: (1) Office of General Counsel (OGC) attorneys and paralegals settling FTCA administrative claims; and (2) VHA employees settling small claims. However, it will not have a significant economic impact on these individuals, as it will result in decreased involvement of DOJ and OGC. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct 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. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Assistance Listing

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

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

List of Subjects in 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.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 11, 2022, 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.

Jeffrey M. Martin,
Assistant Director,
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 amends 38 CFR part 14 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, 5502, 5901-5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Amend § 14.600 by revising paragraphs (c)(1), (2), and (3) and (d)(1) and (2) and the parenthetical authority citation at the end of the section to read as follows:

§ 14.600 Federal Tort Claims Act - general.

* * * * *

(c) * * *

(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, Deputy General Counsel, 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 his or her 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 General Counsel, Deputy General Counsel, and Chief Counsel, 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 but not more than \$500,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, 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 may exceed \$300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, 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, Deputy General Counsel, or Chief Counsel, Torts Law Group; and with the prior written approval of the Attorney General or his or her designee.

(d) * * *

(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, Deputy General Counsel, 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 his or her 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, 2411, 2412, 2671-80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

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