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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1, 14 and 17

RIN 2900-AL31

#### Referrals of Information Regarding Criminal Violations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends VA's conduct regulations to provide that VA employees are required to report information about possible criminal activity to appropriate authorities. The VA Police and the VA Office of Inspector General, the department's two law enforcement entities, will receive such information, will investigate those cases within their respective jurisdiction and will refer proper cases for prosecution. In addition, the final rule will clarify and more accurately state the investigative jurisdiction of the Office of Inspector General. The goal of the final rule is to protect the VA, its employees and the veterans it serves, by having information about criminal activity reported and properly investigated as quickly and thoroughly as possible to prevent additional harm and to bring criminal perpetrators to justice.

**DATES:** *Effective Date:* April 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Bennett, Attorney Advisor, Office of Inspector General (51A1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 565-8678. (The telephone number is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

##### Background

Some significant, serious criminal matters related to VA programs and operations have not been reported to the VA Office of Inspector General (OIG), or to any law enforcement organization, in a timely manner to permit a thorough, effective criminal investigation. In reviewing these cases, it was discovered that there is no regulation that requires all VA employees to report possible

criminal activity to law enforcement organizations. The final rule corrects this flaw by adding new sections to 38 CFR part 1.

#### Employee's Duty To Report Possible Crimes

The final rule is a reasonable and logical extension of an existing regulatory duty to report wrongdoing already placed on VA (and Federal) employees. 5 CFR 2635.101(b)(1) requires that "[e]mployees shall disclose waste, fraud, abuse and corruption to appropriate authorities." Obviously, this requirement already requires Federal employees to report some criminal behavior to appropriate authorities. Given that there is a legal duty to report certain possibly criminal behavior, there should be an equal duty placed on employees to report even more serious matters that could involve physical harm to other employees, VA patients, veterans or other individuals.

In addition, a duty to report criminal activities exists in VA's Employee Handbook. The Handbook, which is dated February 2002, states on page 30 that, "You, as a VA employee, are responsible for reporting any evidence or information that gives reasonable cause to suspect that a serious irregularity or other criminal violation may have occurred in any activity of VA." The VA Employee Handbook goes on to cite section 7(a) of the Inspector General Act, which authorizes the OIG to "receive and investigate complaints or other information from any employee concerning \* \* \* a violation of law \* \* \*." It is worth noting that the section on "How To Contact the Office of Inspector General" is on the same page as the duty to report serious irregularities and criminal acts.

At least six other Federal agencies (Department of the Interior, Department of Health and Human Services, Small Business Administration, Department of Energy, Department of Health and Human Services/Office of Scientific Investigations, and Federal Aviation Administration) have enacted regulations which require their employees to report information about possible criminal activity. The regulations of the first five agencies listed include references to their respective Offices of Inspector General as an appropriate recipient of such information.

#### Office of Inspector General Experience in Criminal Investigations

A second reason for the final rule is to make certain that, once reported, the appropriate law enforcement organization quickly and properly investigates serious criminal matters relating to the programs and operations of VA. Independent and objective investigations of criminal matters relating to the programs and operations of VA are a major part of the OIG's statutory responsibilities.

In coordination with the VA police, the OIG intends to ensure that the appropriate entity investigates allegations of criminal conduct. Because the criminal law enforcement authority of VA police is restricted to VA property, their ability to conduct criminal investigations is limited. The OIG is the only VA entity with the authority to conduct criminal investigations off VA premises. The OIG's experience and knowledge of VA, combined with its statutory authority, makes the OIG uniquely qualified to conduct criminal investigations related to VA programs and operations since virtually all serious, complex cases will require some investigative work away from VA premises.

The VA OIG is also well qualified to serve as the point of referral and contact with the United States Attorneys' Offices on serious criminal matters affecting VA. Finally, there is a clear legal basis for the OIG's jurisdiction and statutory authority to conduct such criminal investigations.

#### Current Regulatory Scheme

At present, the only VA regulations that relate to the referral of criminal allegations are found in 38 CFR 14.560 *et seq.* This section of VA's regulations is a part of the chapter on "Legal Services" and is found under the section heading "Prosecution." Section 14.560(a) imposes upon the Regional Counsels the duty to refer allegations of crimes against the person or property to the U.S. Attorney's Office, the FBI or local law enforcement agencies. Section 14.560(b) provides that "[a]llegations of fraud, corruption or other criminal conduct involving programs and operations of VA will be referred to the Office of Inspector General." The final rule removes the obligation from the Regional Counsels to make referrals to