

ADMINISTRATIVE INVESTIGATION BOARDS AND FACTFINDINGS

- 1. REASON FOR ISSUE:** This directive revises policy within the Department of Veterans Affairs (VA) regarding administrative investigations. It establishes uniform and flexible standards for the conduct, reporting and review of administrative investigations and establishes the responsibilities of those involved.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This VA directive revises policy and guidance for conducting administrative investigations and contains a delegation of the authority to take sworn testimony to certain VA officials. This revised directive clarifies existing policy on Administrative Investigation Boards (AIB) and establishes procedures and guidance for conducting Factfindings.
- 3. RESPONSIBLE OFFICE:** Office of General Counsel. Questions should be referred to the District Offices of Chief Counsel or to the Office of the General Counsel, Personnel Law Group.
- 4. RELATED HANDBOOK:** VA Handbook 0700, Administrative Investigation Boards and Factfindings.
- 5. RESCISSION:** VA Directive 0700, dated March 25, 2002.

CERTIFIED BY:

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ADMINISTRATIVE INVESTIGATION BOARDS AND FACTFINDINGS

1. PURPOSE.

- a. The purpose of this Department of Veterans Affairs (VA) Directive is to provide policy regarding administrative investigations and the procedures to be used in conducting them and reporting the results. Administrative investigations are a systematic process for gathering evidence and ascertaining facts about matters of significant interest to VA. Administrative investigations are conducted to determine what happened and why it happened so that any individual and systemic deficiencies can be identified and corrected. Administrative Investigation Boards (AIBs) and Factfindings are types of administrative investigations, which VA officials may use and tailor to effectively meet diverse requirements and informational needs.
- b. Administrative investigations serve a broad array of important policy and management needs at all levels of VA. VA officials and employees involved in administrative investigations must have a clear understanding of the scope, purpose and nature of administrative investigations and their roles in the investigative process. Investigations that fail to adequately address critical issues, or that reach findings or conclusions that are not supported by the evidence, are an ineffective use of resources and can adversely affect the operation of VA's facilities, the morale of its employees and its image before Congress and the public. Conversely, a well-conducted, well-documented and well-presented administrative investigation enables VA officials to ensure that VA provides the best possible services to Veterans by confirming that administrative decisions are based upon established facts and sufficient review.
- c. This directive is established for the administrative efficiency of VA and does not create rights for any individual. However, individual rights or obligations that must be observed in the course of investigations may arise under other directives, regulations, laws or governing collective bargaining agreements.
- d. Investigations governed by a more specific policy or regulation, if issued by an Under Secretary, Assistant Secretary or higher authority, will take precedence over a contrary provision of this directive. This includes but is not limited to the following types of investigations, which this directive does not govern:
 - (1) Investigations involving quality assurance documents or information protected by 38 U.S.C. § 5705, such as those listed in Veterans Health Administration (VHA) Directive 1320, Quality Management and Patient Safety Activities That Can Generate Confidential Documents;
 - (2) Investigations into complaints of discrimination conducted by the Office of Resolution Management Diversity and Inclusion (ORMDI) pursuant to the regulations of the Equal Employment Opportunity Commission; Note that even when ORMDI is processing such a complaint, additional parallel

- administrative investigations can be, and in many cases should be, conducted by management into allegations of a hostile work environment or harassment as needed to ensure prompt and effective corrective action where necessary. Those management investigations are governed by this directive and VA Handbook 0700 and VA Directive and Handbook 5979;
- (3) Investigations conducted by personnel of the Office of the Inspector General or the Office of the Medical Inspector pursuant to VHA Directive 1038;
 - (4) Reviews, inspections and investigations conducted by the Office of Research Oversight (ORO) pursuant to 38 U.S.C. §§ 7307(a)(2), (d)(2) and (d)(3);
 - (5) Investigations by VA police officers conducted pursuant to VA Directive and Handbook 0730;
 - (6) Tort claims investigations conducted by, or under guidance from, the Office of the General Counsel (OGC);
 - (7) Investigations into allegations of whistleblower retaliation by a VA supervisor or allegations of senior leader misconduct, retaliation or poor performance conducted by the Office of Accountability and Whistleblower Protection pursuant to VA policy in the 0500 series; and
 - (8) Investigations into allegations of insider threat or employee behavioral threat conducted by the Office of Operations, Security and Preparedness's Insider Threat Program pursuant to Executive Order 13587 or Employee Threat Assessment Teams (ETAT) pursuant to any relevant directive.

2. POLICY.

a. ADMINISTRATIVE INVESTIGATIONS IN VA

- (1) It is VA policy that significant incidents occurring and issues arising within VA Administrations, facilities, or Staff Offices or as a result of VA activities shall be reported and investigated as necessary to meet the informational and decision-making needs of VA. Primary responsibility rests with the chief executive of the facility or staff office involved and with their seniors in VA and its administrations. Heads of VA Administrations and Staff Offices, chief executives of VA facilities and authorities senior to any of them in the VA organization are Convening Authorities, who are responsible for convening and coordinating AIBs. These listed officials, supervisors and heads of service lines, business offices or divisions may also be Initiating Authorities, responsible for initiating and coordinating Factfindings. VA Administrations and Staff Offices may further define, clarify or limit this authority.
- (2) Determining the facts and the appropriate response to matters within their areas of responsibility is an inherent duty of VA leadership. A commitment to reliably determining, reporting and acting on the facts promotes effective

decision-making, fairness, confidence in VA and support for its actions among employees, Veterans and the public.

- (3) Everyday information-gathering processes are often sufficient to meet VA's needs, and, as such, AIBs and Factfindings are not required in a variety of circumstances. However, many situations may benefit from a more systematic, thorough and objective analysis of evidence, documented in a manner that clearly conveys the facts, the evidence from which those facts are ascertained and the investigator's conclusions about disputed matters. AIBs and Factfindings are VA's primary tools for this purpose. VA's administrative investigation procedures, as described in VA Handbook 0700, Administrative Investigation Boards and Factfindings, are designed to ensure timely, objective, complete and thoroughly documented investigations and are sufficiently flexible to address the wide array of situations meriting such investigations efficiently.
- (4) AIBs have specific procedural and documentation requirements, whereas Factfindings are more flexible and have fewer procedural requirements. AIBs typically take longer to complete than Factfindings but produce a more substantive investigative report, which includes testimony taken under oath. Factfindings are typically completed more quickly but result in a less formal investigative report which does not include testimony taken under oath. Both types of administrative investigations may result in an action to remedy the problems investigated; however, a Factfinding may also result in the need to conduct an AIB. In assessing the need for an administrative investigation, determining the best procedure to utilize and conducting the administrative investigation, VA officials shall comply with the applicable requirements of this directive and VA Handbook 0700.

b. DELEGATION OF AUTHORITY TO ADMINISTER OATHS DURING AIBS

- (1) The Secretary is authorized to take affidavits and to administer oaths and affirmations during investigations under 38 U.S.C. § 5711. These authorities are hereby delegated to Convening Authorities for AIBs, which are the Heads of VA Administrations and Staff Offices, the chief of VA facilities and all authorities senior to any of these officials in the VA organization. Such authority is in addition to any other existing authorities, including the inherent authority of VA officials to make or direct appropriate inquiries into matters within their areas of responsibility. This delegation of authority shall continue in effect until it, or this directive, is specifically rescinded or revoked and is not subject to the sunset provision of VA Directive 0000, Delegations of Authority.
- (2) Convening Authorities may redelegate these authorities to a principal assistant and/or to members of AIBs for the duration of their investigation duties. Senior Convening Authorities may direct their subordinate Convening Authorities in the exercise of this delegation. In exercising these authorities,

delegees shall comply with applicable requirements of this directive and VA Handbook 0700.

- (3) The Secretary's statutory authority to compel attendance of witnesses and require the production of evidence is not delegated herein but has been delegated separately to other authorities. (See 38 C.F.R. Part 2).
 - (4) VA employees are required to cooperate with administrative investigations in accordance with 38 C.F.R. § 0.735-12(b) and other applicable authorities.
- c. **CONFLICTS OF INTEREST.** The decision whether to convene an AIB or initiate Factfinding cannot be made by an official whose own actions (or failure to act) are likely to be a subject of the investigation or who has or appears to have a personal stake in or bias regarding the matter to be investigated. In such situations, the involved Convening or Initiating Authority shall notify the next higher supervisory authority within the organization of the nature of the matter, the potential need for an administrative investigation and the potential conflict of interest precluding the original Initiating or Convening Authority from making the determination. This higher-level official will become the Convening or Initiating Authority for the matter. Further, Convening and Initiating Authorities are responsible for ensuring that members of AIBs and Factfinders are also free from such conflicts of interests. Questions regarding whether such a personal stake or bias exists or appears to exist can be addressed with OGC.
- d. **COMPLETION OF ADMINISTRATIVE INVESTIGATIONS AND FOLLOW-UP ACTION.** Upon receipt of the investigative report conveying the results of an administrative investigation, the Convening/Initiating Authority shall review the report and take any necessary action based on the results of the investigation. For AIBs, the Convening Authority must certify the completion of the investigation. For Factfindings, the Factfinder must sign the final investigative report to complete the investigation.
- e. **ORIGINAL INVESTIGATIVE FILES AND REPORTS ARE NOT SUBJECT TO THE PRIVACY ACT**
- (1) The original investigative files and reports focus on issues described in the Charge/Authorization Letters or statement of investigative issues and collect evidence about individuals only to the extent that such evidence appears to be material to the issues of the investigation. These original files are not included in a VA Privacy Act systems of records from which information is retrieved by names or unique personal identifiers (i.e., "systems of records" subject to the Privacy Act).
 - (2) An analysis of how much information can be disclosed from the original investigative file should start from the identification as to what is minimally necessary to accomplish the investigative or fact-finding objective which led to the request for the original investigative file information. Please note that a

disclosure from the original investigative file may lead to the original file information disclosed ultimately ending up in a Privacy Act system of records (e.g., a human resource's file) and thus subject to all Privacy Act requirements. Refer questions regarding the proper protection of that information to OGC.

- (3) If you have any questions about a disclosure from an original investigative file, please refer your questions to the appropriate Privacy Officer.

3. RESPONSIBILITIES.

- a. **Under Secretaries, Assistant Secretaries, Key Officials**, and those acting within existing authority, may establish policies governing investigation of specific types of matters within their areas of responsibility as necessary to meet VA's informational needs. Such policies shall be consistent with this directive and with VA Handbook 0700 and avoid unnecessary duplication of material therein.
- b. **Convening/Initiating Authorities** (defined in § 2(a)(1)) shall:
 - (1) Ensure that proper and sufficient administrative investigations are conducted of incidents occurring at their facilities or as a result of the activities of their organizations, consistent with this directive, VA Handbook 0700 and any other governing requirements.
 - (2) Ensure that their determinations and administrative investigations are free from conflicts of interest that may impact the integrity of the investigations.
 - (3) Ensure that AIB Members and Factfinders meet the training requirements to conduct an administrative investigation detailed in VA Handbook 0700.
 - (4) Take appropriate action to protect persons who properly provide information to administrative investigations from reprisal for such cooperation.
- c. **Members of Administrative Boards of Investigation and Factfinders** (collectively referred to as "investigators") shall: comply with the requirements of this directive, VA Handbook 0700 and other governing requirements, including those established by the Convening or Initiating Authority for the specific investigations to which they are assigned.
- d. **All VA Employees** shall:
 - (1) Cooperate with administrative investigations to the extent permitted by governing laws, regulations, policies and collective bargaining agreements including, but not limited to, 38 U.S.C. § 0.735-12(b).
 - (2) Refrain from disclosing any information developed in the course of an administrative investigation as directed by Convening/Initiating Authorities or

investigators, including the substance of their own testimony, except to federal investigators or their designated representatives or advisors. This requirement is established to enhance the integrity and fairness of the investigatory process and does not prohibit disclosures required for official purposes or protected by laws, such as the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8) or the Veterans Affairs and Accountability and Whistleblower Protection Act, 38 U.S.C. § 323.¹

4. REFERENCES.

- a. Whistleblower Protection Act (WPA) and Whistleblower Protection Enhancement Act of 2012 (WPEA), [5 U.S.C. § 2302\(b\)\(8\)](#)
- b. Veterans Affairs Whistleblower Protection and Accountability Act (VAAWPA), [38 U.S.C. § 323](#)
- c. VA Authority to Issue Subpoenas, [38 U.S.C. § 5711](#)
- d. VA Standards of Conduct in Special Areas, [38 C.F.R. § 0.735-12\(b\)](#)

¹ These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this policy and are controlling.