



Protecting Veteran Records

Reference:
VBA Letter 20-21-04
September 2021

Background

- The Federal Records Act of 1950, as amended, contains the statutory authority for VBA records management. Government-wide responsibility for Federal recordkeeping is shared by the General Services Administration (GSA) and National Archives and Records Administration (NARA) to make provisions for the economical and efficient management of records by federal agencies.
- Title 44 of the United States Code (U.S.C.) §§ 3301 through 3314 establishes the legal basis for the disposal of records of the United States Government.
- The Paperwork Reduction Act of 1995, 44 U.S.C., Ch. 3501, (5) establishes the legal basis for minimizing the cost of information creation, collection, maintenance, use, dissemination, and disposition of information.

Background (Cont'd)

VBA Letter 20-21-04

Records and Information Management - defines policies for establishing and maintaining a formalized records management program within all VBA stations (e.g., Regional Offices, VBA Central Office, centers, off-site storage locations, out-based sites, and alternative worksites).

It establishes the roles and responsibilities for VBA personnel to create, manage, use, store, and dispose of VBA federal records throughout their lifecycle and in accordance with Department of Veterans Affairs (VA) and National Archives and Records Administration (NARA) policies.

Presidential Memorandum

- On November 28, 2011, President Obama signed the Presidential Memorandum - Managing Government Records. This memorandum marked the beginning of an Executive Branch-wide effort to reform records management policies and practices and develop a 21st-century framework for managing government records. VBA is working to implement the 2019 mandate that requires federal agencies to manage all permanent electronic records in an electronic format. Additionally, VBA is currently working with the Department to implement the 2016 mandate requiring all federal agencies to manage both permanent and temporary e-mail records in an accessible electronic format.



Federal Records Management

- NARA is the independent Federal agency that helps preserve our nation's history by overseeing the management of all Federal records.
- Federal Agency Records Management Programs must comply with regulations promulgated by NARA (36 CFR 1220).
- Every Federal agency is legally required to manage its records. Records are the evidence of the agency's actions. Therefore, they must be managed properly for the agency to function effectively and to comply with Federal laws and regulations.

Federal Agency Responsibilities

- Making and preserving records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. § 3101).
- Establishing and maintaining an active, continuing program for the economical and efficient management of the records of the agency (44 U.S.C. § 3102).

Federal Agency Responsibilities

- Agency heads have specific legal requirements for records management which include:
 - Establishing safeguards against the removal or loss of records and making requirements and penalties known to agency officials and employees (44 U.S.C. § 3105); and
 - Willfully destroying or removing records without appropriate authorization can result in criminal penalties. The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a \$2,000 fine, 3 years in prison, or both, as defined in 18 U.S.C. 2071.
 - Notifying the Archivist of any actual, impending, or threatened unlawful destruction of records and assisting in their recovery (44 U.S.C. § 3106).

VBA Policy

- It is VBA policy that all Federal records contained on paper, electronic, or other media are properly managed from creation through final disposition, in accordance with federal laws, the General Records Schedule (GRS) and VBA Records Control Schedule (VBA RCS) VB-1 Part I (Field) & Part II (Central Office).

NOTE: Until further notice, all employees shall apply schedule parameters outlined in the National Archives and Records Administration General Records Schedule (GRS) when conflicts between the RCS and GRS exist.

VBA Policy

- Effective immediately, all VBA employees, contractors, Veterans Service Organizations, interns, volunteers, and any other affected parties who are located at a VBA station or a non-VBA station authorized by VBA, must comply with the revised requirements established in this document (VBA Letter 20-21-04). They must also comply with the electronically signed *Rules of Behavior* document at the end of the annual TMS Training Course - VA 10176; *VA Privacy and Information Security Awareness and Rules of Behavior (ROB)*. Any individual who intentionally or repeatedly violates this policy will be subject to appropriate administrative action.

What is a Federal Record?

- Records are defined in various statutes, including the Federal Records Act and the Freedom of Information Act.
- The definition that follows is from the Federal Records Act that governs agencies' records management responsibilities.

“Records include all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of the data in them (44 U.S.C. Chapter 33 § 3301).”

What is a Records Control Schedule?

- A Records Control Schedule (RCS) identifies records as either temporary or permanent. All RCSs must be approved by NARA.
- An RCS provides mandatory instructions for the disposition of federal records (including the transfer of permanent records and disposal of temporary records) when they are no longer needed by the agency.
- As part of the ongoing records life cycle, disposition should occur in the normal course of agency business.
- All Federal records must be scheduled (44 U.S.C. § 3303) either by an agency RCS or NARA's General Records Schedule (GRS).

What are Federal Employee Responsibilities?

Federal employees are responsible for making and keeping records of their work. Federal employees shall:

- Create records needed to do the business of their agency, record decisions and actions taken, and document activities for which they are responsible;
- Take care of records so that information can be found when needed. This means setting up good directories and file plans, regularly and carefully in a manner that allows them to be safely stored and efficiently retrieved when necessary;
- Carry out the disposition of records under their control in accordance with agency RCS, NARA GRS and Federal regulations;

What are Federal Employee Responsibilities?

- Adhere to the VA Privacy and Information Security Awareness and Rules of Behavior (ROB) found in TMS Training Course - VA 10176;
- Treat all information about our Nation's veterans and their beneficiaries with the highest level of confidentiality and utmost respect;
- Disposition records only in accordance with the approved RCS or GRS and never remove records from VA without authorization; and
- Be aware that criminal penalties could result if veterans' information is willfully destroyed or removed without authorization.

Bottom Line - Everyone is responsible for maintaining Agency Records

Disposition of Federal Records

- The VBA Records Control Schedules (RCS VB-1 Part I & II) are the main authorities for the retention or disposition of VBA records. It provides a brief description of the records, identifies them as either temporary or permanent, and establishes the retention and disposition requirements.
- All VBA employees must adhere to these authorities when determining the proper disposition of documents or the appropriateness of transferring official government records to retirement locations.
- The RCS specifies who can use the records, the confidentiality of the information, legal requirements that mandate creation, who has custody, and approved disposition dates.

NOTE: Until further notice, all employees shall apply schedule parameters outlined in the National Archives and Records Administration General Records Schedule (GRS) when conflicts between the RCS and GRS exist.

What does Disposition Mean?

- The disposition of both temporary and permanent records requires the prior authorization of the Archivist of the United States. Agencies submit disposition requests to NARA through Electronic Records Archives (ERA).
- Temporary Records are those records that NARA approves for either immediate disposal or for disposal after a specified time or event (i.e., Non-claims related material).
- Permanent Records are those records that NARA appraises as having sufficient value to warrant continued preservation by the Federal Government as part of the National Archives of the United States (i.e., Claims related material).

RMO/RMT Responsibilities

- Reviewing records to ensure requests for disposition and disposal of documents comply with the procedures outlined in VBA Letter 20-21-04 and applying second signature where required.
- Providing all new employees with a packet containing VBA's disposition and disposal policy, with other records management materials, and ensuring employees know and understand where to locate information pertaining to VBA's Records Management policies and procedures.
- Maintaining a local incidents log to identify and document potential violations to VBA Letter 20-21-04.

RMO/RMT Responsibilities

- Conducting appropriate training with each individual(s) (i.e., employee and/or **supervisor**) who violates records policy.
- Reporting records violations to the employee's supervisor, the Chief, SSD, station Director, and VBA RMO.
- Annually completing TMS #3873736, "Records Management for Records Officers and Liaisons".

RMO/RMT Responsibilities

- Completing and maintaining proper inventory / file plans for their local station.
- Performing additional duties and responsibilities contained within the RMO/RMT Position Description.

NOTE: Division Records Management Officers (DRMOs) are responsible for the same duties, roles, and responsibilities listed in this Directive for the RMO/RMT positions should these position be applicable at their Regional Office.

Supervisor Responsibilities

- Ensuring staff follow the policies and procedures outlined in this Letter, GRS, VBA RCS (VB-1 Part I & II), and the Title 36 CFR, Chapter XII, Subchapter B in order to create and preserve documents pertaining to the functions, policies, decisions, procedures, and essential transactions of their respective Regional Office.
- Collating employee file plans, reviewing reporting accuracy, and forwarding to RLO.
- Assisting RLO's on the life cycle of business line specific records.
- All supervisors are required to ensure compliance with VBA Letter 20-21-04 and the information contained within Appendices A – F of the program specific handling instructions.

Employee Responsibilities

- Maintaining their individual workspace and ensuring all records are submitted for disposition in accordance with the procedures outlined in this policy.
- Cooperating with their Division RLO to ensure all records are documented on the division file inventory and file plan.
- Protecting Personally Identifiable Information (PII) and other VA sensitive information.
- Annually completing VA TMS #3948000, “Records Management for All VBA Employees”.
- Annual completion of the VA Talent Management System (TMS) Course #10176, “Privacy and Information Security Awareness and Rules of Behavior.”

Purchase Cardholders

- Consult the RMO/Alternate RMO and/or an RLO prior to purchasing services requiring the creation, use, storage, maintenance, or disposition of Federal Records, to ensure the records management requirements are incorporated into all purchase documents.
- Acceptance of a contract for the destruction of temporary paper records must not be through the use of purchase cards or other informal means. Acceptance must be via a fully-executed and current written contract. Payment for contracted services, however, may be made with a purchase card once a fully executed and current contract is in place and the contract number is entered onto the purchase card order.

Disposition Procedures – Hardcopy Records

Documents appropriate for destruction without a review/signature include duplicates with a system-generated signifier or marking present that identifies the document as a duplicate of a document maintained in a VA system; draft ratings/letters/decisions/plans; CAPRI prints; SHARE prints; ERRA prints and/or prints with scanning vendor date/time stamp printed from systems of record(s); documents that automatically electronically upload to VBMS or other systems of VA document maintenance, e.g., printed versions of rating decisions/letters do not require review and/or signature; documents with PII that are not Compensation and Pension (Comp & Pen) claims related and/or contain a system-generated signifier or marking identifying the document as duplicate do not require a signature or review.

Although the documents mentioned above in this paragraph do not require signature/review, the documents must be picked up and maintained by the RMO/RMT/Director Designee until destroyed.

Disposition Procedures – Hardcopy Records

Examples of documents that **do** require signature of the employee and second signature review by the RMO/RMT or Director Designee include, but are not limited to, prints from VBMS without a system-generated signifier or marking present that identifies the document as duplicate, a printed or other version of VA Form 27-0820, Report of General Information, copies of faxed VR&E receipts that have been incorporated into the Comp & Pen claims folder, any document received from a claimant or claimant's representative, etc.

Disposition Procedures – Hardcopy Records

Follow the below procedures for documents requiring signature review:

- Employee Role:
 1. Bundle paper documents (staple multiple pages) by beneficiary or claimant's name, sign, date, and annotate the top page with the reason for disposal (e.g., printed in error, printed from VBMS, etc.) and the system that houses the document(s); and
 2. Place bundles too thick to be stapled in envelope(s) or fasten by rubber band(s).
 3. Place documents requiring 2nd review into red envelopes and/or shred boxes (separate from documents that do not require further review/signature). When housing the two types of correspondence together, place documents requiring review/second signature on the top of other document types and separate with a blank sheet of paper.

Disposition Procedures – Hardcopy Records

- RMO/RMT/Director Designee Role (Second Signature Documents Only):
 - Retrieve red envelopes and/or shred boxes per designated schedule approved by the Director and/or Assistant/Deputy Director;
 - Review paper documents placed in the red envelope and/or box to determine if disposal is appropriate;
 - Sign and date if concur with destruction;

Disposition Procedures – Hardcopy Records

- Notify supervisor in writing and return all documents inappropriately submitted for disposal for proper action;
- Update the local incident log if appropriate;
- Conduct appropriate training when an incident or violation has occurred; and
- Notify the VBA Records Officer of any violations via the Organizational Mailbox – VAVBAWAS/CO/RECORDS MANAGEMENT NLT the fifth day of the month following the identified violation.

Disposition Procedures – Hardcopy Records

If the RMO/RMT/Director Designee returns documents determined as inappropriately submitted for destruction and the supervisor/coach disagrees with the finding, the supervisor/coach shall draft a justification/explanation letter addressed to the Assistant Director, via the SSD Chief, explaining his/her decision. The explanation letter and document(s) in question shall be endorsed by the Assistant Director reflecting his/her concurrence or nonconcurrence and be returned to the RMO/RMT for further research. Further research may require consultation with the VBA Records Officer. Otherwise, documents shall be returned to employee(s) for proper disposition.

Disposition of Records

All permanent records and VA sensitive information are to follow an approved record disposition plan, see GRS and RCS VB-1, PART I & PART II, to include: retaining; transferring to a records center for temporary storage; transferring to an archival agency; donating to an eligible repository; and transferring to an approved image reproduction vendor.

- Never place permanent records, sensitive information, and temporary records containing PII with trash, recycling, or other refuse.
- Each business line should follow its program-specific handling instructions as shown in the respective appendix. Where conflicting procedures occur, procedures set forth in section five “Hardcopy Records Disposition Procedures” within VBA Letter 20-21-04 shall take precedence.

Disposition of Records – Employee Responsibilities

Roles for Hard Copy Record Disposal:

- Employee Role:
 1. Bundle paper documents (staple multiple pages) by beneficiary or claimant's name, sign, date, and annotate the top page with the reason for disposal (e.g., printed in error, printed from VBMS, etc.) and the system that houses the document(s);
 2. Place bundles too thick to be stapled in envelope(s) or fasten by rubber band(s). Please note: Each employee shall receive at least one red envelope into which they can place records for disposal. To support business requirements within the RO, Directors maintain discretion to provide additional red envelopes and/or shred boxes to employees, as necessary, based on shred volume; and

Disposition of Records – Employee Responsibilities

3. Place documents requiring second review into red envelopes and/or shred boxes (separate from documents that do not require further review/signature). When housing the two types of correspondence together, place documents requiring review/second signature on the top of other document types and separate with a blank sheet of paper.

Disposition of Records – RMO/RMT Responsibilities

- RMO/RMT role:
 1. Retrieve red envelopes and boxes per designated schedule approved by the Director or Assistant/ Deputy Director;
 2. Review records to ensure they comply with this policy;
 3. Update the records incident tracking log;
 4. Notify supervisor and return all records inappropriately submitted for disposal to supervisor;

Disposition of Records – RMO/RMT Responsibilities

5. Conduct appropriate training when a records violation has occurred;
6. Notify the VBA Records Officer of records violations immediately upon knowledge of the violation via encrypted e-mail; and
7. Keep a log of all records series approved for disposal. This log is not meant to include individual documents, but rather boxes of records within a records series (such as financial records, loan guarantee records, etc.) that have reached their final disposition date and are accompanied by a SF-135, NA 13001, VA Form 7468 etc.

Disposition of Records – Supervisor Responsibilities

- Supervisor Role:
 1. If the RMO/RMT/Director Designee returns documents determined as inappropriately submitted for destruction and the supervisor disagrees with the finding, the supervisor shall draft a justification/explanation letter addressed to the Assistant Director, via the SSD Chief, explaining their decision.
 2. The explanation letter and documents in question shall be returned to the RMO/RMT for further research. Further research may require consultation with the VBA Records Officer. Otherwise, return documents to employee(s) for proper disposition.

Electronic Records Disposition Procedures

- Disposal of Records:
 1. Delete only temporary records, non-records, or records approved for disposal according to the GRS and RCS VB-1, PART I & PART II.
 2. Once a record is uploaded or created in an electronic system of records, it cannot be deleted without requesting assistance from a program-designated Service Desk or authorized Administrator. No employee shall be able to delete a record directly.
 3. If a record is identified as being misfiled in an electronic system, the employee shall take immediate action to relocate the document to the correct record location and follow approved procedures to have the misfiled record deleted from the incorrect location. The local Privacy Officer shall be notified before the document in question is moved, to determine if the misfiled document created a privacy violation.

Electronic Records Disposition Procedures

4. Safeguard documents containing Federal Tax Information (FTI) by following IRS Publication 1075.
5. Electronic unidentifiable mail shall be processed in the Centralized Mail Portal (CM Portal) as outlined in M21-1, Part II, Subpart i, Chapter 2, Section C - Mail Management. Packets approved as unidentifiable mail in the UM FIRST AUTH queue shall be routed to the UM FINAL AUTH queue for review by the RMO or authorized designee.
6. The RMO shall review all unidentifiable mail in the UM FINAL AUTH queue to ensure that both the user and IPC supervisor or RMC Supervisory Program Support Assistant have provided the note indicating the steps taken to identify the Veteran. Until additional guidance and/or policy is implemented, UM that reaches SSD offices do not require the notes that are specified in the M21-1.

Electronic Records Disposition Procedures

7. IPC shall classify unidentified SSD Mail as UM in the CM Portal and input the appropriate notes and route to the RMO for final authorization for destruction.
8. Ensure that both the user and IPC supervisor or RMC Supervisory Program Support Assistant have provided the note indicating the steps taken to identify the Veteran. Until additional guidance and/or policy is implemented, UM that reaches SSD offices do not require the notes that are specified in the M21-1.
9. IPC shall classify unidentified SSD Mail as UM in the CM Portal and input the appropriate notes and route to the RMO for final authorization for destruction.
10. Note: Each program office shall be responsible for developing its own procedure policy on managing the deletion of records within their electronic systems of record (e.g., M21-1, Part II, Subpart ii, Chapter 2, Section A - Folder Maintenance).

Disposition of Records

All electronic permanent records and VA sensitive information records are treated the same as hardcopy records and should follow an approved record disposition plan, see RCS VB-1, PART I & PART II, to include (1) retaining, (2) transferring to a records center for temporary storage, (3) transferring to an archival agency, (4) donating to an eligible repository, and (5) transferring to an approved image reproduction vendor.

Note: Due to the United States Court of Appeals decision, *Robinson v. McDonald*, no Compensation benefit-related records may be destroyed. All Compensation benefit-related records must be maintained in hardcopy form without regard to their presence within VBA systems of records.

Personally Identifiable Information (PII)

Personally Identifiable Information (PII) - Any information one might use to distinguish or trace an individual's identity (e.g., name, social security number), alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (e.g., date and place of birth, mother's maiden name, etc).

Maintaining/Handling of Non-Work-Related Records

- Employees are permitted, at their own risk, to maintain their own PII at their assigned workstations. However, employees are strongly encouraged to secure this information at home. **No personal employee information should be placed into the red shred box.** If so, it will be assumed to be unsigned PII and will be recorded as a violation.
- Non-work-related records in VBA employees' work environment that **do not contain PII** must also be placed in the red boxes for proper disposal to effectively control and manage the record disposition process.

Handling Destruction of Employee Sensitive Material

- Employee sensitive records (e.g., employee records, corrective actions, awards etc.) are usually maintained by supervisors, managers, or human resources officials. These records should be delivered directly to the RMO/RMT in a sealed envelope(s) with the source and type of record clearly identified and signed on the outside of the envelope by the appropriate senior official.

Administrative Housekeeping Items

The following are items that may be placed in employee trash cans if the items do not contain any PII or protected information.

1. Food-related waste (food wrappers, containers, paper plates/cups).
2. Packaging materials, including shred cardboard, bubble or plastic wrap.
3. Other plastic items, including file tabs, colored document flags, envelopes, and clear plastic packing tape.
4. Pasteboard food, medication boxes, and cardboard backs of paper tablets.
5. Napkins/facial tissue.
6. Personal magazines and newspapers.

References

- 36 CFR Subchapter B - Records Management
- VBA Letter 20-21-04, Records and Information Management, dated September 7, 2021
- VA Directive 6300 - Records and Information Management
- VA Handbook 6300.1 - Records Management Procedures
- VA Directive 6371 - Destruction of Temporary Paper Records
- VA Directive 6500.6 – Contract Security
- VA Directive 6609 – Mailing of Personally Identifiable and Sensitive Information
- National Archives and Records Administration General Records Schedule
- VBA Records Control Schedule, VB-1, Part I (Field) and Part II (Central Office)
- M22-4, Part IX, Chapter 8.01d(2), Education Procedures, Liaison and Approval Activities, Records, Files, and Reports
- Office of Management and Budget Circular A-130, Appendix I, paragraph 4h (6-7)

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