

effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of applications expected would not be substantial. The funding for the UDAG program has been reduced in recent years, and only one-fourth of the funding is allocated to small cities. Applications submitted because of the consortia arrangement will have to compete with individual small cities applications and the Department does not that there will be very many for consideration.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the rule will not have a significant impact on the family. The final rule allows geographically proximate small cities to apply jointly for UDAG assistance on behalf of a member city and will have little, if any, impact on family formation, maintenance or general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule allows geographically proximate small cities to apply jointly for UDAG assistance on behalf of a member city and will not have any direct impact on the States.

The rule is listed as item number 1018 in the Department's Semiannual Agenda of Regulations published October 24, 1988 (53 FR 41974, 42001) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance number is 14.221-Urban Development Action Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the proposed rule published in the *Federal Register* on August 12, 1988 (53 FR 30442) is adopted as final without change as set forth below.

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. A new § 570.467 is added to read as follows:

§ 570.467 Specific provisions for consortia of small cities applying for UDAG funds.

(a) *General.* Beginning with the July, 1988 funding round (represented in the table in § 570.460(a) as the May 1-31 application period, the June 1-July 31 review period, and the July 31 decision date), geographically proximate cities of less than 50,000 population may combine to apply for grants on behalf of a member city that is otherwise eligible for assistance under this subpart. Grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities, as set forth in this subpart. For purposes of this section, a consortium may include county governments that are not urban counties. To be eligible, the following general requirements must be met:

(1) Member communities of a consortium must be geographically proximate (i.e. located with normal commuting distance to the project) to the eligible distressed city or cities for which the application is being submitted, as determined by the appropriate HUD field office based on data and analysis supplied by the applicant.

(2) The project site must be located in an area which is within the jurisdiction of a member of the consortium;

(3) At least 51% of the jobs and taxes must go to an eligible distressed city or cities.

(4) All the jobs and taxes to be generated by the project will be counted in the calculation of project selection points.

(b) *Additional requirements.* In addition to the general requirements set forth in paragraph (a) of this section, the following requirements must be met:

(1) The application must include, in addition to the requirements of § 570.458, an executed cooperation agreement signed by all member communities and designating the member unit of government whose chief executive officer will be administratively responsible for the project and the responsible federal official for NEPA, historic preservation and other statutory and regulatory requirements, as set forth in § 570.458(c)(14). The cooperation agreement must also identify the

expected project benefits, i.e., jobs, taxes and repayment and how these project benefits will be allocated among the member communities and the distressed city or cities.

(2) The application must include certification as to each member's authority to enter into the cooperation agreement.

(3) Each member of the consortium must meet all the Fair Housing and Equal Opportunity requirements set forth in this subpart.

(4) UDAG repayments either must go to the eligible city or eligible cities receiving project benefits or must be used entirely for the benefit of these eligible cities.

(c) *Other considerations.* If the benefits go to one eligible city, then the impactation and distress rankings of that city will be used. If more than one eligible distressed city is receiving benefits, the impactation and distress scores will be recalculated based on the combined characteristics of the communities receiving benefits.

Date: December 19, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88-29734 Filed 12-27-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Virginia State Plan; Final Approval Determination; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final State plan approval.

SUMMARY: In FR Doc. 88-27480, published November 30, 1988, OSHA amended Subpart EE of 29 CFR Part 1952 to reflect the Assistant Secretary's decision to grant final approval to the Virginia State plan and to make related revisions. In revising the table of contents for Subpart EE, the listing of § 1952.377, "Changes to approved plans," was inadvertently omitted from the revised table of contents. This notice will correct that error by revising the table of contents to include the omitted section number and heading.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8148.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, (Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, DC, this 15th day of December 1988.

John A. Pendergrass,
Assistant Secretary.

PART 1952—(CORRECTED)

Accordingly, the revised table of contents for Subpart EE of 29 CFR Part 1952 appearing in the *Federal Register* of November 30, 1988, is hereby corrected by adding an entry for § 1952.377 to read as follows:

Subpart EE—Virginia

* * * * *

§ 1952.377 Changes to approved plans.

[FR Doc. 88-29790 Filed 12-27-88; 8:45 am]

BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

38 CFR Part 14

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has adopted the following regulations to revise and clarify existing procedures and requirements regarding recognition of service organizations and their representatives and other individuals, agents, and attorneys representing claimants for benefits administered by the VA. The revised regulations are designed to improve the VA's ability to assure the availability of high quality representation of claimants.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Mullen, Deputy Assistant General Counsel (022A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2440.

SUPPLEMENTARY INFORMATION: On pages 8472 through 8476 in the *Federal Register* of March 18, 1987, the VA

published proposed amendments to Title 38, Code of Federal Regulations, including the establishment of new criteria for recognition as a national veterans' service organization, in addition to the current requirement that an organization be congressionally chartered. Further, new information submission provisions were proposed, including a requirement that an organization requesting recognition state in writing that it would not represent to the public that VA recognition of the organization was for any purpose other than claim representation. Other amendments concerned representation of claimants by attorneys, permission for participation in the representation process of paralegals, law clerks, and law students, and the allocation of space and office facilities at VA regional offices to recognized organizations.

The VA received comments from four veterans' service organizations and two individuals, one of whom is an attorney. The significant comments and recommendations with respect to the proposed amendments are summarized below, with the Agency's responses.

Comments and Recommendations

Section 14.627 Definitions

No comments, suggestions, or objections were received with regard to the definitions.

Section 14.628 Recognition of organizations

One commenter noted that no procedures were set forth for "decertifying" an already-recognized organization and suggested, in broad outline, provisions that should be made in the event the VA intends to maintain the authority to terminate recognition. Another commenter viewed the absence of codified procedures for termination of an organization's recognition as an acknowledgement that the VA lacks authority to do so. In response to these comments, it is pertinent to note that the VA has never taken adverse action to terminate the recognition status of a service organization. The Agency's statutory authority to recognize organizations is discretionary, however, and the lack of explicit rules for effecting termination of such recognition should not be interpreted as an indication to the contrary. We simply perceive no reason, at present, for setting forth such procedures, absent any historical demonstration of necessity for them.

Two commenters expressed uncertainty whether, in essence, the requirements for the purpose of recognition as a national organization

pursuant to § 14.628(a)(2)(i)-(v), (d), and (e) are one-time or ongoing in nature. Their apprehension, evidently, is that data and information to be submitted under these provisions will be required on a periodic basis (such as annually), even from organizations who have secured VA recognition under § 14.628. In response to these concerns, we point out that § 14.628 is concerned generally (as indicated by its introductory sentence and the heading of § 14.628(e)) with establishing the terms and conditions of initial recognition, that is, with one-time requirements for recognition. We perceive no grounds for inferring a requirement of repeated, ongoing submissions. We do emphasize, however, that the Administrator or his/her designee is authorized under new § 14.628(g) to request further information from any recognized organization. This provision, necessary to responsible monitoring by the VA, is not tantamount to a formal, ongoing reporting requirement.

A commenter suggested amendment of § 14.628(e)(7)(i) to indicate that a volunteer attorney in private practice, who occasionally represents VA claimants on behalf of a recognized organization, is not prevented from charging a fee for "service to a claimant" in a non-VA matter or in a Federal Tort Claims Act malpractice suit against the VA. We agree with the implication of this suggestion that the fee limitation statute does not bar an attorney from charging a veteran a fee for services not involving an administrative claim for benefits under Title 38, United States Code. The provision in question, however, is intended to address an organization's accredited representatives rather than non-accredited attorneys. To clarify the point, we have revised § 14.628(e)(7)(i) accordingly.

The attorney commenter objected, in general, to what he described as "bodycount criteria" in § 14.628 as the basis for organization recognition. He questions, in essence, whether there is a connection between thoroughness and competence in representation of a veteran and the number of veterans represented. Our response is twofold: First, we believe that the number of veterans represented is a valid, logical gauge of an organization's capacity to provide quality representation. Demonstrated competence resources, and experience are closely related to "a sizable organizational membership" and "performance of * * * a veterans' services to a sizable number of veterans," as required in § 14.628(d)(2). Second, under § 14.630, "[A]ny person

may be authorized to prepare, present, and prosecute a particular claim," and under § 14.629(c), an attorney may be so authorized by a claimant, without reference to how many others the attorney has represented. We would further note that § 14.628(d)(2) pre-existed the current amendments, and is unaffected by them.

Section 14.629 Requirement for accreditation of representatives, agents, and attorneys

One commenter, a veterans' organization, opined that proposed revisions of § 14.629 impose inadequate controls upon legal interns, law students, and paralegals, who will be authorized to assist in the claims process. The commenter considered insufficient the requirement of § 14.631(c)(3) that these individuals be under the direct supervision of a claimant's attorney when assisting in the preparation, presentation, or prosecution of a claim. It is argued that attorneys may lack competence in VA-benefit-related matters or that they may be deficient in supervisory capability. However, VA is convinced that the principle of accountability is adequately served by the proposed revisions. Clearly, the changes preserve ultimate answerability for the consequences of malfeasance or misfeasance by legal interns, law students, or paralegals with the supervising attorney, or the law firm or legal service office by which he or she is employed. Like other Federal agencies, VA is required to accept an attorney's membership in a State bar as sufficiently indicative of competency to represent claimants, 5 U.S.C. 500(b). Once recognized to represent a claimant, a licensed attorney is subject to the provisions of § 14.633, which sets out grounds for termination of such recognition.

The aforementioned veterans' organization also argued that accredited nonlawyer representatives should be empowered to oversee legal interns, law students, and paralegals in the same manner as attorneys are authorized to do, and asserted that the proposed rules are too vague as regards the definition of these "legal assistants" and the degree of supervision to be exercised over them by their supervising attorneys. We would note that it is common practice for attorneys to avail themselves of the assistance of legal interns, law students, and paralegals, whether on a paid or volunteer basis. This practice is prevalent in law school clinical training programs. While no precise definitions appear necessary, we view a legal intern as a law school graduate not yet admitted to a State bar,

a law student as an individual pursuing a Juris Doctor degree at a school approved by a recognized accrediting association, and a paralegal as a graduate of paralegal training approved by a recognized accrediting association. Authority for assistance of this type for attorneys representing VA claimants has existed at the appellate level for over five years, under the rules of practice of the Board of Veterans Appeals (BVA), 38 CFR 19.156. The BVA has recently proposed a regulatory amendment to clarify that attorneys employed by recognized organizations may utilize such assistance to the same extent as attorneys recognized independently. See 53 FR 20653. Consistent with the practice of the BVA, we believe it appropriate that only attorneys be authorized to supervise legal interns, law students, and paralegals. As for the precise degree of control over these legal assistants, we rely upon the integrity of the attorneys involved to assure that claimants receive a high quality of representation, and that the attorneys closely supervise the activities of their assistants in the claim process.

Section 14.630 Authorization for a particular claim

No comments, suggestions, or objections were received with regard to this proposed rule.

Section 14.631 Powers of attorney

One commenter thought clarification was needed concerning language in § 14.631(c)(2) regarding the precise role of an attorney acting under a power of attorney obtained by a service organization in accordance with § 14.631(a). Specifically, it was thought unclear whether the term "employ," as used in § 14.631(c)(2), was meant to include only attorneys who are paid employees of the service organization or to include any attorney, paid or unpaid, selected by the service organization to handle the case. VA is of the view that the policy of accountability underlying the regulations pertaining to recognition of representatives of claimants requires that "employ" be defined to encompass a situation in which an attorney is retained by a service organization for the purpose of pursuing a person's claim for entitlement to a VA benefit. An attorney lacking any accredited, employment, or retainer relationship with a recognized organization, who wishes to represent a claimant, should either secure a power of attorney under § 14.631(a) or submit a declaration of representation under § 14.629(c).

Another commenter felt that § 14.631(c)(3) should be modified to

permit legal interns, law students, and paralegals to be present at a hearing without a supervising attorney. Since VA is of the judgment that such a change would excessively reduce the responsibility of the attorney of record for direct oversight and supervision of pursuit of a veterans' benefit claim, we cannot concur in this proposal. The commenter further expressed concern about § 14.631(d), pertaining to the situation wherein an attorney submits a letter of representation under § 14.629 regarding one specific benefit, without thereby automatically revoking existing powers of attorney regarding other benefits. The concern apparently is that information regarding the specific claim might be disseminated to a service organization, thus possibly violating the Privacy Act. VA deems this essentially an administrative concern, not appropriately dealt with by regulation amendment.

Another commenter, a service organization, questioned the sagacity of the proposed revision to § 14.631(d) insofar as it permits an attorney to submit a letter of representation under § 14.629 regarding one specific benefit, without such action automatically constituting revocation of existing powers of attorney concerning other benefits. The commenter regarded this amendment as ill-advised and dangerous, on the ground that only a review of a case in its entirety will afford a claimant due process and assure that all benefits for which he/she may be eligible are realized. If the proposed revision is put in effect, the service organization thought it would be in the claimant's best interests for it to terminate its representation authority in favor of the attorney. VA views this concern as exaggerated, in light of an attorney's obligation to afford the best representation possible to his/her client. We believe that a competent attorney would consider the claimant's entire record, since the requirements of sound advocacy entail consideration of all potentially relevant evidence.

VA's own review of the proposed § 14.631, in the perspective of Agency experience with the current regulation, has indicated several problems. Some representatives of service organizations have felt that, once a limited power of attorney is executed by an appellant in favor of an attorney, the general power of attorney to the service organization is revoked. Also, when a claim appealed to the Board of Veterans Appeals by an attorney holding a limited power of attorney is remanded to a regional office, a question sometimes arises as to who will represent the claimant at the

regional office level regarding the specific claim. Further, once a decision in a claim subject to a specific authorization or power of attorney is handed down, the question has arisen as to who is now the claimant's recognized representative, with some service organizations considering their original power of attorney revoked. In order to clarify this situation, we have reworded the third sentence of § 14.631(d) and added a fourth to reflect: (1) That representation of a claimant either by an attorney submitting a letter of representation for a particular claim under § 14.629(c) or by a person submitting an authorization for a particular claim under § 14.630 does not automatically constitute revocation of an existing general power described in 38 CFR 14.631(a); and (2) that these "limited" powers respecting a "particular claim" are operative only during the pendency of the claim, after which the "general" power governs prospective claims (subject, of course, to claimants' rights to confer limited powers in the future). We feel these amendments should resolve some of the uncertainties which have arisen.

Section 14.632 Letters of accreditation

No comments, suggestions, or objections were received with regard to proposed changes to this rule.

Section 14.633 Termination of accreditation of agents, attorneys, and representatives

One commenter urged that language be added to § 14.633(c)(4) to prohibit solicitation of membership in an organization by the organization's representative while he/she represents a claimant. VA's view is that this action is unnecessary and that solicitation of membership during handling of a claim is satisfactorily subsumed under the present regulatory language forbidding "[A]ny other unlawful, unprofessional, or unethical practice." We recognize, of course, an organization's interest in securing new members. However, it is important that claimants feel no pressure to join an organization simply because it is representing him/her in a claim. Accordingly, we would note that any membership solicitation conducted by an accredited representative should clearly disclaim any relationship between the veteran's claim and whether or not the veteran chooses to join or contribute to the organization.

Section 14.634 Fees and expenses

One commenter recommended that a description of allowable expenses be included in § 14.634(b), to include fees paid for experts, typing, copying,

postage, travel, and researchers. VA prefers a case-by-case approach, with the understanding that routine overhead-cost items are not reimbursable, while costs clearly generated by and attributable to the claim are.

This commenter further requested that § 14.634 be modified to reflect current official interpretations of the scope of 38 U.S.C. 3404. Specifically, he referred to the inapplicability of the \$10 fee limitation to third parties not standing to benefit from a veteran's claim and to benefit-overpayment cases brought in court. VA concurs in this suggestion, which has been accomplished by addition of two sentences of § 14.634(a).

Section 14.635 Reconsideration of denial of fees and expenses

No comments, suggestions, or objections were received with regard to this section.

Section 14.637 Office space and facilities

One commenter recommended that § 14.637 should clarify a practice of providing VA office space to employees of recognized State organizations through the accreditation of these employees to a national organization. VA Regional Offices in a few states do provide space to employees of State organizations accredited to national organizations. VA has no objection to the minor modification requested, and has inserted a clause in effect recognizing the existing practice.

Two commenters questioned the use in § 14.637(a)(3) of the number of claimants for whom an organization holds powers of attorney as a criterion for allocating office space. Rather, they advised that the number of organization representatives seeking space and the estimated frequency of use should be the major criteria. They felt that factoring in numbers of powers of attorney favors entrenched service organizations. However, VA regards the number of claimants represented by an organization as worthy of being accorded great weight in assigning office space. It is fully as substantial a consideration as the number of full-time paid representatives permanently assigned to the office. Moreover, regional office space is a quite limited resource, subject to intensive use. Nonetheless, in order to accommodate the commenter's objections, VA has added § 14.637(a)(4), which provides that requests for office space should include any data the requesting organization deems significant to allocation of such space.

Another commenter objected that proposed § 14.637 was too restrictive in limiting office space use to assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits "and no other purpose." It is suggested that service organizations furnish a variety of types of assistance not directly related to pursuit of VA benefits, and that such activities ought to be permissible in the office space provided in VA facilities. It was further posited that VA would be acting counter to decades of accepted practice in amending its rule to restrict the uses to which the Government space and facilities may be applied. The commenter asserted that it appears VA is advancing an undisclosed intention to prohibit membership solicitation activities by accredited service organization representatives, without explaining why. In response, we would stress that no significant change in policy was contemplated in the amendment to § 14.637; the language added in the proposed rulemaking was merely intended to clarify the regulation and make it more closely conform to the governing statute. Section 3402 of Title 38, United States Code, authorizes the Administrator to recognize organizations to represent individuals "in the preparation, presentation, and prosecution of claims" for VA benefits, and to "furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized." This statutory mandate clearly expresses congressional intent to permit private, nongovernmental organizations to use taxpayer-supported facilities for a particular purpose, i.e., claim representation. The commenter advanced two principal rationales for interpreting the statute to permit organizations to use their VA-provided space for soliciting new members: first, the longstanding agreements whereby disabled veterans are provided on-the-job training (OJT) as claim representatives by recognized veterans' organizations under the vocational rehabilitation programs in chapter 31 of Title 38, which training may include a small block of instruction on chapter activities such as membership drives; and, second, the importance of strong veterans' organizations to act in a "quasi-governmental" role in oversight of veterans' benefits legislation and administration, which function is enhanced by growing membership strength.

Neither rationale is compelling. We have reviewed current OJT agreements, and find no explicit indication that all

training of novice claim representatives is to be conducted in VA space, nor that membership solicitation is to comprise a significant part of such training. And, without in any way devaluing the contributions of veterans' organizations to oversight of government programs, we must be mindful that the statutory mandate regarding the use of free VA space and office facilities clearly indicates that claim representation is intended to be the primary activity conducted there. Accordingly, the final rule retains the language stating that the basic purpose of the grant of space and facilities is for organizations "assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits." However, we acknowledge that other, secondary activities may take place there on occasion as well, such as counseling and assistance on other veteran-services-related matters, include the OJT vocational rehabilitation training discussed above. Any activities involving membership solicitation should be minimal in VA space, and should be clearly distinguished from claim activities.

A commenter criticized § 14.637(b) for giving a VA-facility Director too much latitude of authority in withdrawing allocation of space from an organization and reassigning it either to the VA or another service organization, based on potential better use. It was submitted that a displaced service organization should be given the right to appeal to the Chief Benefits Director or other VA Central Office official, including the right to a hearing. We have modified the language of § 14.637(b) to clarify that the final decision on such space-allocation issues rests with the Chief Benefits Director, as to office space under control of the Department of Veterans Benefits. However, under 38 U.S.C. 3402(a)(2), the right of the Administrator to furnish office space is explicitly discretionary, and has been since enactment in 1945. Accordingly, there is no basis for an expectation of entitlement to space allocation, giving rise to due-process rights upon adverse action concerning such space.

We appreciate the comments and suggestions of those concerned individuals and organizations that responded to publication of the proposed rules, and we acknowledge their contribution in developing these final rules. The proposed rules are, therefore, adopted with the amendments noted above and minor amendments of a technical nature. The final rules are set forth below.

Executive Order 12291

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are nonmajor for the following reasons:

- (1) They will not have an effect on the economy of \$100 million or more;
- (2) They will not cause a major increase in cost or prices;
- (3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act (RFA)

The Administrator hereby certifies that these regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory-flexibility-analyses requirements of §§ 603 and 604. The reason for this certification is that these regulations impose no regulatory burden on small entities, and only claimants for VA benefits will be directly affected.

Information Collection

The information collection contained in § 14.628(e) has been approved by the Office of Management and Budget under OMB control number 2900-0439.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Lawyers, Organization and functions of government agencies, Veterans.

Approved: November 23, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 14, Legal Services, General Counsel, is amended as follows:

PART 14—[AMENDED]

1. The undesignated center heading following § 14.619 which reads "Recognition of Organizations, Accredited Representatives, Attorneys, Agents; Rules of Practice and Information Concerning Fees, 38 U.S.C. Chapter 59" and the note which follows it are removed.

2. The undesignated center heading preceding § 14.626 is revised to read as follows:

Representation of Veterans Administration Claimants; Recognition

of Organizations; Accreditation of Representatives, Attorneys, Agents; Rules of Practice and Information Concerning Fees, 38 U.S.C. 3401-3405

3. Section 14.627 is revised to read as follows:

§ 14.627 Definitions.

As used in regulations on representation of Veterans Administration claimants:

(a) "Accreditation" means recognition by the Veterans Administration of representatives, attorneys, and agents to represent claimants.

(b) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(c) "Attorney" means a member in good standing of a State bar.

(d) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Veterans Administration pertaining to veterans, dependents, and survivors.

(e) "Cancellation" means termination of authority to represent claimants.

(f) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans Administration benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(h) "Recognition" means certification by the Veterans Administration of organizations to represent claimants.

(i) "Representative" means a person who has been recommended by a recognized organization and accredited by the Veterans Administration.

(j) "State" includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(k) "Suspension" means temporary withholding of authority to represent claimants.

4. Section 14.628 is revised to read as follows:

§ 14.628 Recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of Veterans Affairs.

(a) *National organization.* An organization may be recognized as a national organization if:

(1) It was recognized by the Veterans Administration prior to October 10, 1978, and continues to satisfy the

requirements of § 14.628(d) of this section, or

(2) It is chartered by act of Congress and satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under paragraph (e) of this section;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(iii) Sizable number of claimants for which powers of attorney for claim representation are held;

(iv) Present capability to represent claimants before the Board of Veterans Appeals in Washington, DC; and

(v) Geographic diversification, i.e., sizable number of chapters or offices in more than one State.

(b) *State organization.* An organization created by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Other organization.* An organization other than a State or national organization as set forth in paragraphs (a) and (b) of this section may be recognized when the Veterans Administration has determined that it is a veterans' service organization primarily involved in delivering services connected with either Title 38, United States Code, benefits and programs or other Federal and State programs designed to assist veterans. The term "veteran" as used in this paragraph shall include veterans, former armed forces personnel, and the dependents or survivors of either. Further, the organization shall provide responsible, qualified representation in the preparation, presentation, and prosecution of claims for Title 38, United States Code, benefits.

(d) *Requirements for recognition.* In order to be recognized under paragraph (a) or (c) of this section the organization shall:

(1) Have as a primary purpose services to veterans; and

(2) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans' services to a sizable number of veterans; and

(3) Commit a significant portion of its assets to veterans' services; and

(4) Establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service.

Complete claims service includes the ability to assure representation before the Board of Veterans Appeals.

However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Veterans Administration; and

(5) Take affirmative action, including training and monitoring of its accredited representatives, to ensure proper handling of claims.

(e) *Information to be submitted by organizations requesting recognition.* In order for an organization to be recognized under paragraphs (a) or (c) of this section, the following information shall be supplied:

(1) *Purpose.* A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) *Service commitment.* (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(iii) The type of Title 38, United States Code, services performed or to be performed, with an approximation of the number of veterans and dependent clients served by the organization in each type of service designated; and/or

(iv) The type of services, if any, performed in connection with other Federal and State programs which are designed to assist former armed forces personnel and their dependents, and an approximation of the number of veteran and dependent clients served by the organization under each program designated.

(3) *Assets.* (i) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting veterans' services; and

(ii) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Veterans Administration.

(4) *Training.* (i) A statement of the skills, training, and other qualifications for handling veterans' claims of paid or volunteer staff personnel; and

(ii) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for such training, the projected number of trainees for the first year, and the name(s) and qualifications of the

individual(s) primarily responsible for the training.

(5) *Complete claims service.* (i) The record of representation before a discharge review board, or other proof of ability to represent claimants before the Veterans Administration; and

(ii) Proof of capability of provide representation before the Board of Veterans Appeals; or

(iii) Proof of association or agreement for the purpose of representation before the Board of Veterans Appeals with a recognized service organizations, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning alternative service.

(6) *Supervision.* The organization shall execute an agreement which states that it shall take affirmative action, including training and monitoring of its accredited representatives, to ensure proper handling of claims.

(7) *Other.* (i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Veterans Administration recognition of the organization is for any purpose other than claimant representation;

(ii) The names, titles, and addresses of officers and the officials authorized to certify representatives; and

(iii) The names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(f) *Recognition or denial.* A notice of the Administrator's determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied. The notice will state that recognition is solely for the purpose of claimant representation before the Veterans Administration. If recognition is denied an organization, the Veterans Administration will set forth an explanation of the reasons for denial. A denial of recognition may be appealed to the Administrator within 90 days of the denial. The Veterans Administration will consider the appeal within 30 days of receiving such request. The organization will have an opportunity to fully document its position, and the appeal will cover all aspects of the application for recognition and the denial.

(g) *Requests for further information.* The Administrator or the Administrator's designee may request further information from any recognized organization, including progress reports, updates, or verifications.

(Authority: 38 U.S.C. 3402).

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2900-0439).

5. Section 14.629 is revised to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent, or attorney. The claimant; the representatives, agent, or attorney, or an official of the organization for which such person acts; or the appropriate Veterans Administration officials may appeal such determination to the General Counsel.

(a) *Representatives.* A recognized organization shall file with the Office of the General Counsel Veterans Administration Form 2-21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and

(i) Has successfully completed a Veterans Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to represent claimants before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is accredited and functioning as a representative of another recognized organization; and

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Individuals desiring accreditation as agents must file an application with the Office of the General Counsel and establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration which shall be prepared and graded in the Office of the General Counsel. The examination may be taken at any convenient District Counsel office under the supervision of the District Counsel. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(c) *Attorneys.* (1) An attorney engaged by a claimant shall state in writing on

his or her letterhead that the attorney is authorized to represent the claimant in order to have access to information in the claimant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney.

(2) If the claimant so consents, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in representation and may have access to the claimant's records in the same manner as the attorney of record.

(3) Legal interns, law students, and paralegals may not be independently accredited to represent claimants under this paragraph. (See § 14.630; see also § 19.156).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) of this section or § 14.631(c)(iii) shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

(Authority: 38 U.S.C. 210(c), 3401, 3404)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney. A person accredited under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made to the General Counsel.

(Authority: 38 U.S.C. 3403)

7. In § 14.631, the introductory text of paragraph (a) and paragraphs (c) and (d) are revised to read as follows:

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Veterans Administration Form 23-22 (Appointment of Veterans Service Organization as Claimant's Representative) or Veterans' Administration Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c) or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

(c)(1) Only one organization, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraphs (c)(2) and (c)(3) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or attorney of record until notice of a change, if any, is received by the Veterans Administration.

(2) An organization named in a power of attorney executed in accordance with paragraph (a) of this section may employ an attorney to represent a claimant in a particular claim. Unless the attorney is an accredited representative of the organization, the written consent of the claimant shall be required.

(3) Legal interns, law students, and paralegals may assist in the preparation, presentation, or prosecution of a claim under the direct supervision of a claimant's attorney of record designated under § 14.629(c), or an attorney who is either employed by or an accredited representative of an organization named in a power of attorney executed in accordance with paragraph (a) of this section. However, prior to their participation, the claimant's written consent must be furnished to the Veterans Administration. Such consent must specifically state that a legal intern, law student, or paralegal furnishing written authorization from the attorney of record or the organization named in the power of attorney may have access to the claimant's records and that such person's participation in all aspects of the claim is authorized. The supervising attorney, or an attorney authorized under § 14.629(c)(2), must be present at any hearing in which a legal intern, law student, or paralegal participates.

(d) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a

claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney. If an attorney submits a letter of representation under § 14.629 regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

*(Authority: 38 U.S.C. 210(c), 3402, 3404)

8. Section 14.632 is revised to read as follows:

§ 14.632 Letters of accreditation.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of the Veterans Administration station director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of accreditation, or an identification card, will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Veterans Administration installations. Letters of accreditation to former employees of the Federal Government will advise such individuals of the restrictions and penalties concerning post-employment conflict of interest provided in Title 18, United States Code. Record of accreditation will be maintained in the Office of the General Counsel.

(Authority: 38 U.S.C. 3402, 3404).

9. Section 14.633 is revised to read as follows:

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or organization.

(b) Accreditation shall be canceled at such time a determination is made that any requirement of § 14.629 is no longer met by an agent, attorney, or representative.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following:

(1) Violation of or refusal to comply with the laws administered by the Veterans Administration or with the regulations governing practice before the Veterans Administration;

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of request for evidence by the Veterans Administration, or willfully withholding an application for benefits.)

(d) Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before the Veterans Administration demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

(e) As to cancellation of accreditation under paragraphs (b), (c) or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of § 14.629, improper conduct, or incompetence, the District Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the District Counsel shall take the following action:

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the suspension and of an intent to cancel accreditation. The notice to the representative will also state the reasons for the suspension and impending cancellation, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working

days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel accreditation. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, the District Counsel shall forward the record to the General Counsel for final determination.

(f) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the party requesting the hearing, an appropriate Veterans Administration official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the District Counsel within 10 working days after the close of the hearing. The District Counsel will immediately forward the entire record to the General Counsel for decision.

(g) The decision of the General Counsel is final. The effective date for termination of accreditation shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel's office for 3 years.

(Authority: 38 U.S.C. 210(c), 3402, 3404)

10. Section 14.634 is revised to read as follows:

§ 14.634 Fees and expenses.

Accredited representatives of national, State, or other recognized organizations, and individuals authorized for a particular claim, shall

not be entitled to receive fees. Attorneys and agents are entitled to receive fees as provided in paragraphs (a) and (b) of this section.

(Authority: 38 U.S.C. 3404(c))

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents accredited under § 14.629(b) or (c) may receive the fee permitted by statute. The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or the District Counsel's designee, who will consider the quality, nature, and extent of the services. The fee-limitation statute applies in all Veterans Administration administrative proceedings involving Veterans Administration beneficiaries or claimants; it does not apply in any court proceeding except a suit involving Government life insurance. An attorney may receive a fee or salary in excess of the statutory limit from an organization, governmental entity, or other disinterested third party for representation of a claimant.

(Authority: 38 U.S.C. 784, 3404, 3405)

(b) *Expenses.* Notwithstanding paragraph (a) of this section, an agent, attorney, or person authorized under § 14.630, who incurs an expense in the prosecution of a claim, may be reimbursed for that expense by the claimant. However, prior to demanding or accepting such reimbursement, the agent, attorney, or person must submit a sworn itemized statement of the expense to the Veterans Administration, and reimbursement of the expense must be approved by the District Counsel, or the District Counsel's designee. The statement of expense and a copy of the District Counsel's determination will be retained in the claims folder as part of the permanent record. Notice of the action taken shall be transmitted to the requestor by the service handling the claim.

(Authority: 38 U.S.C. 3404)

11. Section 14.635 is revised to read as follows:

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested, a hearing officer will be appointed by the Director

of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the complainant, an appropriate Veterans Administration official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing, the hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the General Counsel, who will immediately forward the entire record to the General Counsel for decision. The decision of the General Counsel is final.

(Authority: 38 U.S.C. 210(c), 3404)

12. Section 14.637 is revised to read as follows:

§ 14.637 Office space and facilities.

The Administrator may furnish office space and facilities, if available, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Veterans Administration facility in which space is desired and should set forth:

- (1) The number of full-time paid representatives who will be permanently assigned to the office;
- (2) The number of secretarial or other support staff who will be assigned to the office;
- (3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and
- (4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Veterans Administration, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or resign such space to another organization. In the case of a facility under control of the Department of Veterans Benefits, the final decision on such matters will be made by the Chief Benefits Director.

(Authority: 38 U.S.C. 3402).

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GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRM Temp. Reg. 10, Supp. 2]

Triennial Review of Agency Administration and Operation of Information Resources Management Activities

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation, supplement.

SUMMARY: Federal Information Resources Management Temporary Regulation 10 established the Federal Information Resources Management Review Program. Supplement 1, making pen and ink revisions and extending the effective date to December 31, 1988, was published in the *Federal Register* on February 19, 1987. This supplement extends the temporary rule for an additional two years and describes an alternative procedure for small agencies to report on their information resources management review activities. The intent is to continue temporary implementation of the Federal Information Resources Management Review Program to allow additional program experience to be incorporated into the codification amendment.

DATES: *Effective date:* January 1, 1989, but may be observed earlier. *Expiration date:* December 31, 1990. Comments are due: January 27, 1989.

ADDRESS: Comments should be addressed to the General Services Administration (KMPR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Regulations Branch (KMPR), Information Resources