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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900-AI93

Recognition of Organizations and Accreditation of Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise existing procedures and requirements regarding recognition of service organizations and accreditation of their representatives and agents, attorneys, and individuals seeking to represent claimants for benefits administered by VA. These amendments are necessary to improve clarity and to enhance VA's ability to assure high quality representation of claimants.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI93." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Martin J. Sendek, Staff Attorney, Office of the General Counsel (022C), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273-6330.

SUPPLEMENTARY INFORMATION: We are proposing to make numerous minor changes in the provisions governing recognition of organizations and accreditation of representatives, agents, attorneys, and individuals for purposes of updating, clarification, and conformity and to enhance VA's ability to protect the interests of claimants.

New definitions of "complete claims service," "cross-accreditation," and "facilities" would be added to § 14.627 to assist in implementation of other provisions discussed below. The definition of "facilities" would reflect General Counsel opinions interpreting that term. The definition of "claimant" in § 14.627 would be amended to reflect that representation may begin before a claim is filed.

In § 14.628, minor changes would be made in provisions governing recognition of "national," "state," and "other organizations." In order to meet the diversification requirement for recognition as a "national" organization, an organization would be required to have a sizable number of chapters or offices in more than one region of the country, rather than merely in more than one state, as is currently required. This would provide better evidence that an organization is truly "national" in the scope of its operations. In the case of "state" organizations, the regulation would be amended to require that the organization not only be created by a state government, as is currently required, but that it also be funded by the state government. This change would assure that the organization is in fact affiliated with and supported by the state government. Also, provisions currently designated as relating to "other" organizations would be given the more descriptive heading of "regional or local organization." Provisions in § 14.628 pertaining to the qualification of service organizations for recognition would be condensed and simplified. The requirements for recognition would be revised to make clear that an organization seeking recognition must establish that it has adequate funding to fulfill the representational responsibilities it wishes to assume. Requirements relating to the provision of complete claims service would be modified to reflect that certain organizations may not choose to represent every claimant seeking their assistance and to assure that the interests of claimants are protected in such cases. Rules governing the decision to grant or deny recognition would be simplified and would be revised to make clear that only the Secretary of Veterans Affairs may grant recognition and that the General Counsel may deny recognition, subject to appeal to the Secretary.

Provisions pertaining to the accreditation of service organization representatives in § 14.629(a) would be amended to delete certain obsolete material relating to the qualifications of representatives. Provisions pertaining to the accreditation of agents in § 14.629(b)

would be amended to require that applicants for accreditation as agents use VA Form 21a prescribed by VA for that purpose. The information required to be submitted on this form would be set forth in the regulation at proposed § 14.629(b). The information required to be included on the form is necessary to establish that statutory eligibility requirements, i.e., good character and reputation, are met. This change is intended to assure that all necessary information will be supplied with the application. Section 14.629(b) would also be simplified by omission of certain provisions pertaining to internal VA procedures. Further, § 14.629(b) would provide that an applicant must achieve a score of 75 percent or more on a written examination administered by VA. We believe this will ensure sufficient proficiency to represent claimants before this Department.

Provisions in §§ 14.629 and 14.631 concerning authorization of representation by attorneys and use of legal interns, law students, and paralegals would be consolidated and clarified. Provisions governing attorneys' access to records would be removed from § 14.629(c). Rules governing access to records are stated in part 1 of title 38, Code of Federal Regulations, and their duplication in this part is unnecessary.

Proposed amendments to § 14.630 would incorporate VA's long-standing interpretation that the authorization to represent a claimant under that section is available on a one-time-only basis and may not be used to represent a series of claimants one at a time. The revised provisions would also specify factors which may be considered by the General Counsel in determining whether to grant an exception to this limitation.

The provisions pertaining to powers of attorney in § 14.631 would be modified to reflect a change in the law made by section 508 of Pub. L. 104-275. Under the revised provision, when a claimant executes a power of attorney in favor of a representative of a recognized service organization, unless the claimant indicates otherwise in the specific manner prescribed in the regulations, the power of attorney would be considered as designating the whole organization as the claimant's representative. Also, the regulation would be amended to reflect that a claimant may select an individual service organization representative as his or her representative if prescribed procedures are followed. A provision would be added to make clear that a representative designated in a power of attorney can decline to accept the

appointment and to assure that the claimant and VA are notified of that action. Current § 14.631(e), dealing with the continuation of the authority of a power of attorney upon a claimant's death, would be removed to reflect recent court decisions.

Section 14.632 would be amended to revise obsolete terminology and to delete provisions relating to internal VA procedures.

Section 14.633(a), regarding termination of accreditation, would be modified to make clear that accreditation shall be canceled immediately upon receipt of a request for cancellation from an agent, attorney, representative, or certifying organization and that cross-accreditation shall be canceled immediately once the accreditation on which the cross-accreditation is based is canceled. In order to better inform representatives of VA's expectations regarding their responsibilities to claimants, § 14.633(c) would be amended to add failure to keep a claimant informed of actions taken concerning a claim as an additional example of conduct warranting disciplinary action. VA regulations are not intended to define or affect any professional responsibilities of attorneys as members of the bar.

Section 14.633(e) would be amended to allow a Regional Counsel to suspend an agent's or attorney's accreditation for misconduct or incompetence, after an inquiry, pending a decision on termination of accreditation by the General Counsel. This change would make procedures applicable to agents and attorneys consistent with those applicable to representatives and would permit the Department to better protect the interests of claimants. In recognition of the national practice of certain claimants' representatives, § 14.633(e) would also be amended to make clear that a Regional Counsel undertaking an inquiry concerning the conduct of an agent, attorney, or service organization representative may request the assistance of another Regional Counsel as to matters within the latter's area of jurisdiction. Section 14.633(g) would be amended to clarify the actions, including suspension of accreditation and the issuance of a formal reprimand, which the General Counsel may take with respect to disciplinary proceedings and to state procedures for reinstatement of accreditation following cancellation.

Section 14.635 would be amended to incorporate VA's long-standing interpretation that free space and facilities may only be provided to the accredited representatives of recognized

national organizations in buildings owned or occupied by VA. Certain inappropriate cross references erroneously included after §§ 14.634 and 14.635 would be deleted.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that proposed 38 CFR 14.629(b) would contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI93."

Title: Application for Accreditation as a Claims Agent.

Summary of collection of information: Under the provisions of proposed § 14.629(b), an individual who wishes to be accredited as a claims agent to represent claimants before VA would be required to submit a completed VA Form 21a to VA's Office of General Counsel (022A), 810 Vermont Ave., NW, Washington, DC 20420. The information requested on VA Form 21a is set forth at proposed § 14.629(b).

Description of the need for information and proposed use of information: This information is needed to determine whether an individual would be eligible to be accredited as a claims agent to represent claimants before VA.

Description of likely respondents: Individuals who wish to be accredited as a claims agent to represent claimants before VA.

Estimated number of respondents: 20 per year.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 15 hours.

Estimated annual burden per collection: 45 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will 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. The adoption of the proposed changes would not cause significant changes for those affected by the proposal. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: July 24, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 14 is proposed to be amended as follows:

**PART 14—LEGAL SERVICES,
GENERAL COUNSEL**

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 5502, 5902–5905, unless otherwise noted.

2. Section 14.626 is revised to read as follows:

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

3. In § 14.627, paragraphs (h), (i), (j), and (k) are redesignated as paragraphs (k), (l), (m), and (n), respectively; and paragraph (g) is revised and new paragraphs (h), (i), and (j) are added; and an authority citation is added at the end of the section, to read as follows:

§ 14.627 Definitions.

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

(h) *Complete claims service* means representation of each claimant requesting assistance, from the initiation of a claim until the completion of any potential administrative appeal.

(i) *Cross-accreditation* means an accreditation based on the status of a representative as an accredited and functioning representative of another organization.

(j) *Facilities* means equipment and furnishings which promote the efficient operation of an office and adjacent accommodations use of which is needed in order to promote access to office space.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

4. In § 14.628, paragraph (e) is removed; paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively; and paragraphs (a)(2), (b),

(d), and newly redesignated (e), and the heading of paragraph (c) are revised to read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) * * *
(2) It satisfies the following requirements:

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

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

(iii) Capability and resources to provide representation to a sizable number of claimants;

(iv) Capability to represent claimants before the Board of Veterans' Appeals in Washington, D.C.; and

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

(b) *State organization.* An organization created and funded 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) *Regional or local organization.*
* * *

(d) *Requirements for recognition.* (1) In order to be recognized under this section, an organization shall meet the following requirements:

(i) Have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement outlining the purpose of the organization.

(ii) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) The number of members and number of posts, chapters, or offices and their addresses; and

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

(C) A description of the services performed or to be performed in connection with programs administered by the Department of Veterans Affairs, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and

(D) A description of 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, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

(iii) Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services; and

(B) 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 Department of Veterans Affairs.

(iv) Provide complete claims service to each veteran requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(l)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

(A) If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service.

(B) If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

(v) Take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an

organization requesting recognition shall submit:

(A) A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and

(B) 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 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.

(2) In addition, the organization requesting recognition shall supply:

(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 Department of Veterans Affairs recognition of the organization is for any purpose other than claimant representation; and

(ii) The names, titles, and addresses of officers and the official(s) authorized to certify representatives.

(e) *Recognition or denial.* A notice of the determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied.

(i) Only the Secretary is authorized to recognize organizations.

(ii) The General Counsel is authorized to deny recognition of organizations. If the General Counsel denies recognition, the General Counsel will provide the organization with a notice of that decision, setting forth an explanation of the reasons for denial of recognition. A denial of recognition may be appealed to the Secretary within 90 days of mailing of notice of the denial.

* * * * *

5. In § 14.629, paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) are removed; the section heading and introductory text; paragraphs (a) introductory text, (a)(I), (a)(2)(ii) and the section authority citation; and paragraphs (b) and (c) are revised, to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Regional Counsel will resolve any question of current qualifications of a service organization representative, agent, or attorney. The claimant, the service organization representative, agent, or attorney, or an official of the organization for which such person acts, or a concerned Department of Veterans Affairs official may appeal such determination to the General Counsel.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 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 has demonstrated an ability to represent claimants before the Department of Veterans Affairs;

* * * * *

(2) * * *

(ii) Has successfully completed a course of training and an examination which have been approved by a VA Regional Counsel with jurisdiction for the State; and

* * * * *

(Authority: 38 U.S.C. 501(a), 5902)

(b) *Agents.* (1) An individual desiring accreditation as an agent must establish that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claim(s). An individual desiring accreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

(i) His or her full name and business address;

(ii) Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);

(iii) Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government.

(iv) Information concerning any criminal background of the applicant;

(v) Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability;

(vi) Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;

(vii) The names, addresses, and phone numbers of three character references; and

(viii) Information relevant to whether or not the applicant has any physical limitations which would interfere with

the completion of a comprehensive written examination administered under the supervision of a VA regional counsel.

(2) Applicant's must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6 month period.

(Authority: 38 U.S.C. 501(a), 5904)

(c) *Attorneys.* (1) An attorney may represent a claimant upon submission of authorization as described in § 14.631(a) or (b).

(2) If the claimant consents in writing, 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 the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a) or (b), if the claimant's written consent is furnished to the Department of Veterans Affairs. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. (See § 20.606).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section 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.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0018)

(Authority: 38 U.S.C. 501(a), 5904)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one

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.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives and claims agents operating in the claimant's geographic region;

(2) Whether the claimant has unsuccessfully sought representation from other sources;

(3) The nature and status of the claim; and

(4) Whether there exist unique circumstances which would render alternative representation inadequate.

(Authority: 38 U.S.C. 501(a), 5903)

7. In § 14.631, paragraphs (c)(3) and (e) are removed; paragraphs (b), (c), and (d) are redesignated as paragraphs (e), (f), and (g), respectively; and paragraph (a), introductory text, (a)(2), and newly redesignated paragraphs (e), (f)(1), and (g) are revised; and paragraphs (b), (c), and (d) are added, to read as follows:

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Department of Veterans Affairs Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative) or Department of Veterans Affairs Form 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 paragraph (b) of this section or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

* * * * *

(2) Shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing in the claimant's claims folder.

(b) An attorney engaged by a client may state in writing on his or her letterhead that the attorney is authorized to represent the claimant. This evidence of authorization shall be equivalent to an executed power of attorney and shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing in the claimant's claims folder.

(c) The Secretary may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word "only" with reference to the individual representative.

(d) An organization, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may decline to accept appointment as a claimant's representative by so notifying the claimant and the agency of original jurisdiction in writing prior to taking any action on the claimant's behalf before the Department of Veterans Affairs after execution of the power of attorney by the claimant.

(e) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

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

* * * * *

(g)(1) 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.

(2) If an attorney submits a letter concerning representation under paragraph (b) of this section 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. 501(a), 5902, 5903, 5904)

8. Section 14.632 is revised to read as follows:

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility 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, notification of accreditation 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 Department of Veterans Affairs installations.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

9. In § 14.633, paragraph (e)(2)(ii) is removed; paragraph (e)(2)(iii) is redesignated as new paragraph (e)(2)(ii); and paragraphs (a), (b), (c) introductory text, (c)(3), (c)(4), (e) introductory text, (e)(2)(i) and (g) are revised, to read as follows:

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

(a)(1) Accreditation shall be canceled at the request of an agent, attorney, representative, or certifying organization. If an organization requests cancellation of the accreditation of a representative it has certified, the organization shall notify the representative of the request, unless the representative is deceased.

(2) Cross-accreditation shall be canceled when a representative ceases to be accredited through the organization whose accreditation created the basis for the cross-accreditation, unless information has

been provided to the General Counsel indicating that the representative is independently qualified for accreditation by reason of membership or employment with the organization through which he or she is cross-accredited.

(b) Accreditation shall be canceled when the General Counsel finds that an agent, attorney, or representative no longer meets a requirement of § 14.629.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following on the part of an agent, attorney, or representative:

* * * * *

(3) Demanding or accepting unlawful compensation or gratuity for preparing, presenting, or prosecuting a claim or advising or consulting a claimant 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; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of a request for evidence by the Department of Veterans Affairs; failing to keep a claimant informed of actions taken concerning his or her claim; or willfully withholding an application for 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 Regional 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. The Regional Counsel of jurisdiction may request the assistance of another Regional Counsel as to matters occurring within the latter's area of jurisdiction.

* * * * *

(2) * * *

(i) Suspend accreditation immediately and notify the agent, attorney, or representative, and in the case of a representative, the representative's organization, of the suspension and of an intent to cancel accreditation. The notice will also state the reason(s) for the suspension and 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 showing of sufficient cause.

* * * * *

(g)(1) The General Counsel may cancel accreditation, continue the existing suspension of accreditation for a specified period, dissolve the existing suspension, and/or issue a formal reprimand. The decision of the General Counsel is final. The effective date of cancellation or suspension of accreditation is the date a final decision is rendered by the General Counsel. The records of the case will be maintained in the General Counsel's office for ten years from the date of a final decision.

(2) A person whose accreditation has been canceled may apply for reinstatement at any time following the expiration of two years from the date of cancellation by filing a written request for reinstatement with the General Counsel.

(i) In the case of an individual seeking reinstatement as a service organization representative, a recognized organization must file on his or her behalf VA Form 21 (Application for Accreditation as a Service Organization Representative). Such an application will be evaluated subject to the same criteria as are applicable to new applications for accreditation as a service organization representative, except that satisfactory proof of good character and reputation will be required in addition to certification by the service organization.

(ii) An individual requesting reinstatement as a claims agent must do so by submitting VA Form 21a "Application for Accreditation as a Claims Agent." Such an application will be evaluated subject to the same criteria as are applicable to new applications for accreditation as a claims agent.

(iii) An attorney requesting reinstatement must demonstrate, to the satisfaction of the General Counsel, that he or she is a licensed attorney in good standing, is of good character and reputation, is sufficiently competent to handle VA cases, and will follow the statutes and regulations applicable to the adjudication of claims and the representation of claimants before VA.

(3) Reinstatement to full accreditation following cancellation is subject to a two-year probationary period.

(i) During the probationary period, the accreditation of an attorney, agent, or representative may be canceled upon a finding by a Regional Counsel that a preponderance of evidence supports a determination that the agent, attorney,

or representative has engaged in conduct described in paragraph (c)(1), (2), (3), or (4) of this section.

(ii) In a proceeding to cancel accreditation during a probationary period, procedures concerning notice, hearing, and submission of additional evidence shall be as described in paragraphs (e)(2)(i) and (f) of this section. The decision by the Regional Counsel is final. The effective date for cancellation of accreditation shall be the date a decision is issued by the Regional Counsel. The records of the case will be forwarded to the General Counsel's office and will be maintained in that office for ten years from the date of the decision.

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§ 14.634 [Amended]

10. In § 14.634, the cross references immediately following the authority citation are removed.

11. In § 14.635, the cross references immediately following the authority citation are removed; the section introductory text and paragraph (b), are revised to read as follows:

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, 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 claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

* * * * *

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

(Authority: 38 U.S.C. 501(a), 5902)

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