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(Approved by the Office of Management and Budget under control numbers 1513–0053, 1513–0057, and 1513–0115)

Signed: September 23, 2024.

Mary G. Ryan,

Administrator.

Approved: September 24, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary, Tax Policy.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 81

RIN 2900–AS17

Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to implement a new authority requiring VA to establish a pilot program to assess the feasibility of awarding grants to eligible entities to establish new legal assistance clinics or enhance existing legal assistance clinics and pro bono efforts to provide certain legal assistance to veterans and individuals who served in the Armed Forces. This rulemaking provides proposed grant program eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of grant funds, and other requirements necessary to implement the grant program.

DATES: Comments must be received on or before December 2, 2024.

ADDRESSES: Comments may be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on www.regulations.gov as soon as possible after they have been received. VA will not post on www.regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages

individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at [Regulations.gov](https://www.regulations.gov), under RIN 2900–AS17.

FOR FURTHER INFORMATION CONTACT: Madolyn Gingell, National Coordinator, Legal Services for Veterans, Veterans Justice Programs, Clinical Services, Veterans Health Administration, Department of Veterans Affairs, at Madolyn.Gingell@va.gov or (239) 223–4681.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (the Act), was signed into law and authorized appropriations for defense activities and various other purposes. Section 548(b) of the Act directed the Secretary of VA (Secretary) to establish a pilot program to assess the feasibility and advisability of awarding grants to eligible entities to establish new legal assistance clinics or enhance existing legal assistance clinics or other pro bono efforts in locations other than VA facilities to provide certain legal assistance to veterans and individuals who served in the Armed Forces. VA proposes to implement this pilot program by creating the Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program (Grant Program) in new part 81 of title 38, Code of Federal Regulations (CFR).

The primary purpose of the Grant Program is to provide certain legal assistance to former service members to assist them in gaining access to VA benefits. Because a former service member's discharge is often a barrier to VA benefits, VA believes the Grant Program would provide needed assistance with improving the character of discharge for those individuals whose current discharge status renders them ineligible for VA benefits. Attorneys are well-suited to help individuals navigate these processes, and the proposed Grant Program would directly fund the provision of legal assistance with any VA program, with improving the status of a military discharge or

characterization of service, and with seeking a review of a military record before a board of correction of military or naval records, consistent with Section 548(b) of the Act. The Grant Program would serve a broad group of individuals, not just those who meet the statutory definition of veteran under 38 U.S.C. 101(2), and would also assist any individual discharged or released from the Armed Forces, including those who served in a reserve component.

To be eligible for VA programs and services, an individual's military discharge or release must generally be under "other than dishonorable conditions" (e.g., honorable, under honorable conditions, general), a standard established in the statutory definition of veteran under 38 U.S.C. 101(2). A military discharge or release under certain conditions, regardless of the character of service listed on an individual's Certificate of Uniformed Service (DD Form 214/5), could also constitute a statutory bar to VA programs and services under 38 U.S.C. 5303. However, in certain circumstances, individuals that do not meet the statutory definition under 38 U.S.C. 101(2) could qualify for VA programs and services if they receive a favorable outcome through a military service discharge review board, a board for correction of military or naval records, or VA's character of discharge determination.

In late September 2021, VA sought input from 18 veterans service organizations and legal services organizations to inform development of the criteria and requirements for implementation of the Grant Program. VA asked the organizations to provide comments on: (1) the types of VA programs to be focused on; (2) any additional assistance that should be provided beyond what is specified in the Act; (3) criteria that should be emphasized during the grant selection process; (4) how VA should require grantees to target individuals eligible to receive legal assistance without regard for the conditions of discharge or release from the Armed Forces; (5) criteria that should be used to assess the effectiveness of the Grant Program; (6) and any additional factors VA should consider for the Grant Program.

VA received input from two veterans service organizations and three legal services organizations. Multiple commenters stated the Grant Program should prioritize approving grant applicants that: operate in underserved areas; would provide legal assistance to improve the status of a military discharge or characterization of service; and would provide legal assistance to

those who are ineligible for VA health care. Almost all commenters suggested VA prioritize approving grant applicants that have experience providing legal assistance to veterans instead of prioritizing grant applicants who would expand their current program to newly provide legal assistance to veterans or grant applicants who would start an entirely new legal assistance program. In addition, commenters suggested VA prioritize grant applicants that engage in community outreach to former service members, considering both the direct outreach of the applicant as well as the applicant's relationships with community partners serving these individuals. Additionally, some commenters suggested that VA allow grantees to provide a broad range of legal assistance beyond what is specified in the Act. These comments were considered during development of the proposed Grant Program criteria and requirements, and the feedback VA received is publicly available at www.regulations.gov as "Supporting & Related Material" to this rulemaking.

38 CFR Part 81—Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program

The Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program (Grant Program) would be established in new part 81 of title 38, CFR, to provide clarity and establish criteria for applicants and grantees who may participate in the Grant Program. These new regulations would ensure consistency in the overall administration of the Grant Program and would provide transparency to eligible entities applying for and administering a legal assistance grant.

The purpose, scope, and definitions applicable to the Grant Program would be established in proposed §§ 81.0 and 81.5. Eligibility for entities seeking a legal assistance grant would be established in proposed § 81.10. Eligible individuals seeking legal assistance from a grantee would be established in proposed § 81.15. The types of legal assistance that could be provided to eligible individuals under the Grant Program would be established in proposed § 81.20. Grant Program application, scoring, and selection criteria for new grantees and renewals would be established in proposed §§ 81.25 through 81.50. Grantee requirements would be established in proposed §§ 81.55 through 81.115. The proposed content and structure of new part 81 are described in further detail below.

§ 81.0 Purpose and Scope

Proposed 38 CFR 81.0 would explain the purpose and scope of part 81. Proposed paragraph (a) would state that the purpose is to implement the Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program to award grants to eligible entities to establish new legal assistance clinics or enhance existing legal assistance clinics or other pro bono efforts providing legal assistance to eligible individuals. Proposed paragraph (b) would state that part 81 applies only to the provision of legal assistance in locations other than VA facilities to align with section 548(b)(1) of the Act. These statements would be consistent with the intent, purpose, and scope of the Grant Program established in section 548(b) of the Act.

We note that the present Grant Program is distinct from the program established by Section 548(a) of the Act, codified in 38 U.S.C. 5906, which directs VA to facilitate the provision of pro bono legal assistance by a qualified legal clinic at certain VA locations. Legal assistance authorized under section 548(a) of the Act is provided at VA facilities, operates through pro bono legal clinic partnerships with VA, and is only available to veterans, surviving spouses of veterans, and children of deceased veterans using the statutory definition of veteran under 38 U.S.C. 101(2).

The present Grant Program is also distinct from the grant program authorized by 38 U.S.C. 2022A, codified in 38 CFR part 79 as the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program (hereinafter referred to as LSV-H), which awards grants to provide a wide range of legal services directly addressing the needs of homeless veterans and veterans at-risk for homelessness, and also uses the statutory definition of veteran under 38 U.S.C. 101(2). While the authority for the LSV-H grant program is distinct from the present Grant Program, we relied on the LSV-H grant program regulations in 38 CFR part 79 when drafting these proposed regulations. VA believes maintaining as much consistency as possible between these two similar grant programs will allow for ease of administration and use by VA, eligible entities, and eligible individuals alike. In our discussion below, we note the instances where we relied on the LSV-H regulations to develop this rulemaking.

81.5 Definitions

Proposed 38 CFR 81.5 would set forth the definitions, in alphabetical order, for terms that apply throughout part 81 and to any Notice of Funding Opportunity (NOFO) for the Grant Program.

VA would define *applicant* as an entity meeting the eligibility criteria of § 81.10 that submits an application for a legal assistance grant announced in a NOFO for the Grant Program administered under this part. VA would define applicant in this manner since only an eligible entity as defined in § 81.10 could submit an application for a legal assistance grant in accordance with § 81.25. This proposed definition is based on a plain language understanding of the term and would be similar to the definition used in the LSV-H grant program (see 38 CFR 79.5).

VA would define *Armed Forces* as having the meaning given to that term in 38 U.S.C. 101(10). Section 101(10) of title 38, U.S.C., defines Armed Forces as the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components thereof. Defining this term would be necessary to further identify eligible individuals in proposed 38 CFR 81.15, and we would use the definition of Armed Forces in 38 U.S.C. 101(10) to maintain consistency among VA programs.

VA would define *grantee* as an eligible entity that is awarded a legal assistance grant under this part. This proposed definition is based on a plain language understanding of the term and would be similar to the definition used in the LSV-H grant program (see 38 CFR 79.5).

VA would define *legal assistance clinic* as an entity or program whose primary purpose is to provide legal assistance to individuals on a pro bono basis. The definition would refer collectively to both the individuals providing pro bono assistance and to the legal services rendered. The term would not be a reference to a certain physical space, as legal assistance clinics may operate remotely or virtually. This definition would be consistent with the term's common usage in the legal community.

VA would define *legal assistance grant* as a grant awarded under this part. This definition is a plain language understanding of the term.

VA would define *nonprofit entity* as an entity that meets the requirements of 26 U.S.C. 501(c)(3), (6), or (19), which establish the criteria for tax exempt status by the Internal Revenue Service. This definition would be necessary to further define eligible nonprofit entities

under proposed 38 CFR 81.10 and would be similar to the definition used in the LSV–H grant program (see 38 CFR 79.10(c)).

Nonprofit organizations classified under section 501(c)(3) include certain entities operated exclusively for religious, charitable, scientific, public safety testing, literary, or educational purposes; to foster amateur sports competition; or for the prevention of cruelty to children or animals; and that do not substantially participate in legislative or political activities. To be eligible under section 501(c)(3), no net earnings of the entity may benefit a private shareholder or individual.

Nonprofit organizations classified under section 501(c)(6) include business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players). To be eligible under section 501(c)(6), no net earnings of the entity may benefit a private shareholder or individual.

Nonprofit organizations classified under section 501(c)(19) are those entities comprised of current or former members of the Armed Forces of the United States; or an auxiliary unit, society, trust, or foundation associated with such entity as long as it is organized in the United States or any of its possessions, and a majority of its members are past or present members of the Armed Forces of the United States, with the remainder comprised mostly of individuals who are cadets or former members of the Armed Forces of the United States. To be eligible under section 501(c)(19), no net earnings of the entity may benefit a private shareholder or individual.

VA would define *Notice of Funding Opportunity (NOFO)* using the meaning given in 2 CFR 200.1, or successor regulations. Section 200.1 defines NOFO as a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The NOFO provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, the required components of an application, and how to submit an application. The NOFO is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term. The Grant Program would be subject to the requirements of 2 CFR part 200, which establishes the uniform

administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. This definition would also be consistent with the LSV–H grant program (see 38 CFR 79.5).

VA would define *participant* as an individual meeting the eligibility criteria of 38 CFR 81.15 who receives legal assistance from a grantee under this part. This is a plain language understanding of the term.

VA would define *reserve component* as having the meaning given to that term in 10 U.S.C. 10101. Section 10101 of title 10, U.S.C., (the title applicable to the Armed Forces of the United States) defines the reserve components of the Armed Forces as the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. We would refer to section 10101 to provide further clarity on the specific types of service that would qualify as reserve component service, because VA’s definition of “Armed Forces” in 38 U.S.C. 101(10) does not individually define the term “reserve components”. Defining this term would be necessary to further identify eligible individuals in proposed 38 CFR 81.15.

VA would define *State* as any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. This would be similar to the definition of the term found in 38 U.S.C. 101(20), as well as the definition used in the LSV–H grant program (see 38 CFR 79.5).

VA would define *subcontractor* as any third-party contractor, of any tier, performing work directly for an eligible entity. This is a common understanding of the term and would be consistent with the definition used in the LSV–H grant program (see 38 CFR 79.5).

VA would define *suspension* as an action by VA that temporarily withdraws VA funding under a legal assistance grant, pending corrective action by the grantee or pending a decision by VA to terminate the legal assistance grant. Suspension of a legal assistance grant would be a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, “Debarment and Suspension.” This definition would be consistent with the definition used in the LSV–H grant program (see 38 CFR 79.5). However, with regards to implementing Executive

Orders 12549 and 12689, VA has added the word guidance, as not all of VA’s implementations of Executive Orders are regulatory. Suspension is addressed in proposed 38 CFR 81.110, which is further discussed in this rulemaking.

VA would define *withholding* to mean that payment under a legal assistance grant would not be made until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal assistance grant. This term is defined in this manner as it is intended to provide a general description of how this term is used in 2 CFR part 200, which governs VA grant programs, including the legal assistance grant program. This term relates to withholding payment of a legal assistance grant pursuant to 38 CFR 81.110, which is further discussed in this rulemaking. This definition would be similar to the definition used in the LSV–H grant program (see 38 CFR 79.5).

§ 81.10 Eligible Entities

Proposed 38 CFR 81.10 would set forth the criteria for an entity to be considered eligible for the Grant Program. This section would be consistent with the provisions specified in section 548(b)(2) of the Act, which state that an eligible entity is a veterans service organization or other nonprofit organization specifically focused on assisting veterans; an entity specifically focused on assisting veterans and associated with an accredited law school; a legal services organization or bar association; or such other type of entity as VA considers appropriate for purposes of the Grant Program. This section would also provide additional criteria for such entities to be considered eligible for a legal assistance grant.

Proposed 38 CFR 81.10 would state that an eligible entity must be a nonprofit or public entity that meets the following requirements.

Proposed § 38 CFR 81.10(a) would establish the types of nonprofit entities that could be eligible for a legal assistance grant. While nonprofit status is required only in section 548(b)(2)(A) for an organization that is “specifically focused on assisting veterans”, proposed § 81.10(a) would require that all of the entities set forth in proposed paragraphs (1) through (5) operate in a nonprofit status to be eligible for a legal assistance grant. We would include this additional requirement to ensure that only organizations who do not operate for profit would be eligible for a legal assistance grant as we believe that would be consistent with the intent of

the Grant Program, but we note that the majority of these entities already operate in a nonprofit status. As discussed previously, “nonprofit entity” would be defined in proposed § 81.5 as an entity that meets the requirements of 26 U.S.C. 501(c)(3), (6), or (19).

Proposed 38 CFR 81.10(a)(1) would state that a veterans service organization (VSO) that is specifically focused on assisting veterans and recognized by VA in accordance with 38 U.S.C. 5902 would be eligible for a legal assistance grant. This would be consistent with section 548(b)(2)(A) and (e)(2) of the Act. We note that section 548(b)(2)(A) of the Act limits eligibility to VSOs “specifically focused on assisting veterans”, but we do not believe Congress intended to limit eligibility only to those VSOs providing services exclusively to veterans as defined in 38 U.S.C. 101(2). Such an interpretation would render the language in section 548(b)(1)(A) of the Act, which states that “individuals who served in the Armed Forces” are eligible, superfluous. Therefore, even though the VSO must specifically focus on veterans, we would consider VSOs that provide services to more than just veterans (specifically those individuals eligible under proposed 38 CFR 81.15) to be eligible organizations under proposed § 81.10(a)(1). To the extent that Congress did not intend this outcome under section 548(b)(2)(A) of the Act, VA would use its discretion under section 548(b)(2)(D) of the Act to include VSOs that may also provide services to eligible individuals who do not meet the criteria to be a veteran under in 38 U.S.C. 101(2).

Proposed 38 CFR 81.10(a)(2) would state that an organization that is specifically focused on assisting veterans, but is not a VSO in accordance with proposed paragraph (a)(1), would be eligible for a legal assistance grant. This would be consistent with section 548(b)(2)(A) of the Act. Similar to proposed 38 CFR 81.10(a)(1), VA would consider organizations specifically focused on assisting veterans that provide services to more than just veterans (specifically those individuals eligible under proposed § 81.15) to be eligible organizations under proposed § 81.10(a)(2).

Proposed 38 CFR 81.10(a)(3) would state that an entity associated with a law school accredited by the American Bar Association and specifically focused on assisting veterans would be eligible for a legal assistance grant. This would be consistent with section 548(b)(2)(B) of the Act. Many law schools operate one or more pro bono (no cost) legal assistance clinics as part of their

curriculum. These legal assistance clinics allow law students to provide legal assistance directly to clients under the supervision of a licensed attorney. The areas of law and types of individuals served by these legal assistance clinics vary among law schools. Section 548(b)(2)(B) of the Act specifies that these entities must be “associated with an accredited law school.” VA would require accreditation by the American Bar Association (ABA), as it is the largest and most universal accreditation standard for legal education in the United States. According to the Law School Admissions Council, only 35 law schools in the United States are not ABA-accredited, compared to nearly 200 law schools accredited by the ABA. See <https://www.lsac.org/choosing-law-school/find-law-school/non-aba-approved-law-schools/> and https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/. VA proposes to adopt this accreditation criteria because the ABA requires strict adherence to uniform academic standards and using this standard would provide for transparency and consistency among Grant Program applicants. See https://www.americanbar.org/groups/legal_education/resources/standards/.

Proposed 38 CFR 81.10(a)(4) would state that a legal services organization would be eligible for a legal assistance grant. Legal services organizations are entities whose primary purpose is to provide pro bono legal assistance to individuals. Commonly referred to as “legal aid,” each State has one or more organizations providing these services, which are typically limited to low-income individuals. Legal services organizations may operate from a defined physical space using attorneys employed by the organization, or they may be structured as a network of attorneys providing pro bono services in their individual capacity to clients upon referral from the organization. Legal services organizations operate in a nonprofit status and are therefore distinct from law firms that operate for profit but may provide limited pro bono services. VA would not add any additional criteria for a legal services organization to be considered eligible, because these organizations are structured similarly and are easily identifiable within the legal community. This would be consistent with section 548(b)(2)(C) of the Act.

Proposed 38 CFR 81.10(a)(5) would state that a bar association, which is an organization of lawyers aligned at the national, State, or local level, would be eligible for a legal assistance grant.

Some bar associations serve a regulatory function, while others are solely a professional organization for members. VA would not add any additional criteria for a bar association to be considered eligible, because these organizations are structured similarly and are easily identifiable within the legal community. This would be consistent with section 548(b)(2)(C) of the Act.

Proposed 38 CFR 81.10(b) would establish the three categories of public entities that would be eligible for the Grant Program, which would be consistent with section 548(b)(2)(D) of the Act.

Proposed 38 CFR 81.10(b)(1) would state that a local government, which would be further defined as a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government, would be eligible for a legal assistance grant.

Proposed paragraph (b)(2) would state that a State government would be eligible for a legal assistance grant. We would not include any further definition, as this term is commonly understood by the public.

Proposed paragraph (b)(3) would state that a Federally recognized Indian tribal government would be eligible for a legal assistance grant. We would further define this term as the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. Using this definition would establish consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. Inclusion of these public entities would be consistent with the LSV-H grant program (see 38 CFR 79.10).

§ 81.15 Eligible Individuals

Proposed 38 CFR 81.15 would set forth the individuals eligible to receive legal assistance from grantees under the Grant Program. Proposed paragraph (a)

would establish the first criterion for an individual to be eligible for legal assistance, stating that the individual must have served in the Armed Forces, including individuals who served in a reserve component of the Armed Forces. This criterion would be consistent with the definition of individuals eligible to receive legal assistance described in section 548(b)(1)(A) of the Act.

As explained previously, “Armed Forces” and “reserve component” would be defined in proposed 38 CFR 81.5 as having the meaning given to those terms in 38 U.S.C. 101(10) and 10 U.S.C. 10101, respectively. We would not use the term “veteran” as defined in 38 U.S.C. 101(2) in proposed 38 CFR 81.15(a), because the title 38 definition is narrower than those who would be explicitly eligible under section 548(b)(1)(A) of the Act regarding character of discharge. Relying on the definition of “reserve component” in 10 U.S.C. 10101 would also clarify that an individual who was called to serve in the Army or Air National Guard of the United States (pursuant to the authority to federalize the State militia under title 10, U.S.C.) would be eligible to receive legal assistance, while an individual who served only in the Army or Air National Guard of an individual State (pursuant to the authority to maintain a State militia under title 32, U.S.C.) would not be eligible to receive legal assistance. An individual who was never called to Federal service in the Army or Air National Guard of the United States, but who served only in the Army or Air National Guard of an individual State, would not be eligible for any VA services, regardless of the individual’s military discharge or characterization of service, and such individual would therefore receive no benefit from the types of legal assistance able to be provided under the Grant Program as established in proposed 38 CFR 81.20.

Proposed 38 CFR 81.15(b) would establish the second criterion, stating that the individual must have been discharged or released therefrom, regardless of the conditions of such discharge or release. Proposed paragraph (b) would also state that for the purpose of determining eligibility, “discharged or released” refers to the official termination of service in the component of the Armed Forces in which the individual served. This would be a commonsense interpretation of the term and would be necessary to ensure consistent application among the different terminology and documentation used by each military service and its reserve component(s). The conditions of an individual’s

discharge or release would not be considered in determining eligibility for legal assistance under the Grant Program, which would be a deviation from the majority of VA programs and services that use the statutory definition of veteran under 38 U.S.C. 101(2) and require an individual’s discharge or release to be “under conditions other than dishonorable.” This section would be consistent with the eligibility criteria specified in section 548(b)(1)(A) of the Act.

§ 81.20 Legal Assistance

Proposed 38 CFR 81.20 would set forth the types of legal assistance eligible individuals could receive from grantees under the Grant Program. This section would be consistent with sections 548(b)(1)(A) of the Act and 38 U.S.C. 5906(c) with one limitation, which is discussed in further detail below.

Section 548(b)(1)(A) of the Act cites to 38 U.S.C. 5906(c) to establish the types of legal assistance that may be provided under the Grant Program. Section 5906(c) provides for the following types of legal assistance: legal assistance with any program administered by the Secretary; legal assistance associated with improving the status of a military discharge or characterization of service in the Armed Forces, including through a discharge review board or seeking a review of a military record before a board of correction for military or naval records; and such other legal assistance as the Secretary considers appropriate and determines may be needed by eligible individuals.

Proposed 38 CFR 81.20(a) would explain that legal assistance could be provided with regard to any VA program administered by the Secretary. This would include navigating the full range of VA programs and services such as claims and appeals for compensation and pension, education, health care, loans, national cemetery matters, and VA character of discharge determinations. This would be consistent with section 548(b)(1)(A) of the Act and 38 U.S.C. 5906(c)(1). Pursuant to 38 U.S.C. 5901, no one can act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by VA unless such individual has been recognized for such purposes by VA. VA implemented this authority and established a formal accreditation process in 38 CFR 14.626 through 14.637. We would include a note to proposed paragraph (a) to state that a grantee must be accredited consistent with §§ 14.626 through 14.637 before acting as an agent or

attorney in the preparation, presentation, or prosecution of any claim under laws administered by VA.

Proposed 38 CFR 81.20(b) would explain that legal assistance could be provided to improve the status of a military discharge or characterization of service in the Armed Forces, including through a discharge review board. Proposed paragraph (b) would further explain that legal assistance could also be provided in seeking review of a military record before a board of correction for military or naval records. This would be consistent with section 548(b)(1)(A) of the Act and 38 U.S.C. 5906(c)(2).

During consultation, we received two comments encouraging VA to include legal assistance for any type of legal issue an eligible individual may be facing. We considered this input, but for the purposes of the Grant Program, we would not incorporate into regulation the “other legal assistance” provision in 38 U.S.C. 5906(c)(3). Limiting legal assistance provided under the Grant Program to the areas specifically listed in 38 U.S.C. 5906(c)(1) and (2) would allow grantees to devote maximum resources to ensure this expanded population of eligible individuals can access VA programs and services for which they may be eligible. That is, VA believes it is critical to focus the legal assistance offered under the Grant Program on enabling eligibility for VA programs and services and does not intend to add assistance under 5906(c)(3) at this time.

§ 81.25 Applications for Legal Assistance Grants

Proposed 38 CFR 81.25 would set forth the process for eligible entities to apply for a legal assistance grant under this part.

Proposed paragraph (a) would provide the requirements for an application package to be considered complete, as described in further detail in the NOFO. To select eligible entities in accordance with the criteria provided in section 548(b)(6) of the Act, Grant Program application packages would require the following information:

Proposed 38 CFR 81.25(a)(1) would state that applicants must provide documentation demonstrating the entity is eligible to apply for a legal assistance grant under proposed § 81.10. This would ensure VA had necessary information to determine the applicant’s eligibility status and would be consistent with section 548(b)(2) of the Act.

Proposed 38 CFR 81.25(a)(2) would state that applicants must describe their capacity, and the capacity of any

identified subcontractors, to provide legal assistance to eligible individuals. This would be consistent with section 548(b)(6)(A) of the Act.

Proposed 38 CFR 81.25(a)(3) would state that applicants must describe the legal assistance they would provide and the identified need for that assistance among eligible individuals. This would be consistent with section 548(b)(6)(B) of the Act.

Proposed 38 CFR 81.25(a)(4) would state that applicants must also provide documentation that demonstrates their need for financial assistance from a legal assistance grant. This would be consistent with section 548(b)(6)(C) of the Act.

Proposed 38 CFR 81.25(a)(5) would state that applicants must provide a description of the geographic area or community served by the applicant. This would be consistent with section 548(b)(6)(D) of the Act.

Proposed 38 CFR 81.25(a)(6) through (14) would set forth additional information necessary to ensure that VA could adequately evaluate applicants for the purposes of this Grant Program. These application criteria would be similar to criteria used in the LSV–H grant program (see 38 CFR 79.25).

Proposed paragraph (a)(6) would state that applicants must describe the physical location where legal assistance will be provided to eligible individuals, if applicable (that is, if the applicant would be utilizing a physical space).

Proposed paragraph (a)(7) would state that applicants must describe how they will ensure that legal assistance is provided to eligible individuals.

Proposed paragraph (a)(8) would state that applicants must describe the characteristics of the eligible individuals who will receive legal assistance provided by the applicant. This criterion would provide an opportunity for applicants to explain if their proposed program would reach special populations, such as medically underserved or tribal individuals, and would be consistent with section 548(b)(6)(B) and (E) of the Act.

Proposed paragraph (a)(9) would state that applicants must provide an estimate with supporting documentation of the number of eligible individuals who will receive legal assistance provided by the applicant.

Proposed paragraph (a)(10) would state that applicants must provide documentation relating to their ability to maintain appropriate levels of qualified staff and coordinate with any identified subcontractors.

Proposed paragraph (a)(11) would state that applicants must provide documentation relating to their capacity

to effectively administer a legal assistance grant. This documentation would need to address the applicant's accounting practices and financial controls; capacity for data collection and reporting required under part 81; and experience administering other Federal, State, or county grants similar to the Grant Program under this part.

Proposed paragraph (a)(12) would state that applicants must provide documentation of their managerial capacity. This documentation would need to address the applicant's capacity to coordinate the provision of legal assistance by the applicant or by other organizations on a referral basis; continually assess the needs of participants for legal assistance; coordinate the provision of legal assistance with services provided by VA; customize legal assistance to the needs of eligible individuals; and comply with and implement the requirements of part 81 throughout the term of the legal assistance grant.

Proposed paragraph (a)(13) would state that applicants must provide documentation demonstrating that adequate financial support will be available to carry out the legal assistance for which the grant is sought consistent with the application.

Proposed paragraph (a)(14) would state that applicants must provide any additional information that VA deems appropriate, which VA would specifically list in the NOFO. This inclusive provision would allow VA to further tailor application requirements throughout the duration of the Grant Program, if necessary.

Proposed paragraph (b) would state that subject to funding availability, grantees could apply for renewal of a legal assistance grant if the grantee's program will remain substantially the same. To apply for renewal, a grantee would be required to submit a complete legal assistance grant renewal application package, as described in the NOFO. This would allow VA to renew legal assistance grants in a timely and efficient manner without lapse in the provision of legal assistance to participants from year to year. This would be consistent with the LSV–H grant program (see 38 CFR 79.25(b)).

Proposed paragraph (c) would state that VA could request, in writing, that an applicant or grantee, as applicable, submit other information or documentation relevant to the application. This would be distinct from proposed paragraph (a)(14), which allows additional information to be requested within the NOFO. If an application caused concern or failed to address all required information,

proposed paragraph (c) would allow VA to collect all necessary information to properly evaluate each applicant or grantee.

81.30 Threshold Requirements Prior to Scoring Legal Assistance Grant Applicants

Proposed 38 CFR 81.30 would set forth the threshold requirements that must be met before VA would score legal assistance grant applicants pursuant to § 81.35.

Proposed paragraphs (a) through (h) of § 81.30 would state that an application would be scored by VA if it demonstrates that the entity is eligible to receive a legal assistance grant under § 81.10; if it is filed within the time period established in the NOFO and any additional information or documentation requested by VA under § 81.25(c) is provided within the time frame established by VA; if it is completed in all parts; if the activities for which the legal assistance grant is requested would be eligible for funding under this part; if the applicant's proposed participants would be eligible to receive legal assistance under this part; if the applicant agrees to comply with the requirements of this part; if the applicant does not have an outstanding obligation to the Federal government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and if the applicant is not in default by failing to meet the requirements for any previous Federal assistance.

By establishing these threshold requirements in regulation, applicants would be able to clearly determine whether they meet the minimum standard before beginning the intensive process of preparing and submitting a legal assistance grant application. This section would serve as an administrative checklist for applicants and would be similar to the LSV–H grant program (see 38 CFR 79.30). These threshold requirements would also ensure that VA could effectively utilize its resources by scoring only complete applications that could be eligible to receive a legal assistance grant.

81.35 Scoring Criteria for Legal Assistance Grant Applicants

Proposed 38 CFR 81.35 would set forth the criteria to score legal assistance grant applicants. VA would establish scoring criteria for awarding grants to allow VA to distribute legal assistance grants consistent with section 548(b) of the Act and VA's goals and objectives for the Grant Program, which would be further detailed in the NOFO.

This section would not include specific point values for each criterion but would state that point values would be set forth in the NOFO. This would provide VA the flexibility to adjust point values throughout the administration of the Grant Program, if necessary. Values for these criteria could vary according to their likelihood to impact the successful development and operation of the applicant's program. The proposed scoring criteria would be substantially similar to those developed for the LSV-H grant program (see 38 CFR 79.35).

Proposed 38 CFR 81.35(a) would state that VA would award points based on the background, qualifications, experience, and past performance of the applicant and any subcontractors identified by the applicant in the legal assistance grant application, as demonstrated by the criteria described in proposed paragraphs (a)(1) and (2) of this section. These criteria would ensure that the applicant has the necessary and relevant background as well as the experience to provide legal assistance consistent with section 548(b)(6)(A) of the Act.

Background and organizational history. Proposed 38 CFR 81.35(a)(1) would establish how VA would assess an applicant's background and organizational history. VA would score an applicant's background and organizational history relevant to the provision of legal assistance. VA would also score whether the applicant maintains organizational structures with clear lines of reporting and defined responsibilities, as well as whether the applicant has a history of complying with agreements and not defaulting on financial obligations. All "background and organizational history" requirements listed for an applicant would also be scored for any subcontractors identified by the applicant.

Organization and staff qualifications. Proposed paragraph (a)(2) would establish how VA would assess an applicant's organization and staff qualifications. VA would award points based on the applicant's experience working with and providing legal assistance to individuals who would meet the criteria for eligibility specified in § 81.15. VA would consider an applicant's experience working with former members of the Armed Forces, who are the individuals eligible for legal assistance under proposed § 81.15, as well as an applicant's experience working with VA programs and services important to ensure the needs of eligible individuals will be met through the Grant Program. This would be

especially relevant given that the legal assistance available under the Grant Program concerns only VA programs and services and military service-related matters.

Applicants would be scored based on their qualifications to provide legal assistance, including the professional qualifications of staff and the ability to properly supervise law students, if applicable. Scoring would take into consideration whether attorneys are properly licensed, in good standing as a member of their State bar, and not subject to professional disciplinary action. Scoring would also consider whether an applicant associated with a law school has appropriate staff to meet applicable standards for supervising law students engaged in student practice. The rules for supervising law students eligible to practice law under the supervision of a practicing attorney vary among jurisdictions.

To ensure that Grant Program resources could be allocated appropriately, VA would award points based on the experience of the applicant's staff in administering programs similar to the Grant Program. All "organization and staff qualifications" requirements listed for an applicant would also be scored for any subcontractors identified by the applicant.

Proposed paragraph (b) would state that VA would award points based on the applicant's program concept and legal assistance plan, as demonstrated by the criteria listed in proposed paragraphs (b)(1) through (7). These criteria would be used to determine whether the applicant has a fully developed program concept and plan able to meet the intent of section 548(b) of the Act and this part. These criteria would be instrumental in assessing the potential effectiveness of an applicant's proposed program and allocating resources to the greatest benefit of eligible individuals.

Need for the program. Proposed 38 CFR 81.35(b)(1) would establish how VA would assess the need for the program. Applicants would receive points based on the ability to demonstrate a need amongst eligible individuals, as well as an understanding of the legal assistance needs unique to eligible individuals, in the area or community the program would serve. VA would also consider the applicant's demonstration of need for financial assistance from the legal assistance grant to serve eligible individuals. These selection criteria would be consistent with section 548(b)(6)(B) and (C) of the Act.

Outreach and screening plan. Proposed 38 CFR 81.35(b)(2) would establish how VA would assess the applicant's outreach and screening plan for eligible individuals. Applicants would receive points based on their outreach and referral plan to identify and assist eligible individuals in need of legal assistance covered by the Grant Program. Applicants would also need to demonstrate a plan to process and receive legal assistance referrals and assess and accommodate the needs of referred eligible individuals.

Program concept. Proposed paragraph (b)(3) would establish that points would be awarded based on the feasibility of the applicant's program concept, size, scope, and staffing plan. Program concept scoring would also include whether the applicant's program is sufficiently designed to meet the legal needs of eligible individuals.

Program implementation timeline. Proposed paragraph (b)(4) would establish that points would be awarded based on the timeliness of the proposed program. This would account for the applicant's ability to begin providing legal assistance to eligible individuals as quickly as possible and within a specified timeline. Applicants would also be scored on the timeliness of their hiring plan or their plan to utilize present staff for the program.

Collaboration and communication with VA. Proposed paragraph (b)(5) would establish that points would be awarded based on the applicant's plan to coordinate services with local VA facilities.

Ability to meet Grant Program expectations. Proposed paragraph (b)(6) would establish that points would be awarded based on the demonstration of commitment to ensuring the applicant's program meets VA's requirements, goals, and objectives for the Grant Program as specified in the NOFO.

Capacity to undertake program. Proposed paragraph (b)(7) would establish that points would be awarded based on whether the applicant has sufficient capacity, including staff resources, to undertake the proposed program.

Proposed paragraph (c) would state that VA would award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the criteria in proposed paragraphs (c)(1) through (4). These factors would be used to assess whether applicants will be equipped to adequately evaluate, monitor, report on, remediate, and manage the proposed program. These criteria would ensure that applicants selected for participation in the Grant Program would be able to provide the

information needed by VA to routinely assess the effectiveness of the Grant Program.

Program evaluation. Proposed paragraph (c)(1) would establish that points would be awarded based on the creation of clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible individuals and through which the applicant's program performance can be continually evaluated.

Monitoring. Proposed paragraph (c)(2) would establish that points would be awarded based on the applicant's ability to monitor the proposed program. Points awarded would consider whether the applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines. Whether the applicant has adequate financial and operational controls in place to ensure the proper use of legal assistance grant funds would also be considered. VA would score the feasibility of the applicant's plan for ensuring that their staff, and any subcontractors, are appropriately trained and comply with the requirements of part 81.

Remediation. Proposed paragraph (c)(3) would establish that points would be awarded based on the applicant's plan to establish a system to remediate noncompliant aspects of the program if and when they are identified.

Management and reporting. Proposed paragraph (c)(4) would establish that points would be awarded based on whether the applicant's program management team has the capability and a system in place to provide timely and accurate reports at the frequency set by VA.

Proposed paragraph (d) would state that VA would award points based on the applicant's financial capability and plan, as demonstrated by the criteria listed in proposed paragraphs (d)(1) and (2). These criteria ensure that funds would be provided only to applicants who have considered the costs and have an acceptable plan to secure necessary funding for the consistent provision of legal assistance to eligible individuals.

Organizational finances. Proposed paragraph (d)(1) would establish that points would be awarded based on the financial stability of the applicant and any identified subcontractors.

Financial feasibility of the program. Proposed paragraph (d)(2) would establish that points would be awarded based on the applicant's plan to obtain all funding necessary to operate the proposed program for the period of the legal assistance grant. VA would also

score the cost-effectiveness of the applicant's proposed program and the ability to effectively implement it on-budget.

Proposed paragraph (e) would state that VA would award points based on the applicant's connections within the community, a factor VA considers key to ensuring the success of the applicant's proposed program and the Grant Program overall. Applicants would demonstrate this through the criteria listed in proposed paragraphs (e)(1) through (4). VA acknowledges that applicants may not have existing relationships but could develop them over time. Additionally, VA understands that applicants without these connections could obtain them through relationships with community partners.

Area or community linkages. Proposed paragraph (e)(1) would establish that points would be awarded based on the applicant's plan to develop or rely on existing linkages with VA, Federal, State, local, and tribal governments, agencies, and private entities for the purpose of providing additional legal assistance to eligible individuals.

Past working relationships. Proposed paragraph (e)(2) would establish that points would be awarded based on the applicant's (or applicant's staff's), and any identified subcontractors' (or subcontractors' staff's) successful past working relationships and linkages with public and private organizations that provide legal and non-legal supportive services to eligible individuals.

Local presence and knowledge. Proposed paragraph (e)(3) would establish that points would be awarded based on the applicant's presence in the area or community to be served by the applicant, as well as the applicant's understanding of the dynamics of that area or community.

Integration of linkages and program concept. Proposed paragraph (e)(4) would establish that points would be awarded based on how the applicant's linkages to the area or community would enhance the effectiveness of the proposed program.

81.40 Selection of Grantees

Proposed 38 CFR 81.40 would set forth the process for awarding legal assistance grants to applicants. These criteria would be consistent with the selection criteria in section 548(b)(6) of the Act and similar to the LSV-H grant program (see 38 CFR 79.40).

Proposed paragraph (a) would state that VA would score all applicants meeting the threshold requirements

specified in § 81.30 using the scoring criteria specified in § 81.35.

Proposed paragraph (b) would state that applicants would be grouped within the applicable funding priorities if such priorities are set forth in the NOFO. Establishing funding priorities in the NOFO would provide VA the flexibility to update changing priorities quickly and efficiently throughout the conduct of the Grant Program.

Proposed paragraph (c) would state that applicants receiving the minimum amount of total points and points per category set forth in the NOFO would be ranked in order from highest to lowest scores, within their respective funding priority group, if any. The minimum amount of total points and points per category would be specified in the NOFO and could change annually. Establishing point values in the NOFO would provide VA the flexibility to address changing requirements throughout the administration of the Grant Program.

Proposed paragraph (d) would state that VA would use the applicant's ranking as the primary basis for selection for funding. VA would ensure that at least one legal assistance grant is distributed to an eligible entity in each State, if VA determines that there is such an entity in a State that has applied for a legal assistance grant and meets the requirements specified in § 81.30. This would be consistent with the requirement specified in section 548(b)(3) of the Act and would also account for the requirement to consider the geographic diversity of applicants specified in section 548(b)(6)(D) of the Act.

Proposed 38 CFR 81.40(e) would state that VA would fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any, subject to the provisions of proposed paragraph (d) of this section. If funding priorities have been established, VA would select applicants in the next highest funding priority group based on their rank within that group, to the extent funding is available and subject to the provisions of proposed paragraph (d) of this section.

Proposed paragraph (f) would state that VA could select an applicant for funding when sufficient funds become available if the applicant would have been selected but for a procedural error committed by VA. This provision would apply only if there is no material change in the information that would have resulted in the applicant's selection. A new application would not be required.

§ 81.45 Scoring Criteria for Grantees Applying for Renewal of Legal Assistance Grants

Proposed 38 CFR 81.45 would set forth the criteria to score legal assistance grantees applying for renewal of a previously awarded grant. Utilization of these scoring criteria would allow VA to review and evaluate grantees appropriately to ensure that only successful programs would receive additional grant funding. These criteria would be consistent with section 548(b) of the Act and similar to the LSV-H grant program (see 38 CFR 79.45).

Proposed paragraph (a) would state that VA would award points based on the success of the grantee's program. Success would be determined by the overall satisfaction of program participants, if such information was available, as well as the timeliness of the legal assistance provided to participants by the grantee. VA would score how well the grantee developed and sustained relationships with community partners to refer eligible individuals in need of legal assistance. Grantees would also be scored on their effectiveness in conducting outreach to eligible individuals, demonstrated through increased engagement of participants.

Proposed paragraph (b) would state that VA would award points based on the cost effectiveness of the grantee's program, demonstrated by showing that the cost per participant was reasonable and that the program was effectively implemented within budget.

Proposed paragraph (c) would state that VA would award points based on how well the program complied with Grant Program goals and requirements. VA would consider whether the grantee's program was administered in accordance with VA's goals for the Grant Program as described in the NOFO; with all applicable laws, regulations, and guidelines; and with the legal assistance grant agreement.

Proposed paragraph (d) would state that VA would award points based on the continued need of the grantee's program for financial assistance from the Grant Program to serve eligible individuals. This would be consistent with section 548(b)(6)(C) of the Act.

81.50 Selection of Grantees for Renewal of Legal Assistance Grants

Proposed 38 CFR 81.50 would set forth the process for selecting grantees applying for renewal of legal assistance grants. VA would score grantees seeking renewal using a simplified process considering the success, cost effectiveness, and compliance of their

program with Grant Program expectations. These criteria would be consistent with section 548(b) of the Act and similar to the LSV-H grant program (see 38 CFR 79.50).

Proposed 38 CFR 81.50(a) would state that VA would score all grantees meeting the threshold requirements specified in § 81.30 using the scoring criteria specified in § 81.45.

Proposed paragraph (b) would state that grantees receiving the minimum amount of total points and points per category set forth in the NOFO would be ranked in order from highest to lowest scores.

Proposed paragraph (c) would state that VA would use the grantee's ranking as the basis for selection for funding and would fund the highest-ranked grantees for which funding is available.

Proposed paragraph (d) would state that VA could award any deobligated funds to an applicant or existing grantee at its discretion. If VA chose to award deobligated funds to an applicant or existing grantee, proposed paragraph (d)(1) would state that VA could first offer the deobligated funds to the applicant or grantee with the highest score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee would have to have the capacity and agree to provide prompt services to the affected community.

The relevant NOFO refers to the most recently published NOFO which covers the geographic area including the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered additional funds, received the multi-year award. If the first such applicant or grantee offered the deobligated funds refuses, proposed paragraph (d)(2) would state that VA could then offer the deobligated funds to the next highest-ranked applicant or grantee, per the criteria in proposed paragraph (d)(1) of this section. VA would continue on in rank order until the deobligated funds were awarded. Under proposed paragraph (d)(3), VA could offer to award funds under other conditions, or could choose not to award the deobligated funds at all, when VA deems it appropriate based on other relevant factors.

Proposed paragraph (e) would state that VA could select a grantee for renewed funding when sufficient funds become available if the grantee would have been selected for renewal but for a procedural error committed by VA. This provision would apply only if there is no material change in the information that would have resulted in

the grantee's selection. A new application would not be required.

81.55 General Operation Requirements

Proposed 38 CFR 81.55 would set forth the requirements for the operation of legal assistance programs administered pursuant to this part. These requirements would further the effective administration of the grantee's program, ensure that the legal needs of eligible individuals are being properly addressed, and would be similar to the LSV-H grant program (see 38 CFR 79.55).

Eligibility documentation. Proposed paragraph (a) would explain how grantees must handle and record the eligibility of participants. Prior to providing legal assistance, grantees must verify and document an individual's eligibility using the criteria specified in § 81.15. Once a grantee begins providing legal assistance, the grantee must continue to provide legal assistance as long as the participant remains eligible and has a need for legal assistance. If a participant becomes ineligible or the grantee is unable to meet the participant's legal needs, the grantee would be required to provide information about other programs and resources or provide a referral to another organization able to meet the participant's need.

Legal assistance documentation. Proposed paragraph (b) would explain how grantees must document information about the legal assistance provided to participants. Grantees would have to document the legal assistance provided and how it was provided. Grantees would have to document the duration of the legal assistance provided and document the goals for the provision of such assistance. Grantees would also have to document any measurable outcomes of the legal assistance provided as determined by VA, such as whether the participant's legal issue was resolved. This information is necessary to VA to evaluate the success of the Grant Program and how to allocate funds.

Confidentiality. Proposed paragraph (c) would explain that grantees must maintain the confidentiality of participant records related to the provision of legal assistance. Grantees would have to establish and implement procedures ensuring the confidentiality of participant records, as well as information related to the address or location where legal assistance is provided. The procedures established by a grantee must be consistent with the attorney-client confidentiality rules of the applicable State bar.

Notifications to participants.

Proposed paragraph (d) would explain that grantees would need to provide certain information to participants. Prior to providing legal assistance, grantees would inform participants that legal assistance is being paid for, in whole or in part, by VA. Participants would also have to be notified of the specific type of legal assistance available through the grantee's program, as well as any conditions or restrictions on the receipt of legal assistance by the participant.

Assessment of funds. Proposed paragraph (e) would explain that grantees must regularly assess how grant funds can be used alongside other available funds and services to ensure the continuity of program operations and assist participants. This would encourage grantees to search for and leverage additional resources that could improve the grantee's program and the legal and non-legal needs of participants.

Administration of legal assistance grants. Proposed paragraph (f) would explain that grantees must properly administer legal assistance grants. This would include compliance with the requirements of this part, with the legal assistance grant agreement, and with other applicable Federal, State, and local laws and regulations. Grantees would also be responsible for ensuring that the activity of subcontractors is in compliance.

While proposed § 81.55 would not include a reporting requirement for the information required from grantees in this section, grantees would be required to include such information in a report to VA as required and specified in § 81.95. This report, discussed in further detail in the discussion of § 81.95 below, would contain information relating to a grantee's operational effectiveness, fiscal responsibility, compliance with the legal assistance grant agreement, and legal and regulatory compliance. Additionally, the records required under this section would need to be maintained for at least three years as specified in § 81.100, which is also discussed in further detail below. These provisions would be consistent with the reporting requirement found in section 548(b)(7) of the Act.

81.60 Fee Prohibition

Proposed 38 CFR 81.60 would explain that grantees would be prohibited from charging a fee to participants for providing legal assistance funded by a legal assistance grant under this part. This prohibition would be mandated by section 548(b) of the Act, which requires "pro bono legal assistance" for the

program and would be similar to the LSV-H grant program (see 38 CFR 79.60).

We note that attorneys providing services in connection with representation for benefits outside of this Grant Program may be eligible to recover fees and expenses under the provisions of 38 CFR 14.636 and 14.637. Section 14.636 authorizes accredited agents and attorneys to collect reasonable fees directly related to the representation of individuals before VA and the Board of Veterans' Appeals through a fixed fee, an hourly rate, a percentage of benefits recovered, or a combination of such bases. Section 14.637 authorizes accredited agents and attorneys to be reimbursed for certain nonrecurring expenses such as travel, copying records, and expert opinions incurred directly in the prosecution of a claim for benefits. However, because the attorneys providing legal assistance under the Grant Program must provide such assistance pro bono in accordance with the authorizing statute, the fee prohibition in proposed § 81.60 would apply irrespective of the provisions in § 14.636. The fee prohibition in proposed § 81.60 would also apply despite the ability for accredited attorneys and agents outside of this program to collect certain reimbursement expenses under § 14.637 because these fees are only authorized pursuant to a fee agreement, and a fee agreement would not be executed in the provision of pro bono legal assistance under the Grant Program.

§ 81.65 Notice of Funding Opportunity

Proposed 38 CFR 81.65 would provide information on the Notice of Funding Opportunity (NOFO). The NOFO would be a formal announcement published on www.grants.gov that communicates specific details about the availability and award of legal assistance grants to the public. This section would be similar to the LSV-H grant program (see 38 CFR 79.65).

This section would explain what would be identified in the NOFO, including the location to obtain legal assistance grant applications, as well as the date, time, and place to submit completed applications. The NOFO would identify the estimated amount and type of funding available, including the maximum amount and the length of each award. The NOFO would identify specific point values for each criterion specified in proposed § 81.35 and 81.45 along with the minimum number of total points and points per category that an applicant or grantee would need to receive for a legal assistance grant to be funded. The NOFO would identify any

maximum uses of grant funds for specific types of legal assistance and the timeframes and manner of payment for legal assistance grants. The NOFO would also identify any additional information necessary for the application process as determined by VA, including the requirements, goals, and objectives of the Grant Program.

§ 81.70 Legal Assistance Grant Agreements

Proposed 38 CFR 81.70 would provide information on legal assistance grant agreements, which would be the written agreements executed between VA and grantees. These agreements would be legally enforceable and provide assurance to VA that grantees would use awarded funds properly. This section would be similar to the LSV-H grant program (see 38 CFR 79.70).

Proposed paragraph (a) would state that VA would draft and execute a legal assistance grant agreement with an applicant after the applicant is selected for a legal assistance grant in accordance with § 81.40. Upon execution of the agreement, VA would obligate funds to cover the amount of the approved legal assistance grant, subject to the availability of funding. The grantee would be required to agree, and ensure that each subcontractor agrees, to operate the program in accordance with their application and the provisions of part 81. Grantees would also need to agree to comply with other terms and conditions established by VA for purposes of carrying out the Grant Program in an effective and efficient manner. Such terms and conditions would include recordkeeping and reports for program monitoring and evaluation purposes. Grantees would be required to agree to provide additional information deemed appropriate by VA.

Proposed paragraph (b) would state that VA would draft and execute a legal assistance grant agreement with a grantee after such grantee is selected for grant renewal in accordance with § 81.50. Upon execution of the agreement, VA would obligate funds to cover the amount of the approved legal assistance grant, subject to the availability of funding. The renewed legal assistance grant agreement would contain the same provisions described in proposed § 81.70(a).

Proposed paragraph (c) would explain that Grant Program funds could not be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible individuals.

§ 81.75 Program or Budget Changes and Corrective Action Plans

Proposed 38 CFR 81.75 would set forth the process for modifications to a grantee's program or budget and would provide for the use of a corrective action plan (CAP). These provisions would provide necessary oversight and control of grantees' programs, allowing VA to address deficiencies and ensure grant funds are used properly. This section would be similar to the LSV-H grant program (see 38 CFR 79.75).

Proposed paragraph (a) would state that a grantee must submit a written request to VA to modify a legal assistance grant for any proposed significant change that would alter its legal assistance program. If approved, VA would issue a written amendment to the legal assistance grant agreement. A grantee would need to receive VA approval prior to implementing a significant change.

Proposed paragraph (a)(1) would state that significant changes would include—but would not be limited to—a change in the grantee or any subcontractors identified in the legal assistance grant agreement; a change in the area or community served by the grantee; additions or deletions of legal assistance provided by the grantee; a change in category of eligible individuals to be served; and a change in budget line items that are more than ten percent of the total legal assistance grant award.

Proposed paragraph (a)(2) would state that VA's approval of changes would be contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year the application was granted. Modification requests would need to contain a description of, and justification for, the revised proposed use of legal assistance grant funds.

Proposed paragraph (b) would state that VA could require a grantee to initiate, develop, and submit a CAP if, on a quarterly basis, actual legal assistance grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal assistance grant activities vary from the grantee's program description provided in the legal assistance grant agreement.

A CAP would need to identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, and provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. After receipt, VA would inform the grantee, by letter, whether the CAP is approved or disapproved. If the CAP is disapproved,

VA would make suggestions to improve the proposed CAP and request resubmission. VA could also take other remedial actions in accordance with this part.

Proposed paragraph (c) would state that grantees must inform VA in writing of any grantee address changes and key personnel changes, such as a new executive director, legal assistance grant program director, or chief financial officer. Notice of these changes would need to be given to VA within 30 days of the change.

§ 81.80 Faith-Based Organizations

Proposed 38 CFR 81.80 would state that faith-based organizations would be eligible, on the same basis as other organizations, to participate in the Grant Program under this part. This section would reference the requirements of 38 CFR part 50. Part 50 explains that faith-based organizations are eligible to participate in VA's grant-making programs on the same basis as any other organizations, that VA will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law.

VA would apply the provisions of part 50 to the Grant Program established under part 81. However, we would not restate the provisions of part 50 in part 81. In the event that VA makes future amendments to part 50, such amendments would apply to the Grant Program without further need to amend part 81.

§ 81.85 Visits To Monitor Operations and Compliance

Proposed 38 CFR 81.85 would set forth VA's authority to conduct visits for the purpose of inspecting a grantee's legal assistance grant program for compliance with the requirements of this part. The ability to conduct inspections and monitor operations would provide critical oversight for legal assistance grants and would be similar to the LSV-H grant program (see 38 CFR 79.85).

Proposed paragraph (a) would authorize VA to make visits at reasonable times to all grantee locations where legal assistance grant funds are being utilized. The purpose of these visits would be to review grantee accomplishments and management control systems and to provide technical assistance as required. VA would conduct these inspections of program locations and records of a grantee at

such times as necessary to determine compliance with the provisions of this part.

If the visit would be to the premises of the grantee or a subcontractor, the grantee, and any subcontractor, would need to provide all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. If legal assistance would be provided at a participant's home or a location away from the grantee's place of business, VA could accompany the grantee but would only visit a participant's home with consent of the participant. All visits and evaluations would be performed in such a manner as to not unduly delay services.

Proposed paragraph (b) would clarify that the authority to inspect would not provide VA with authority over the management or control of any applicant or grantee under this part.

§ 81.90 Financial Management and Administrative Costs

Proposed 38 CFR 81.90 would set forth the financial management expectations for grant funds. While this section would specifically mention certain general principles, it would also orient readers to the full financial management requirements of 2 CFR part 200. This reference would ensure that applicants and grantees would be aware that legal assistance grants would be subject to the additional requirements of part 200. VA would refer to part 200 rather than including all applicable provisions to prevent the necessity of changes to this part if changes to part 200 are later made. This section would be similar to the LSV-H grant program (see 38 CFR 79.90).

Proposed paragraph (a) would state that grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200, which applies to all Federal funds awarded to non-Federal entities.

Proposed 38 CFR 81.90(b) would state that grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements established in 2 CFR part 200. Financial management requirements are currently located in § 200.302.

Proposed 38 CFR 81.90(c) would state that payment up to the amount specified in the legal assistance grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the grant. The determination of allowable costs would need to be made in accordance with the applicable

Federal cost principles found in 2 CFR part 200. Cost principles are currently located in §§ 200.400 through 200.476.

Proposed 38 CFR 81.90(d) would adopt the requirement in 2 CFR 200.414, or successor regulations, that all grantees may request indirect costs by applying the negotiated indirect cost rate established with their Federal cognizant agency; by applying a de minimis rate as described in 2 CFR 200.414(f), or successor regulations, if they do not have a negotiated indirect cost rate; or requesting to negotiate an indirect cost rate with VA or their Federal cognizant agency.

§ 81.95 Grantee Reporting Requirements

Proposed 38 CFR 81.95 would set forth the reporting requirements for legal assistance grantees. These requirements would be consistent with section 548(b)(7) of the Act, which states that legal assistance grantees must report on their activities and the utilization of grant funds in accordance with criteria established by VA. These requirements would allow for oversight and prudent management of taxpayer dollars and would be similar to the LSV-H grant program (see 38 CFR 79.95).

Proposed 38 CFR 81.95(a) would state that VA could require grantees to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

Proposed paragraph (b) would state that grantees must submit to VA at least once per year, or at another frequency set by VA, a report containing information on the grantee's performance under the Grant Program. This report would contain data concerning the operational effectiveness and fiscal responsibility of the grantee, as well as the grantee's compliance with the legal assistance grant agreement and all applicable laws and regulations. The report would need to include a breakdown of how the grantee utilized legal assistance grant funds, the number of participants assisted, and describe the legal assistance provided to participants. Because the Grant Program would serve an expanded population of eligible individuals, this report would also need to include critical data on each participant, including gender, age, race, service era, branch of service, component, and status of military discharge or characterization of service. The information specified in proposed paragraph (b) would be critical to analyze and monitor the grantee's

performance, and VA would be able to request any additional information if necessary.

Proposed paragraph (c) would state that VA retains the discretion to request additional reports or information needed to fully assess the provision of legal assistance under this part. This inclusive provision would allow VA to collect all necessary information to properly assess and develop the Grant Program, and VA anticipates that requests under proposed paragraph (c) would vary on a based on the grantee's circumstances. This provision would also allow VA to clarify any information received in other reports from a grantee, if necessary.

Proposed paragraph (d) would state that grantees must connect financial data to performance data and develop unit cost information whenever practical. This data would be instrumental in evaluating the financial efficiency of the grantee's program and the individual legal assistance provided.

Proposed paragraph (e) would state that all pages of reports must cite the grantee's legal assistance grant number and be submitted in a timely manner as specified in the grant agreement.

Proposed paragraph (f) would state that grantees must provide consent to post report information on the internet and in other ways deemed appropriate by VA. Additionally, grantees would be required to redact confidential information based on attorney-client privilege, unless the privilege has been waived by the client. These provisions would allow VA to keep the public informed of the availability and progression of the Grant Program.

§ 81.100 Recordkeeping

Proposed 38 CFR 81.100 would set forth the recordkeeping requirements for legal assistance grantees. To document compliance with the requirements of the Grant Program, grantees would be required to maintain all relevant records for three years (unless a longer period is otherwise required by VA) and produce them upon request by VA. Maintaining records for this period would provide VA the information it needs to oversee and manage the Grant Program. This provision would be consistent with the recordkeeping requirements for Federal awards found in 2 CFR 200.334, as well as the reporting requirement found in section 548(b)(7) of the Act. This provision would also be similar to the LSV-H grant program (see 38 CFR 79.100).

§ 81.105 Technical Assistance

Proposed 38 CFR 81.105 would explain that VA would provide

technical assistance to applicants and grantees, as necessary, to help them meet the requirements of this part. This assistance would be provided directly by VA or through contracts with appropriate public or nonprofit private entities. Assistance could include resources for planning, development, and provision of legal assistance to eligible individuals. VA could also offer training sessions to help applicants and grantees understand and implement the Grant Program. This section would also be similar to the LSV-H grant program (see 38 CFR 79.105).

§ 81.110 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA

Proposed 38 CFR 81.110 would explain that VA would enforce part 81 through appropriate actions such as withholding, suspension, deobligation, termination, recovery of funds by VA, and any other allowable actions in accordance with 2 CFR part 200. This section would be similar to the LSV-H grant program (see 38 CFR 79.110).

Similar to proposed 38 CFR 81.90, proposed § 81.110 would reference 2 CFR part 200 to ensure that applicants and grantees would be aware that legal assistance grants would be subject to the additional requirements of part 200. Remedies for noncompliance and collection of funds are currently located in §§ 200.208, 200.305, 200.339 through 200.343, and 200.346. Rather than including all applicable provisions, VA would refer to part 200 to prevent the necessity of changes to part 81 if changes to part 200 are later made.

Certain enforcement actions under proposed 38 CFR 81.110, such as suspension and termination, could result in a disruption of legal assistance to participants. We do not propose to regulate the responsibilities of grantees to continue providing services or to coordinate the transfer of participants to other sources of legal support. Instead, we would include such requirements and responsibilities in the grant agreement that VA and the grantee would enter into, which would ensure any disruption and impact on participants is minimized as much as possible.

§ 81.115 Legal Assistance Grant Closeout Procedures

Proposed 38 CFR 81.115 would explain that legal assistance grants would be closed out in accordance with the provisions of 2 CFR part 200. Similar to proposed 38 CFR 81.90 and 81.110, proposed § 81.115 would reference 2 CFR part 200 to ensure that applicants and grantees are aware that

legal assistance grants would be subject to these additional requirements. VA would refer to part 200 rather than include the relevant requirements in this section in case changes are later made to part 200. Procedures for closing out Federal awards are currently located in §§ 200.344 and 200.345. 38 CFR 81.115 would be similar to the LSV–H grant program (see 38 CFR 79.115).

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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). To the extent there is any such impact, it would result in financial assistance to eligible entities who apply for a legal assistance grant. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of

anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections 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. Section 81.25 contains application provisions for legal assistance grants, including renewals. Section 81.75 contains provisions for program or budget changes and submission of corrective action plans. Section 81.95 contains grantee reporting requirements. These sections are collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at www.reginfo.gov/public/do/PRAMain. OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking 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 provisions of this rulemaking.

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

- Evaluating whether the 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 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 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. The collections of information contained in 38 CFR 81.25, 81.75, and 81.95 are described immediately following this paragraph, under their respective titles.

Title: Application for the Legal Services for Veterans—Legal Assistance for Access to VA Programs (LSV–A) Grant Program.

OMB Control No: 2900–xxxx (New/TBD).

CFR Provision: 38 CFR 81.25.

- *Summary of collection of information:* The new collection of information in 38 CFR 81.25 contains application provisions for the LSV–A Grant Program.

- *Description of need for information and proposed use of information:* This information is needed to award legal assistance grants to eligible entities.

- *Description of likely respondents:* Nonprofit private and public legal service entities applying for grants.

- *Estimated number of respondents per year:* 100.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 1,440 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 2,400 hours.

- *Estimated cost to respondents per year:* Using VA's average annual number of respondents, VA estimates the application information collection burden cost to respondents as \$137,112.00 per year * (2,400 burden hours × \$57.13 per hour).

Title: Renewal Application for the Legal Services for Veterans—Assistance with Access to VA Programs (LSV–A) Grant Program.

OMB Control No: 2900–xxxx (New/TBD).

CFR Provision: 38 CFR 81.25.

- *Summary of collection of information:* The new collection of information in 38 CFR 81.25 requires grantees who want to renew their LSV–A grant to file a renewal application.

• *Description of need for information and proposed use of information:* VA needs this information to renew legal assistance grants previously awarded.

• *Description of likely respondents:* Grant program grantees seeking a renewal of funds.

• *Estimated number of respondents:* 85.

• *Estimated frequency of responses:* Once annually.

• *Estimated average burden per response:* 1,200 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 1,700 hours.

• *Estimated cost to respondents per year:* Using VA's average annual number of respondents, VA estimates the renewal application information collection burden cost to respondents as \$97,121.00 per year * (1,700 burden hours × \$57.13 per hour).

Title: Budget Changes and Corrective Action Plan (CAP) for the Legal Services for Veterans—Legal Assistance for Access to VA Programs (LSV–A) Grant Program.

OMB Control No: 2900–xxxx (New/TBD).

CFR Provision: 38 CFR 81.75.

• *Summary of collection of information:* The new collection of information in 38 CFR 81.75 would require grantees to inform VA of changes to their approved program through an amendment process.

• *Description of need for information and proposed use of information:* This information is needed for a grantee to inform VA of significant changes that will alter a grant program approved by VA. In addition, VA may require grantees to initiate, develop, and submit to VA for approval corrective action plans (CAPs) if actual legal assistance grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal assistance grant activities vary from the grantee's program description provided in the LSV–A grant agreement.

• *Description of likely respondents:* Grantees who desire to modify their approved grant program.

• *Estimated number of respondents:* 10.

• *Estimated frequency of responses:* Once annually.

• *Estimated average burden per response:* 120 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 20 hours.

• *Estimated cost to respondents per year:* Using VA's average annual number of respondents, VA estimates the total CAP information collection burden cost to respondents as \$1,142.60 per year * (20 burden hours × \$57.13 per hour).

Title: Quarterly Performance Reporting Requirements for the Legal Services for Veterans—Legal Assistance for Access to VA Programs (LSV–A) Grant Program.

OMB Control No: 2900–xxxx (New/TBD).

CFR Provision: 38 CFR 81.95.

• *Summary of collection of information:* The new collection of information in 38 CFR 81.95 would require the grantee to submit reports pertaining to operational effectiveness and other applicable LSV–A grant agreement requirements.

• *Description of need for information and proposed use of information:* VA will use this information to determine grantee program effectiveness and compliance with the requirements for the LSV–A Grant Program.

• *Description of likely respondents:* Program grantees for the current grant award year.

• *Estimated number of respondents:* 85.

• *Estimated frequency of responses:* Quarterly = 4 times per year.

• *Estimated average burden per response:* 60 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 340 hours.

• *Estimated cost to respondents per year:* Using VA's average annual number of respondents, VA estimates the total performance report information collection burden cost to respondents as \$19,424.20 per year * (340 burden hours for respondents × \$57.13 per hour).

Title: Bi-Annual Finance Reporting Requirements for the Legal Services for Veterans—Legal Assistance for Access to VA Programs (LSV–A) Grant Program.

OMB Control No: 2900–xxxx (New/TBD).

CFR Provision: 38 CFR 81.95.

• *Summary of collection of information:* The new collection of information in 38 CFR 81.95 would require the grantee to submit reports pertaining to cost effectiveness, fiscal responsibility, and other applicable LSV–A grant agreement requirements.

• *Description of need for information and proposed use of information:* VA will use this information to determine grantee program effectiveness and compliance with the requirements for the LSV–A Grant Program.

• *Description of likely respondents:* Program grantees for the current grant award year.

• *Estimated number of respondents:* 85.

• *Estimated frequency of responses:* Bi-annually = 2 times per year.

• *Estimated average burden per response:* 60 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 170 hours.

• *Estimated cost to respondents per year:* Using VA's average annual number of respondents, VA estimates the total finance report information collection burden cost to respondents as \$9,712.10 per year * (170 burden hours for respondents × \$57.13 per hour).

* The total burden cost to respondents for the information collections associated with the LSV–A Grant Program regulation is estimated to be \$264,511.90.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.056, Legal Services for Veterans Grants.

List of Subjects in 38 CFR Part 81

Administrative practice and procedure; Armed Forces; Armed Forces Reserves; Disability benefits; Grant programs—health; Grant programs—law; Grant programs—social programs; Grant programs—veterans; Grants administration; Health care; Lawyers; Legal services; Military law; Military personnel; Nonprofit organizations; Public assistance programs; Reporting and recordkeeping requirements; Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on September 27, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I to add part 81 to read as follows:

PART 81—LEGAL SERVICES FOR VETERANS—LEGAL ASSISTANCE FOR ACCESS TO VA PROGRAMS GRANT PROGRAM

Sec.

81.0 Purpose and scope.

81.5 Definitions.

81.10 Eligible entities.

81.15 Eligible individuals.

81.20 Legal assistance.

81.25 Applications for legal assistance grants.

81.30 Threshold requirements prior to scoring legal assistance grant applicants.

81.35 Scoring criteria for legal assistance grant applicants.

- 81.40 Selection of grantees.
- 81.45 Scoring criteria for grantees applying for renewal of legal assistance grants.
- 81.50 Selection of grantees for renewal of legal assistance grants.
- 81.55 General operation requirements.
- 81.60 Fee prohibition.
- 81.65 Notice of Funding Opportunity (NOFO).
- 81.70 Legal assistance grant agreements.
- 81.75 Program or budget changes and corrective action plans.
- 81.80 Faith-based organizations.
- 81.85 Visits to monitor operations and compliance.
- 81.90 Financial management and administrative costs.
- 81.95 Grantee reporting requirements.
- 81.100 Recordkeeping.
- 81.105 Technical assistance.
- 81.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.
- 81.115 Legal assistance grant closeout procedures.

Authority: 38 U.S.C. 501, Section 548(b) of Pub. L. 116–283, and as noted in specific sections.

§ 81.0 Purpose and scope.

(a) *Purpose.* This part implements the Legal Services for Veterans—Legal Assistance for Access to VA Programs Grant Program to award grants to eligible entities to establish new legal assistance clinics or enhance existing legal assistance clinics or other pro bono efforts providing legal assistance to eligible individuals.

(b) *Scope.* This part applies only to the provision of legal assistance in locations other than VA facilities.

§ 81.5 Definitions.

For purposes of this part and any Notice of Funding Opportunity (NOFO) issued under this part:

Applicant means an entity meeting the eligibility criteria of § 81.10 that submits an application for a legal assistance grant announced in a NOFO under this part.

Armed Forces has the meaning given to that term in 38 U.S.C. 101(10).

Grantee means an eligible entity that is awarded a legal assistance grant under this part.

Legal assistance clinic means an entity or program whose primary purpose is to provide legal assistance to individuals on a pro bono basis.

Legal assistance grant means a grant awarded under this part.

Nonprofit entity means an entity that meets the requirements of 26 U.S.C. 501(c)(3), (6), or (19).

Notice of Funding Opportunity (NOFO) has the meaning given to this term in 2 CFR 200.1, or successor regulations.

Participant means an individual meeting the eligibility criteria of § 81.15

who receives legal assistance from a grantee under this part.

Reserve component has the meaning given to that term in 10 U.S.C. 10101.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subcontractor means any third-party contractor, of any tier, performing work directly for an eligible entity.

Suspension means an action by VA that temporarily withdraws VA funding under a legal assistance grant, pending corrective action by the grantee or pending a decision by VA to terminate the legal assistance grant. Suspension of a legal assistance grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, “Debarment and Suspension.”

Withholding means that payment under a legal assistance grant will not be made until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal assistance grant.

§ 81.10 Eligible entities.

To be an eligible entity under this part, the entity must be a nonprofit or public entity that meets the following requirements.

(a) A nonprofit entity must be:

(1) A veterans service organization that is specifically focused on assisting veterans and recognized by the Secretary in accordance with 38 U.S.C. 5902;

(2) An organization that is specifically focused on assisting veterans but is not a veterans service organization under paragraph (a)(1);

(3) An entity associated with a law school accredited by the American Bar Association and specifically focused on assisting veterans;

(4) A legal services organization; or

(5) A bar association.

(b) A public entity must be:

(1) A local government, which is a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government;

(2) A State government; or

(3) A federally recognized Indian tribal government, which is the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

§ 81.15 Eligible individuals.

To be eligible for legal assistance under § 81.20, an individual must:

(a) Have served in the Armed Forces, including individuals who served in a reserve component of the Armed Forces; and

(b) Have been discharged or released therefrom, regardless of the conditions of such discharge or release. For the purpose of determining eligibility, “discharged or released” refers to the official termination of service in the component of the Armed Forces in which the individual served.

§ 81.20 Legal assistance.

Legal assistance provided under this Grant Program is limited to the following:

(a) Legal assistance with any VA program administered by the Secretary.

Note to paragraph (a): A grantee must be accredited consistent with §§ 14.626 through 14.637 before acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by VA.

(b) Legal assistance associated with:

(1) Improving the status of a military discharge or characterization of service in the Armed Forces, including through a discharge review board; or

(2) Seeking a review of a military record before a board of correction for military or naval records.

§ 81.25 Applications for legal assistance grants.

(a) To apply for a legal assistance grant, an applicant must submit to VA a complete legal assistance grant application package, as described in the NOFO. A complete legal assistance grant application package includes the following:

(1) Documentation that demonstrates the applicant is an eligible entity under § 81.10;

(2) A description of the capacity of the applicant, and any identified subcontractors, to provide legal assistance to eligible individuals;

(3) A description of the legal assistance to be provided by the applicant and the identified need for

such legal assistance among eligible individuals;

(4) Documentation that demonstrates the applicant's need for financial assistance from a legal assistance grant;

(5) A description of the geographic area or community served by the applicant;

(6) A description of the physical location where the applicant will provide legal assistance to eligible individuals, if applicable;

(7) A description of how the applicant will ensure that legal assistance is provided to eligible individuals;

(8) A description of the characteristics of eligible individuals who will receive legal assistance provided by the applicant;

(9) An estimate with supporting documentation of the number of eligible individuals who will receive legal assistance provided by the applicant;

(10) Documentation relating to the applicant's ability to maintain appropriate levels of qualified staff and coordinate with any identified subcontractors;

(11) Documentation relating to the applicant's capacity to effectively administer a grant under this section that describes the applicant's:

(i) Accounting practices and financial controls;

(ii) Capacity for data collection and reporting required under this part; and

(iii) Experience administering other Federal, State, or county grants similar to the Grant Program under this part.

(12) Documentation of the managerial capacity of the applicant to:

(i) Coordinate the provision of legal assistance by the applicant or by other organizations on a referral basis;

(ii) Assess continuously the needs of participants for legal assistance;

(iii) Coordinate the provision of legal assistance with services provided by VA;

(iv) Customize legal assistance to the needs of eligible individuals; and

(v) Comply with and implement the requirements of this part throughout the term of the legal assistance grant;

(13) Documentation that demonstrates that adequate financial support will be available to carry out the legal assistance for which the grant is sought consistent with the application; and

(14) Any additional information as deemed appropriate by VA and listed in the NOFO.

(b) Subject to funding availability, grantees may submit an application for renewal of a legal assistance grant if the grantee's program will remain substantially the same. To apply for renewal of a legal assistance grant, a grantee must submit to VA a complete

legal assistance grant renewal application package, as described in the NOFO.

(c) VA may request in writing that an applicant or grantee, as applicable, submit other information or documentation relevant to the legal assistance grant application.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

§ 81.30 Threshold requirements prior to scoring legal assistance grant applicants.

VA will only score applicants who meet the following threshold requirements:

(a) The application demonstrates that the entity is eligible to receive a legal assistance grant under § 81.10;

(b) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 81.25(c) is provided within the time frame established by VA;

(c) The application is completed in all parts;

(d) The activities for which the legal assistance grant is requested are eligible for funding under this part;

(e) The applicant's prospective participants are eligible to receive legal assistance under this part;

(f) The applicant agrees to comply with the requirements of this part;

(g) The applicant does not have an outstanding obligation to the Federal government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(h) The applicant is not in default by failing to meet the requirements for any previous Federal assistance.

§ 81.35 Scoring criteria for legal assistance grant applicants.

VA will score applicants who apply for a legal assistance grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score these applicants:

(a) VA will award points based on the background, qualifications, experience, and past performance of the applicant, and any subcontractors identified by the applicant in the legal assistance grant application, as demonstrated by the following:

(1) *Background and organizational history.*

(i) Applicant's, and any identified subcontractors', background and organizational history relevant to providing legal assistance.

(ii) Applicant, and any identified subcontractors, maintain organizational

structures with clear lines of reporting and defined responsibilities.

(iii) Applicant, and any identified subcontractors, have a history of complying with agreements and not defaulting on financial obligations.

(2) *Organization and staff qualifications.*

(i) Applicant, and any identified subcontractors, have experience working with individuals who meet the eligible individual criteria in § 81.15.

(ii) Applicant, and any identified subcontractors, have experience providing legal assistance to individuals who meet the eligible individual criteria in § 81.15.

(iii) Applicant's staff, and any identified subcontractors' staff, are qualified to provide legal assistance, and as applicable, are in good standing as a member of the applicable State bar. In the case of an entity associated with a law school, applicant maintains appropriate staff to meet applicable standards for supervising law students authorized to practice within the jurisdiction.

(iv) Applicant's staff, and any identified subcontractors' staff, have experience administering programs similar to the Grant Program under this part.

(b) VA will award points based on the applicant's program concept and legal assistance plan, as demonstrated by the following:

(1) *Need for the program.*

(i) Applicant has shown a need amongst eligible individuals in the area or community where the program will be based.

(ii) Applicant demonstrates an understanding of the legal assistance needs unique to eligible individuals in the area or community where the program will be based.

(iii) Applicant has shown a need for financial assistance from a legal assistance grant in order to serve eligible individuals.

(2) *Outreach and screening plan.*

(i) Applicant has a feasible outreach and referral plan to identify and assist eligible individuals in need of legal assistance.

(ii) Applicant has a plan to process and receive legal assistance referrals for eligible individuals.

(iii) Applicant has a plan to assess and accommodate the needs of referred eligible individuals.

(3) *Program concept.*

(i) Applicant's program concept, size, scope, and staffing plan are feasible.

(ii) Applicant's program is designed to meet the legal needs of eligible individuals.

(4) *Program implementation timeline.*

(i) Applicant's program will be implemented in a timely manner and legal assistance will be delivered to eligible individuals as quickly as possible and within a specified timeline.

(ii) Applicant has a feasible hiring plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

(5) *Collaboration and communication with VA.* Applicant has a feasible plan to coordinate services with local VA facilities.

(6) *Ability to meet Grant Program expectations.* Applicant demonstrates commitment to ensuring that its program meets VA's requirements, goals, and objectives for the Grant Program as identified in the NOFO.

(7) *Capacity to undertake program.* Applicant has sufficient capacity, including staff resources, to undertake the program.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* Applicant has created clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible individuals and through which the applicant's program performance can be continually evaluated.

(2) *Monitoring.*

(i) Applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has adequate financial and operational controls in place to ensure the proper use of legal assistance grant funds.

(iii) Applicant has a feasible plan for ensuring that the applicant's staff and any subcontractors are appropriately trained and comply with the requirements of this part.

(3) *Remediation.* Applicant has an appropriate plan to establish a system for remediating noncompliant aspects of the program if and when they are identified.

(4) *Management and reporting.* Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances.* Applicant, and any identified subcontractors, are financially stable.

(2) *Financial feasibility of the program.*

(i) Applicant has a realistic plan for obtaining all funding required to operate the program for the period of the legal assistance grant.

(ii) Applicant's program is cost-effective and can be effectively implemented on-budget.

(e) VA will award points based on the applicant's area or community linkages and relations, as demonstrated by the following:

(1) *Area or community linkages.* Applicant has a plan for developing or relying on existing linkages with Federal (including VA), State, local, and tribal governments, agencies, and private entities for the purpose of providing additional legal assistance to eligible individuals.

(2) *Past working relationships.* Applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), have fostered successful working relationships and linkages with public and private organizations providing legal and non-legal supportive services to eligible individuals.

(3) *Local presence and knowledge.*

(i) Applicant has a presence in the area or community to be served by the applicant.

(ii) Applicant understands the dynamics of the area or community to be served by the applicant.

(4) *Integration of linkages and program concept.* Applicant's linkages to the area or community to be served by the applicant enhance the effectiveness of the applicant's program.

§ 81.40 Selection of grantees.

VA will use the following process to select applicants to receive legal assistance grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 81.30 using the scoring criteria set forth in § 81.35.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will ensure that legal assistance grants are distributed to at least one eligible entity in each State, if VA determines that there is such an entity in a State that has

applied for a legal assistance grant and meets the requirements set forth in § 81.30.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If funding priorities have been established, to the extent funding is available and subject to paragraph (d) of this section, VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding when sufficient funds become available if there is no material change in the information that would have resulted in the applicant's selection. A new application will not be required for this purpose.

§ 81.45 Scoring criteria for grantees applying for renewal of legal assistance grants.

VA will score grantees who are applying for a renewal of a legal assistance grant. VA will set forth the specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a legal assistance grant:

(a) VA will award points based on the success of the grantee's program, as demonstrated by the following:

(1) Participants were satisfied with the legal assistance provided by the grantee.

(2) The grantee delivered legal assistance to participants in a timely manner.

(3) The grantee implemented the program by developing and sustaining relationships with community partners to refer eligible individuals in need of legal assistance.

(4) The grantee was effective in conducting outreach to eligible individuals and increased engagement of participants seeking legal assistance provided by the grantee.

(b) VA will award points based on the cost effectiveness of the grantee's program, as demonstrated by the following:

(1) The cost per participant was reasonable.

(2) The grantee's program was effectively implemented within budget.

(c) VA will award points based on the extent to which the grantee's program complied with the Grant Program's goals and requirements, as demonstrated by the following:

(1) The grantee's program was administered in accordance with VA's

goals for the Grant Program as described in the NOFO.

(2) The grantee's program was administered in accordance with all applicable laws, regulations, and guidelines.

(3) The grantee's program was administered in accordance with the grantee's legal assistance grant agreement.

(d) The continued need of the grantee's program for financial assistance from the legal assistance grant in order to serve eligible individuals.

§ 81.50 Selection of grantees for renewal of legal assistance grants.

VA will use the following process to select grantees applying for renewal of legal assistance grants:

(a) So long as the grantee continues to meet the threshold requirements set forth in § 81.30, VA will score the grantee using the scoring criteria set forth in § 81.45.

(b) VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores.

(c) VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest-ranked grantees for which funding is available.

(d) At its discretion, VA may award any deobligated funds to an applicant or existing grantee. If VA chooses to award deobligated funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA may first offer to award the deobligated funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. For the purposes of this section, the relevant NOFO is the most recently published NOFO which covers the geographic area that includes the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award.

(2) If the first such applicant or grantee offered the deobligated funds refuses the funds, VA may offer to award the funds to the next highest-ranked applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the deobligated funds are awarded.

(3) VA, at its discretion, may choose to award the deobligated funds under other conditions, or may choose to not award the deobligated funds at all, when VA determines appropriate based on consideration of other relevant factors.

(e) If a grantee would have been selected but for a procedural error committed by VA, VA may select that grantee for funding when sufficient funds become available if there is no material change in the information that would have resulted in the grantee's selection. A new application will not be required for this purpose.

§ 81.55 General operation requirements.

(a) Eligibility documentation.

(1) Prior to providing legal assistance, grantees must verify and document an individual's eligibility for legal assistance using the criteria set forth in § 81.15.

(2) Once the grantee initiates legal assistance, the grantee will continue to provide legal assistance to the participant so long as the individual continues to meet the eligibility criteria set forth in § 81.15.

(3) If a grantee finds that a participant is ineligible to receive legal assistance under this part, or the grantee is unable to meet the legal needs of that participant, the grantee must provide information on other available programs and resources or provide a referral to another legal services organization that is able to meet the participant's need.

(b) Legal assistance documentation.

For each participant who receives legal assistance from the grantee, the grantee must document the legal assistance provided, how such assistance was provided, the duration of the assistance provided, goals for the provision of such assistance, and measurable outcomes of the legal assistance provided as determined by VA, such as whether the participant's legal issue was resolved.

(c) Confidentiality. Grantees must maintain the confidentiality of records kept in connection to legal assistance provided to participants. Grantees that provide legal assistance must establish and implement procedures to ensure the confidentiality of:

(1) Records pertaining to any participant, and

(2) The address or location where legal assistance is provided.

Such confidentiality must be consistent with the grantee's State bar rules on confidentiality in an attorney-client relationship.

(d) Notifications to participants. Prior to initially providing legal assistance to a participant, the grantee must notify each participant of the following:

(1) The legal assistance is being paid for, in whole or in part, by VA;

(2) The specific legal assistance available to the participant through the grantee's program; and

(3) Any conditions or restrictions on the receipt of legal assistance by the participant.

(e) Assessment of funds. Grantees must regularly assess how legal assistance grant funds can be used in conjunction with other available funds and services to ensure continuity of program operations and to assist participants.

(f) Administration of legal assistance grants. Grantees must ensure that legal assistance grants are administered in accordance with the requirements of this part, the legal assistance grant agreement, and other applicable Federal, State, and local laws and regulations. Grantees are responsible for ensuring that any subcontractors carry out activities in compliance with this part.

§ 81.60 Fee prohibition.

Grantees must not charge a fee to participants for providing legal assistance that is funded with amounts from a legal assistance grant under this part. Grantees may not recover fees otherwise authorized under 38 CFR 14.636.

§ 81.65 Notice of Funding Opportunity (NOFO).

When funds are available for legal assistance grants, VA will publish a NOFO on *Grants.gov*. The NOFO will identify:

(a) The location for obtaining legal assistance grant applications;

(b) The date, time, and place for submitting completed legal assistance grant applications;

(c) The estimated amount and type of legal assistance grant funding available, including the maximum grant funding available per award;

(d) The length of term for the legal assistance grant award;

(e) Specific point values to be awarded for each criterion listed in §§ 81.35 and 81.45;

(f) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a legal assistance grant to be funded;

(g) Any maximum uses of legal assistance grant funds for specific legal assistance;

(h) The timeframes and manner for payments under the legal assistance grant; and

(i) Other information necessary for the legal assistance grant application

process as determined by VA, including the requirements, goals, and objectives of the Grant Program.

§ 81.70 Legal assistance grant agreements.

(a) After an applicant is selected for a legal assistance grant in accordance with § 81.40, VA will draft a legal assistance grant agreement to be executed by VA and the applicant. Upon execution of the legal assistance grant agreement, VA will obligate legal assistance grant funds to cover the amount of the approved legal assistance grant, subject to the availability of funding. The legal assistance grant agreement will provide that the grantee agrees, and will ensure that each subcontractor agrees, to:

(1) Operate the program in accordance with the provisions of this part and the applicant's legal assistance grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the Grant Program, in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a legal assistance grant in accordance with § 81.50, VA will draft a legal assistance grant agreement to be executed by VA and the grantee. Upon execution of the legal assistance grant agreement, VA will obligate legal assistance grant funds to cover the amount of the approved legal assistance grant, subject to the availability of funding. The legal assistance grant agreement will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible individuals.

§ 81.75 Program or budget changes and corrective action plans.

(a) *Change in legal assistance grant agreement.* A grantee must submit to VA a written request to modify a legal assistance grant for any proposed significant change that will alter its legal assistance program. If VA approves such change, VA will issue a written amendment to the legal assistance grant agreement. A grantee must receive VA's approval prior to implementing a significant change.

(1) Significant changes include, but are not limited to:

(i) A change in the grantee or any subcontractors identified in the legal assistance grant agreement;

(ii) A change in the area or community served by the grantee;

(iii) Additions or deletions of legal assistance provided by the grantee; and

(iv) A change in category of eligible individuals to be served; and a change in budget line items that are more than 10 percent of the total legal assistance grant award.

(2) VA's approval of changes is contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted.

(3) Each legal assistance grant modification request must contain a description of, and justification for, the revised proposed use of legal assistance grant funds.

(b) *Corrective action plan.* VA may require that the grantee initiate, develop, and submit to VA for approval a corrective action plan (CAP) if, on a quarterly basis, actual legal assistance grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal assistance grant activities vary from the grantee's program description provided in the legal assistance grant agreement.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action.

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

(c) Grantees must inform VA in writing of any key personnel changes (e.g., new executive director, grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

§ 81.80 Faith-based organizations.

Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the Grant Program under this part in accordance with 38 CFR part 50.

§ 81.85 Visits to monitor operations and compliance.

(a) VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using legal assistance grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. If a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the legal assistance grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

(b) The authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part.

§ 81.90 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the legal assistance grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the legal assistance grant. The determination of allowable costs must be made in accordance with the applicable Federal cost principles set forth in 2 CFR part 200.

(d) In accordance with 2 CFR 200.414, or successor regulations, grantees may, in regard to indirect costs:

(i) Apply the negotiated indirect cost rate established with their Federal cognizant agency;

(ii) Apply a de minimis rate, as described in 2 CFR 200.414(f), or

successor regulations, if they do not have a negotiated indirect cost rate; or

(iii) Request to negotiate an indirect cost rate with VA or their Federal cognizant agency.

§ 81.95 Grantee reporting requirements.

(a) VA may require grantees to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

(b) At least once per year, or at the frequency set by VA, each grantee must submit to VA a report containing information relating to operational effectiveness; fiscal responsibility; legal assistance grant agreement compliance; and legal and regulatory compliance. This report must include a breakdown of how the grantee used the legal assistance grant funds; the number of participants assisted; information on each participant's gender, age, race, service era, branch of service, component, and status of military discharge or characterization of service; a description of the legal assistance

provided to each participant; and any other information that VA requests.

(c) VA may request additional reports or information to allow VA to fully assess the provision of legal assistance under this part.

(d) Grantees must relate financial data to performance data and develop unit cost information whenever practical.

(e) All pages of the reports must cite the assigned legal assistance grant number and be submitted in a timely manner as set forth in the grant agreement.

(f) Grantees must provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA. Grantees must clearly redact information that is confidential based on attorney-client privilege, unless that privilege has been waived by the client.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–XXXX.)

§ 81.100 Recordkeeping.

Grantees must ensure that records are maintained for at least a 3-year period

(unless a longer period is otherwise required) to document compliance with this part. Grantees must produce such records at VA's request.

§ 81.105 Technical assistance.

VA will provide technical assistance, as necessary, to applicants and grantees to meet the requirements of this part. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or nonprofit private entities.

§ 81.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

§ 81.115 Legal assistance grant closeout procedures.

Legal assistance grants will be closed out in accordance with 2 CFR part 200.

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