

To ensure that the flightcrew has an accurate glideslope deviation indication, accomplish the following:

Compliance Time for Action

(a) Within 5 days after the effective date of this AD, accomplish the requirements of either paragraph (b) or (c) of this AD.

Inspection To Determine Part Number

(b) Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV-850 Navigation Receiver Module; part number 7510134-811, -831, -901, or -931; which is part of the Honeywell Primus II RNZ-850/-851 Integrated Navigation Unit; to determine if Mod "L" has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ-850/-851 Integrated Navigation Unit, is labeled NV-850, and contains the part number and serial number for the Honeywell Primus II NV-850 Navigation Receiver Module. If Mod "L" is installed, the letter "L" will be blacked out.

(1) If Mod "L" is installed, before further flight, do paragraph (c) of this AD.

(2) If Mod "L" is not installed, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For more information on the inspection specified in paragraph (b) of this AD, refer to Honeywell Technical Newsletter A23-3850-001, Revision 1, dated January 21, 2003.

Aircraft Flight Manual Revision

(c) Revise the Limitations section of the aircraft flight manual (AFM) to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

Flight Limitations

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays.

Parts Installation

(d) As of the effective date of this AD, no person may install a Honeywell Primus II NV-850 Navigation Receiver Module on which Mod "L" has been installed, on the Honeywell Primus II RNZ-850/-851 Integrated Navigation Unit of any airplane, unless paragraph (c) of this AD is accomplished.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Operations Inspector, as applicable, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(g) This amendment becomes effective on March 11, 2003.

Issued in Renton, Washington, on February 14, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-4238 Filed 2-21-03; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900-AI93

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

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

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

DATES: *Effective Date:* February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sendek or Y. Ken Lee, Staff Attorneys, Office of the General Counsel (022), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-6315.

SUPPLEMENTARY INFORMATION: On November 4, 1998, VA published a notice of proposed rulemaking in the **Federal Register**. 63 FR 59495. We proposed to make numerous minor changes in the provisions governing recognition of organizations and accreditation of representatives, agents, attorneys, and individuals for purposes of updating, clarification, and conformity to governing statutes and to enhance VA's ability to protect the interests of claimants.

The public comment period ended on January 4, 1999. VA received sixteen comments: six from veterans service organizations, six from State departments of veterans affairs, and four from private attorneys. These comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule with changes explained below.

Section 14.627 Definitions

One commenter stated that the language "intends to file" in the definition of "claimant" in proposed § 14.627(g) is confusing and should be modified because there is no way for the organization to ascertain an individual's future intentions. We believe that the definition appropriately includes individuals who intend to file an application for benefits because representation necessarily includes preliminary development and preparation of the application. However, in order to alleviate concern that a representative may not be able to identify claimants based on their intention, we have amended § 14.627(g) to provide that a claimant is one who has filed or has expressed to a representative, agent, or attorney his or her intention to file an application for benefits.

One commenter requested clarification of the definition of "facilities" under proposed § 14.627(j), but provided no explanation of what may be unclear about the proposed definition. We find the definition clear in encompassing office equipment and furniture that promote efficient office operations, and adjacent accommodations, such as parking space,

needed to facilitate access to office space.

Section 14.628 Recognition of Organizations

One commenter recommended clarification of the term “region” in proposed § 14.628(a)(2)(v), for purposes of determining whether an organization is sufficiently diversified geographically to qualify as a national organization. To clarify this provision and to provide objective standards, we changed the “Geographic diversification” requirement to require either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

Three commenters expressed concerns regarding the phrase “funded by a State government” for purposes of determining whether an organization qualifies as a State organization as described in proposed § 14.628(b). Two commenters asked about the extent to which an organization must be funded by a State in order to meet this requirement and one also asked whether a local group that receives some State funding could qualify. Another commenter suggested that a State agency should not be disqualified under this section if it shares facilities with a private organization that shares the cost of the facilities. To address the stated concerns, we have amended § 14.628(b) to specify that an organization must be “primarily” funded by a State in order to qualify under that section.

In proposed § 14.628(d)(1)(i), we are maintaining the existing requirement that an organization requesting recognition demonstrate that recognition would benefit veterans. This requirement was inadvertently omitted in the proposed amendment to § 14.628.

One commenter suggested that proposed § 14.628(d)(1)(iv)(A) state that State organizations not be required to provide representation before the Board of Veterans’ Appeals in Washington, DC, if claimants are properly notified in writing of this limitation in service. We believe that this situation is adequately covered in § 14.628(d)(1)(iv) as proposed and therefore make no change based on this comment.

One commenter expressed concern that proposed §§ 14.627(h) and 14.628(d)(1)(iv)(B) could be interpreted as precluding a service organization from declining representation in a frivolous claim, a claim where a proper representative-client relationship cannot be maintained, or a claim where a conflict of interest exists on the part of the organization, unless the organization had previously submitted a statement of policy pursuant to proposed

§ 14.628(d)(1)(iv)(B) stating its intention with respect to such claims. The commenter stated that service organizations should be given the same discretion to decline representation as private attorneys have in such instances.

Another commenter requested clarification of whether, under the definition of “complete claims service” in proposed § 14.627(h), a representative can elect not to join in an administrative appeal. A third commenter requested clarification of whether an organization or an individual representative may determine whether to provide representation in a particular case.

Pursuant to proposed § 14.628(d)(1)(iv), in order to be recognized, an organization must provide complete claims service or give written notice of any limitation in its claims service. “Complete claims service” is defined in § 14.627(h) as including representation through completion of an administrative appeal.

These provisions are intended to ensure that a recognized organization maintains a policy and capability of providing each claimant with representation throughout the course of a claim and administrative appeal or provide written notice of limitations in service and advice concerning alternative service. They are not intended to limit the organization’s discretion to determine whether an appeal is appropriate in a particular claim or to decline representation in an individual case where the circumstances of the case made representation by the organization impracticable or inappropriate. So long as an organization has a policy and capability of providing complete claims service, the requirement for recognition will be met regardless of whether the organization or an individual representative of the organization determines that an administrative appeal is not appropriate based on the facts and law in an individual case and chooses not to participate in the appeal or that based on the circumstances of a particular case representation is rendered impracticable or inappropriate due to the frivolous nature of the claim, the inability to maintain an appropriate representative-claimant relationship, or the potential for a conflict of interest on the part of the organization if representation is provided. A note has been added following

§ 14.628(d)(1)(iv)(B) to clarify this point.

One commenter suggested that it may be impossible to adequately monitor individual representatives to “ensure proper handling of claims” as required by proposed § 14.628(d)(1)(v) if claimants are permitted under proposed

§ 14.631(c) to designate a specific individual service organization representative as their sole representative. The commenter expressed concern that in such a case the organization would lack access to records needed to properly monitor the claim. Regardless of whether a claimant designates an individual or a service organization in a power of attorney, it is a fundamental responsibility of an organization to ensure that its representative provides appropriate assistance to claimants. Although the option for a claimant to designate an individual representative as his or her sole representative may present some difficulty to an organization in monitoring its representatives, this difficulty could be addressed by the organization requiring specific reports from its representatives regarding their activities or by the organization requiring its representatives to decline individual appointments.

One commenter asserted that proposed § 14.628(e) creates an inequitable if not unlawful situation by providing that only the Secretary is authorized to recognize service organizations but that the General Counsel is authorized to deny recognition to service organizations. The commenter suggested that both powers should reside with either the Secretary or the General Counsel. In light of this comment, we have determined that the authority to grant or deny recognition to an organization should reside with the Secretary and have amended § 14.628(e) accordingly.

We also note that electronic filing, via electronic mail or facsimile, of information provided to VA under § 14.628 is acceptable.

Section 14.629 Requirements for Accreditation of Service Organization Representatives; Agents; and Attorneys

One commenter argued that the current introductory text of § 14.629 permitting an “appropriate” VA official to appeal a regional counsel’s determination regarding the qualifications of a service organization representative should not be revised by substitution of reference to a “concerned” VA official, as proposed. The commenter suggested that a “concerned” official could include one motivated by purely personal interests. This change was intended to provide greater specificity in the regulation. Further, it cannot be presumed that VA officials will take official actions based on improper motives. However, to further enhance the specificity of the provision, we have revised the introductory text of § 14.629 to refer to

an appeal by an Adjudication Officer or Service Center Manager.

Several commenters addressed aspects of the testing requirements in proposed §§ 14.629(a)(2)(ii) and 14.629(b)(2). These comments evidenced a misconception that the examination requirements would apply to all service organization representatives. In fact, these requirements, which already exist in current regulations, apply respectively only to county veterans service officers recommended for accreditation by State organizations and to applicants for accreditation as claims agents. In light of this misunderstanding, we make no change based on these comments.

One commenter expressed the view that the claims-agent testing requirement should be applied to all applicants for accreditation. Veterans service organizations generally conduct their own training and testing programs or contract for training and testing of the representatives in order to assure proper handling of claims. VA is aware of no evidence that this system is not working adequately. Accordingly, we see no need for imposition of a requirement that all applicants for accreditation be tested by VA.

To promote consistency with regulations and practices governing access to Veterans Benefits Administration automated claims records, we are adding a note at the end of § 14.629 to clarify that persons working under the supervision of a claimant's designated representative may qualify for read-only access to the claimant's Veterans Benefits Administration automated claims records.

Section 14.631 Powers of Attorney

One commenter questioned the proposal in proposed § 14.631(a)(2) to require the submission of a power of attorney to the VA "regional office that has jurisdiction over the claim." That section currently requires that the power of attorney be submitted to the "appropriate" VA office. The commenter argued that the change is inconsistent with VA's practice of accepting claims at facilities other than regional offices and would require claimants, in certain instances, to submit powers of attorney and claims to different offices. Based on this comment, we have determined to retain the current wording of § 14.631(a)(2).

The same commenter stated that an additional provision should be added to § 14.631(c) permitting a service organization to file with VA a notice that it will not allow the appointment of an individual accredited representative

of the organization as the sole representative of a claimant. The commenter stated that the appointment of specific representatives would impair the ability of the organization to exercise management control over its operations. Two other commenters expressed the belief that a claimant should not be permitted to appoint an individual representative in a power of attorney, as would be permitted under proposed § 14.631(c). Proposed § 14.631(c) is intended to reflect the amendment to 38 U.S.C. 5902(c) made by Public Law 104-275. That statute clearly reflects Congress' judgment that a claimant may under certain circumstances choose to appoint an individual accredited service organization representative as his or her sole representative. We note, however, that, notwithstanding the referenced statute, service organizations retain management authority over their representatives, may direct them not to accept individual appointments, and may request cancellation of their accreditation if they fail to follow organization policy in this regard. Such matters involve issues of internal service organization operations that need not be addressed in the regulations.

One commenter suggested that, in light of proposed § 14.631(d), which permits a service organization or individual named in a claimant's power of attorney to decline appointment as a claimant's representative, the power-of-attorney form should incorporate an acceptance space that must be signed by the accredited representative to make the appointment operative. Because recognized service organizations are generally expected to provide representation to each claimant requesting assistance, we believe it is not unreasonable to require service organizations and their representatives to decline an appointment by written notification to the claimant and VA. Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile. Accordingly, we have adopted proposed § 14.631(d) without change, but have added a note to that provision clarifying the acceptable means of submission of notification to VA.

Section 14.633 Termination of Accreditation of Agents, Attorneys, and Representatives

We received numerous comments on various aspects of our proposed amendments to § 14.633, governing termination of accreditation. In light of these comments, we are undertaking a full reevaluation of that section of the

regulation and plan to publish a revised proposal concerning that provision in the future. Accordingly, we are not adopting any changes to § 14.633 at this time.

Section 14.635 Office Space and Facilities

One commenter stated the belief that an appeal process is needed to prevent arbitrary and capricious decisions from being made by VA facility directors, who have discretion under proposed § 14.635 to withdraw office space and facilities previously granted to an organization and to reassign the space to another organization. As stated in proposed § 14.635(b), final decisions regarding allocation of office space and facilities will be made by the Under Secretary for Benefits in the case of a facility under the control of the Veterans Benefits Administration. Thus, if any organization feels that space has been withdrawn by a facility director in an arbitrary manner, the organization may appeal the matter to the Under Secretary. This should provide a sufficient safeguard against arbitrary decisionmaking. We have added a reference to the regulation to provide for final decision by the Under Secretary for Health in the case of a facility under the control of the Veterans Health Administration.

Another commenter suggested that office space currently assigned to accredited representatives should not be subject to withdrawal. Under 38 U.S.C. 5902(a)(2), VA may, on a discretionary basis, furnish space and facilities, if available, to organizations engaged in claim representation. Guaranteeing space to representatives currently occupying such space would interfere with VA's ability to accomplish its mission by using its facilities in the most efficient manner. Accordingly, we have not adopted this suggestion.

Applicability of Regulations

Three commenters asked whether the proposed amendments would apply to organizations and representatives already recognized or accredited. As to organizations, current regulations at 38 CFR 14.628(a)(1) and (f), which would not be changed by these amendments, reflect VA's understanding that organizations must continue to meet regulatory requirements for recognition in order to retain that recognition. Existing organizations would be expected to meet the amended requirements subsequent to their effective date. However, VA has no plans to conduct a review of already-recognized organizations to assure compliance with the revised

requirements. As to individual representatives, those already accredited need not reapply for accreditation under the amended regulations, nor must new powers of attorney be submitted to replace powers of attorney currently in force.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains provisions constituting a collection of information at 38 CFR 14.629(b) under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, the Office of Management and Budget (OMB) has approved the information collection requirements for § 14.629(b) and has assigned an OMB control number 2900–0605.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that adoption of these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Because this action merely clarifies VA’s procedures concerning the accreditation and recognition of claimant representatives, it will not require significant changes in operations for those affected by the rule. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 14

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

Approved: November 18, 2002.

Anthony J. Principi,
Secretary of Veterans Affairs.

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

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

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

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Section 14.626 is revised to read as follows:

§ 14.626 Purpose.

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

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

3. Section 14.627 is amended by:

- A. Redesignating paragraphs (h), (i), (j), and (k) as paragraphs (k), (l), (m), and (n), respectively.
- B. Revising paragraph (g).
- C. Adding new paragraphs (h), (i), and (j).

D. Adding an authority citation at the end of the section.

The revision and additions read as follows:

§ 14.627 Definitions.

* * * * *

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

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

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

(j) *Facilities* means equipment and furnishings that promote the efficient operation of an office, and adjacent accommodations, which are needed to facilitate access to office space.

* * * * *

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

4. Section 14.628 is amended by:
A. Revising the paragraph heading in paragraph (c).

B. Removing paragraph (e).

C. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

D. Revising paragraphs (a)(2), (b), (d), and newly redesignated paragraph (e).

E. Revising the information collection parenthetical at the end of the section.

The revisions read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) * * *

(2) It satisfies the following requirements:

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

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

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

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

(v) Geographic diversification, i.e., either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

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

(c) *Regional or local organization.*

* * *

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

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

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

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

(B) A copy of the articles of incorporation, constitution, charter, and

bylaws of the organization, as appropriate;

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

(D) A description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

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

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and

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

(iv) Maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(1)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

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

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

Note to Paragraph (d)(1)(iv): An organization may be considered to provide complete claims service notwithstanding the exercise of discretion to determine that provision of representation in a particular case is impracticable or inappropriate because, under the circumstances, the facts or law do not support the filing of a claim or appeal, an appropriate representative-claimant relationship cannot be maintained, or representation would give rise to a conflict of interest on the part of the organization.

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

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

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

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

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

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

(e) *Recognition or denial.* Only the Secretary is authorized to recognize organizations. Notice of the Secretary's determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0439.)

5. Section 14.629 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraphs (a)(1)(i) through (a)(1)(iii).

C. Revising paragraph (a) introductory text, paragraph (a)(1), paragraph (a)(2)(ii), and the authority citation at the end of paragraph (a).

D. Revising paragraphs (b) and (c).

E. Revising the information collection parenthetical at the end of the section.

The revisions read as follows:

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

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

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

(1) Is of good character and reputation and has demonstrated an ability to represent claimants before the Department of Veterans Affairs;

(2) * * *

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

* * * * *

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

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

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

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

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

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

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

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

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

(viii) Information relevant to whether or not the applicant has any physical limitations which would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel.

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

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

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

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

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

order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. (See § 20.606).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

Note to § 14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under § 14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0018 and 2900-0605.)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney.

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

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

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

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

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

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

7. Sections 14.631 is amended by:

A. Revising paragraph (a) introductory text.

B. Removing paragraphs (c)(3) and (e).

C. Redesignating paragraphs (b), (c), and (d) as paragraphs (e), (f), and (g), respectively.

D. Revising newly redesignated paragraphs (e), (f)(1), and (g).

E. Adding paragraphs (b), (c), and (d).

F. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 14.631 Powers of attorney.

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

* * * * *

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

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

(d) An organization, representative, agent, or attorney named in a power of

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

Note to § 14.631(d): Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile.

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

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

* * * * *

(g)(1) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney.

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

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

8. Section 14.632 is revised to read as follows:

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including

any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Department of Veterans Affairs installations.

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

§ 14.634 [Amended]

9. Section 14.634 is amended by removing the Cross References paragraph at the end of the section.

10. Section § 14.635 is amended by:

A. Revising the introductory text.

B. Revising paragraph (b), and the authority citation at the end of the section.

C. Removing the Cross References paragraph at the end of the section.

The revisions read as follows:

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

* * * * *

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

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

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900-AL13

Fisher Houses and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

DATES: *Effective Date:* March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Jill E. Manske, Social Work Services (110B), Veterans Health Administration, 202-273-8549 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document sets forth requirements regarding the use of temporary lodging by veterans receiving VA medical care or C&P examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. VA is mandated to establish a program for providing such temporary lodging under section 221(a) of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106-419). These statutory provisions regarding temporary lodging have been codified at 38 U.S.C. 1708 and are administered by the Veterans Health Administration (VHA) of VA.

In a document published in the **Federal Register** on April 30, 2002 (67 FR 21191), VA proposed to provide for temporary lodging at Fisher Houses, VA health care facilities (generally referred to as "hoptels"), and at temporary non-VA lodging facilities, such as hotels or motels, provided by a VA health care facility. These are the facilities that may be used for temporary lodging under 38 U.S.C. 1708.

The public comment period ended on July 1, 2002. We received one comment asking VA to change the text in paragraph 60.2 (1) to add the words "or Fisher House Foundation" after "Zachary and Elizabeth M. Fisher Armed Services Foundation." We agree. This change will accurately reflect the name of this organization.

Based on the rationale set forth in the proposed rule and this document, we