

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 1, 14, 19 and 20**

**RIN 2900-AM62**

**Accreditation of Agents and Attorneys; Agent and Attorney Fees**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing the representation of claimants for veterans benefits in order to implement provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and to reorganize and clarify existing regulations. The proposed regulations would establish the procedures and rules necessary for VA to facilitate the paid representation of claimants by accredited agents and attorneys after a notice of disagreement has been filed with respect to a case. The intended effect of these regulations is to fulfill Congress' direction that agents and attorneys may be paid for services rendered after a notice of disagreement is filed with respect to a decision by an agency of original jurisdiction while ensuring that claimants for veterans benefits have responsible qualified representation in the preparation, presentation, and prosecution of claims for veterans benefits.

**DATES:** *Comment Date:* Comments must be received by VA on or before June 6, 2007.

**ADDRESSES:** Written comments may be submitted by through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulations Management (OOREG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM62—Accreditation of Agents and Attorneys; Agent and Attorney Fees." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael G. Daugherty, Staff Attorney, Office of the General Counsel (022G2),

Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6315. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority—Section 101 of Public Law 109-461**

Section 101 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, amends chapter 59 of title 38, United States Code, governing the recognition of individuals for the preparation, presentation, and prosecution of claims for benefits before VA. Prior to the amendments, 38 U.S.C. 5904(a) authorized VA to accredit individuals who show that they are of good character and reputation and qualified to provide competent representation. In current 38 CFR 14.629, VA implemented section 5904(a) by requiring agents to establish their good character and reputation through an application process and pass a written examination administered by VA as a prerequisite to accreditation. Attorneys were presumed to be qualified for VA accreditation based upon membership in good standing of a State bar. The amendments to chapter 59 require VA to: (1) Regulate the qualifications and standards of conduct applicable to accredited agents and attorneys; (2) annually collect information about accredited agents' and attorneys' standing to practice or appear before any court, bar, or Federal or State agency; (3) proscribe accreditation of individuals who have been suspended or disbarred by any such entity without reinstatement; (4) add to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA; and (5) subject veterans service organization representatives and individuals recognized for a particular claim to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys.

Section 101 of Public Law 109-461 also amends the fee provisions in chapter 59 including the point in the VA appeals process at which an agent or attorney can charge fees for representation. The VA appeals process begins when an individual disagrees with a decision made by an Agency of Original Jurisdiction (AOJ), such as a VA Regional Office (RO). To appeal a decision, an individual must file a Notice of Disagreement (NOD) with the AOJ expressing disagreement with the decision and a desire for appellate review. If the AOJ receives a timely NOD, it will change its decision or send

the claimant a Statement of the Case (SOC) designed to provide information necessary to appeal the case to the Board of Veterans' Appeals (Board). After submitting a timely NOD, and following the receipt of a SOC, an individual may complete his or her appeal to the Board by timely filing a substantive appeal. Once the appeal has been submitted and assuming the Board has sufficient information to reach a decision, the Board will issue a final administrative decision in the case. Prior to the amendments, section 5904(c)(1) proscribed the charging of fees by agents and attorneys for services provided before a first final decision of the Board in a case. Under the amendments, accredited agents and attorneys may charge fees for services provided after the claimant files a NOD.

The amendments also authorize VA to: (1) Restrict the amount of fees agents or attorneys may charge and subject fee agreements between agents or attorneys and claimants to review by VA, such review to be appealable to the Board; and (2) collect an assessment from any agent or attorney to whom VA pays fees directly from past-due benefits. Further, the amendments eliminate fee matters as grounds for criminal penalties under 38 U.S.C. 5905.

To implement the amendments to chapter 59 and to reorganize and clarify existing regulations, VA proposes to amend 38 CFR parts 14, 19 and 20 relating to the representation of claimants for veterans benefits, the accreditation of individuals who may provide representation, and the limitation on fees. VA also proposes to move regulations relating to remote access to computerized veterans' claims records from part 14 to 38 CFR part 1 concerning release of information from claimant records. VA has made no substantive changes to the remote access regulations and is moving these regulations to part 1 because they are similar in content to other part 1 regulations governing the disclosure of claimant information and will be easier to locate in that part.

**Section 14.627—Definitions**

We propose to define "agency of original jurisdiction," "service," and "representation" to clarify current regulations and assist in implementation of other provisions discussed below. With respect to "agency of original jurisdiction," in *Bates v. Nicholson*, 398 F.3d 1355 (Fed. Cir. 2005), the United States Court of Appeals for the Federal Circuit held that the VA General Counsel's final decision to cancel the accreditation of a representative, agent, or attorney may be

appealed to the Board. Accordingly, for purposes of part 14, we propose to clearly state that “agency of original jurisdiction” means the VA activity or administration that made the initial determination on a claim or matter, including the General Counsel’s cancellation-of-accreditation decisions under 38 CFR 14.633 and decisions regarding the reasonableness of fees and expenses under 38 CFR 14.636 and 14.637. Current § 14.627 provides that an “attorney” is a member in good standing of a State bar. We propose to amend that definition consistent with 38 U.S.C. 5904 to additionally provide that an “attorney” is an individual who has met the standards and qualifications established by VA in proposed § 14.629(b).

#### **Section 14.629—Requirements for Accreditation of Representatives; Agents; and Attorneys**

The introductory text to current § 14.629 tasks the VA Regional Counsel of jurisdiction with resolving any question concerning the current qualifications of an accredited service organization representative, agent, or attorney. Current 38 CFR 14.632 also tasks the Regional Counsel of jurisdiction with determining the qualifications of prospective representatives, agents, and attorneys. Consistent with current practice, we propose to amend the introductory text to § 14.629 to provide that it is the Assistant General Counsel of jurisdiction or his or her designee who manages VA’s accreditation program and makes initial determinations concerning the qualifications of prospective representatives, agents, and attorneys. The Assistant General Counsel would accredit qualified individuals and would notify other individuals concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. The Assistant General Counsel’s determination concerning the current qualifications of an applicant is a final decision unless appealed by the applicant to the General Counsel. Any such appeal must be in writing, limited to the evidence before the Assistant General Counsel, and filed with the General Counsel not later than 30 days from the date on which the Assistant General Counsel’s decision was mailed. The General Counsel’s decision concerning the current qualifications of an applicant is a final decision of the agency not subject to further review. Questions regarding the current qualifications of accredited representatives, agents, and attorneys

would be resolved using the procedures in § 14.633.

Section 5904(a)(2) requires agents and attorneys, as a condition of accreditation, to establish that they are of good character and reputation; are qualified to render claimants valuable service, and are otherwise competent to assist claimants in presenting claims; possess the level of experience or specialized training specified by VA; and certify to VA that they have satisfied the qualification standards established by VA. Section 5904(a)(3) requires VA to annually collect information about accredited agents’ and attorneys’ standing to practice or appear before any court, bar, or Federal or State agency, and section 5904(a)(4) prohibits VA from recognizing any agent or attorney who has been suspended or disbarred by any court, bar, or Federal or State agency to which the agent or attorney was previously admitted and not subsequently reinstated.

To implement the accreditation requirements established by Congress, we propose to establish a two-step process for accrediting agents and attorneys that is similar to the process for agents under current § 14.629(b). Individuals desiring accreditation would be required to file with the Office of the General Counsel a written application (VA Form 21a) on which they provide background information relevant to a determination of good character and reputation. Pursuant to the requirements of section 5904(a)(4), applicants would also be required to provide information about their standing to practice or appear before any court, bar, or Federal or State agency, to include a certification of good standing that may be available from the court, bar, or agency, and would be required to provide VA with a release to enable VA to obtain such other information that may be necessary to process the application. Upon a determination that the prospective agent or attorney is of good character and reputation, an applicant would then be given the opportunity to demonstrate his or her qualification to render valuable service to claimants and competence to assist claimants in presenting claims by achieving a score of 75 percent or more on a written examination administered at the office of a VA Regional Counsel or the VA Central Office. Currently, VA notifies prospective claims agents that they will be tested on information available in the United States Code and the Code of Federal Regulations. To assist agents and attorneys in preparing for future accreditation examinations, VA would make relevant materials available in a

format widely available to the general public.

In section 5904(a)(2), Congress gave VA the option of requiring a specific “level of experience” or “specialized training” as a condition of accreditation. VA has determined that successful completion of a written examination that covers veterans benefits law and procedures would provide the best proof that an agent or attorney has the requisite qualifications for accreditation under section 5904(a)(2). First, State licensing authorities generally require an examination to be admitted to the bar. Accordingly, attorneys are familiar with written examinations as an objective measure of their skill, competence, and qualifications to represent clients. Second, written examinations are a practical means of carrying out Congress’ intent to allow veterans to choose their own counsel. An attorney who meets the character and reputation requirements and possesses the requisite knowledge of veterans benefits law could take the examination without waiting to achieve a specific “level of experience” or attending “specialized training,” which may not be readily available or adequately demonstrate the competence desired by Congress. Third, under current § 14.629(b), VA Regional Counsels administer exams to applicants for accreditation as claims agents and that procedure could be made available to attorneys at each of the Regional Counsel’s local offices. Finally, Congress has also authorized the United States Patent and Trademark Office (PTO) to accredit agents and attorneys for purposes of practice before that agency. Under that authority, the PTO determined that, among other requirements not relevant to VA’s accreditation program, objective testing would suffice for purposes of making qualification determinations. We believe that successful completion of a written examination demonstrates that an agent or attorney possesses a level of knowledge better than mere evidence of training or a period of experience. Therefore, proposed § 14.629(b) would implement a testing requirement that is based upon our experience in accrediting agents under current procedures and the PTO’s experience in accrediting agents and attorneys under 37 CFR part 11.

In proposed § 14.629(b), VA would also expand its inquiry into an applicant’s background to provide a more complete basis for the Department’s determination of good character and reputation. In addition, proposed § 14.629(b) would provide specific examples of conduct that would

demonstrate a lack of good character and reputation for purposes of accreditation.

Proposed § 14.629(c) would amend provisions relating to representation provided by attorneys, law firms, law students and paralegals to clarify that a claimant must use a VA Form 21-22a to appoint an accredited attorney. As will be discussed further below, a VA Form 21-22a, signed by the claimant, is also necessary to authorize VA to disclose protected claimant information to an agent or attorney. VA intends to facilitate efficient adjudication of claims through universal use of this form. VA's field personnel cannot efficiently or accurately sort through a variety of appointment forms and releases, many of which would require further legal review to determine whether VA could lawfully release a claimant's information.

#### **Section 14.630—Authorization for a Particular Claim**

Section 5903 authorizes VA to recognize any individual for purposes of providing representation on one claim, provided that the individual certifies that he or she will not charge a fee for the representation and files the appropriate power of attorney. Proposed § 14.630 would clarify that a properly executed VA Form 21-22a is necessary to allow VA to disclose claimant information to a person providing representation under the authority of this section. This change is necessary to comply with 38 CFR part 1, which implements the disclosure provisions of the Privacy Act, 38 U.S.C. 5701, and 38 U.S.C. 7332. It would also commit an individual providing representation under this section to comply with the laws administered by VA and the rules of conduct in proposed § 14.632. New paragraph (d) would implement section 5903(b), which authorizes VA to suspend or exclude an individual providing representation under this section on the same basis as accredited agents or attorneys.

#### **Section 14.631—Powers of Attorney; Disclosure of Claimant Information**

We propose to amend § 14.631(a) to clarify that a properly executed VA Form 21-22a, signed by the claimant and the accredited representative, agent, attorney, or individual authorized to provide representation for a particular claim, is required for purposes of both representation and VA's disclosure of claimant information to the individual designated on the form.

Current § 14.631(b), which permits attorneys to submit declarations of representation on letterhead, would be

removed to reflect Congress' amendment of section 5904 and to comply with the disclosure provisions in 38 CFR part 1. VA acknowledges that this change would impose some additional responsibilities in the near-term for attorneys who use letterhead declarations in their veterans' law practice. However, the use of a standard authorization form, with language that VA has approved as legally sufficient, will expedite VA's correspondence with attorneys and ensure that claimant information is released only according to law.

Redesignated § 14.631(c) would not include the procedure for an organization or individual to decline representation, which we propose to remove consistent with the signature requirement in proposed § 14.631(a). In its place we propose to provide guidance regarding the circumstances under which an individual or organization may withdraw from representation and the procedure for withdrawing.

Redesignated § 14.631(f) would clarify that agents and attorneys may limit the scope of their representation regarding a particular claim by describing the limitation in writing on the VA Form 21-22a. This clarification is necessary to ensure that claimants and their agents or attorneys understand the scope of representation.

#### **Section 14.632—Standards of Conduct for Persons Providing Representation Before the Department**

We propose to remove current § 14.632 consistent with our above discussion of amendments to the introductory text to § 14.629. In its place, we propose to add new provisions governing the standards of conduct for accredited representatives, agents, and attorneys as required by Congress in section 5904(a). In developing the proposed standards of conduct, we reviewed both the American Bar Association's Model Rules of Professional Conduct and other Federal agency rules of practice. We propose to establish general affirmative duties of honesty, competence, and diligence for all persons providing representation before VA. The proposed rules would also list specific conduct and behavior expressly prohibited in representing claimants before VA. Finally, in addition to the requirement concerning VA's standards of conduct, the rules would also require attorneys to conform to the standards of conduct established by the jurisdictions in which they are admitted to practice. Violation of VA's standards of conduct or those of the jurisdiction in which an

attorney is admitted to practice, would be a basis for cancellation of accreditation under proposed 38 CFR 14.633.

#### **Section 14.633—Cancellation of Accreditation of Representatives, Agents, and Attorneys**

Proposed § 14.633(c) would implement sections 5904(b)(6) through (9) by adding to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA.

We propose to further amend § 14.633 to clarify the roles and responsibilities of VA personnel during cancellation-of-accreditation proceedings. Currently § 14.633(d) requires the Regional Counsel of jurisdiction to initiate an inquiry upon the receipt of information indicating that a representative, agent, or attorney no longer meets accreditation requirements, has engaged in improper conduct, or has demonstrated a lack of competence in providing representation. However, the accreditation program is managed by an Assistant General Counsel at VA's Central Office, and, generally, allegations of misconduct are initially directed to the Central Office for evaluation. As a result, we have determined that it would be more efficient for the Assistant General Counsel managing the program to handle all inquiries and forward certain investigative tasks to a Regional Counsel as necessary. Accordingly, in proposed § 14.633(d), we state that the Assistant General Counsel of jurisdiction shall conduct the inquiry into allegations that may warrant suspension or cancellation of accreditation under § 14.633(b) through (d).

Currently, § 14.633(e) distinguishes representatives from agents and attorneys in that representatives are immediately suspended upon notification of the General Counsel's intent to cancel accreditation. However, section 5901(b)(2) subjects representatives to suspension and exclusion on the same basis as agents and attorneys. Because all individuals providing representation for VA claimants are held to the same standards of conduct, and subject to suspension and exclusion on the same basis, we propose to amend § 14.633(e) to provide accredited representatives and individuals providing representation under § 14.630 with the same procedural rights as are afforded to accredited agents and attorneys.

Additionally, the process for notifying agents and attorneys of VA's intent to cancel accreditation in current § 14.633(e) provides a period of only 10

days for an agent or attorney to decide whether a hearing is appropriate or to submit additional evidence and does not require an agent or attorney to answer VA's notice. In proposed § 14.633(e), we propose to notify the individual providing representation under § 14.630, representative, agent or attorney of VA's intent to cancel accreditation, the right to submit additional evidence, and the right to request a hearing by certified or registered mail. We would also require the individual to provide VA with an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, responding to VA's notice. The answer would include a statement of facts that constitute the individual's defense to VA's reasons for cancellation and would admit or deny each allegation contained in VA's notice of intent to cancel accreditation. Failure to deny an allegation would be treated as an admission of the allegation. Individuals receiving notice of intent to cancel accreditation would have 30 days from the date the notice was mailed to provide the answer to VA, submit additional evidence, and request a hearing on the matter. Any request for a hearing would be made in the answer. Failure to file an answer or request a hearing within the time allowed would result in the Assistant General Counsel closing the evidentiary record at the end of the 30-day period and forwarding the record and a recommendation to the General Counsel for a final decision.

Currently, § 14.633(f) through (g) provides that the General Counsel may cancel an accreditation after notice and opportunity for a hearing conducted by a hearing officer who is not an employee of the Office of the Regional Counsel. However, in some cases, the VA Central Office is a more appropriate forum for the hearing because the evidence required to conduct a hearing is located at or near the Central Office, or the events and circumstances providing the basis for the hearing took place at or near the Central Office. As a result, referral to a Regional Office for a hearing may unnecessarily delay cancellation proceedings. In § 14.633(f), we propose to establish an alternate hearing location at the VA Central Office following the same general procedure as exists in current rules for a Regional Office hearing with the exception that the Director of the Compensation and Pension Service would appoint the hearing officer and the Assistant General Counsel or the Assistant General Counsel's designee would present the evidence for VA. In both

instances, the General Counsel would make the final decision on suspension or cancellation of accreditation based on the recommendation of the Assistant General Counsel.

Current § 14.633(f) does not restrict VA's ability to schedule a hearing in disaccreditation proceedings. As discussed above, proposed § 14.633(e) requires individuals served with notice of intent to cancel accreditation to file an answer with the Office of the General Counsel within 30 days from the date the notice was mailed. To ensure that an individual receives adequate notice of a hearing conducted under § 14.633 and to prevent a hearing from being scheduled during the 30-day period allowed for an answer, we propose to require that a hearing officer provide notice of a hearing at least 21 days before the date of the hearing and to prohibit hearings from being scheduled during the 30-day period allowed for an answer.

In a proceeding under § 14.633, current § 14.633(f) does not establish a deadline for the introduction of evidence by VA or by an individual providing representation under § 14.630, representative, agent or attorney. Unlike a benefits claim, in a § 14.633 proceeding, the evidence of record associated with a decision to suspend or cancel accreditation should be sufficiently developed at the completion of a hearing such that no additional evidence relevant to the General Counsel's decision is likely to exist, and, as a result, the record can be closed at the completion of the hearing. Accordingly, in proposed § 14.633(g), we state that, if an individual has not provided VA with an answer within 30 days from the date the notice was mailed, the record will be closed; otherwise the record will be closed 10 days after the completion of the hearing. The procedures in § 14.633(g) are necessary to provide individuals an expeditious decision on cancellation of their accreditation and to ensure that veterans receive competent representation.

To maintain the integrity of the record and ensure expeditious processing, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a § 14.633 proceeding at the completion of a hearing in no way limits the ability of the Board of Veterans' Appeals to conduct a de novo review of the material issues of fact and law in the

record on appeal or to remand to the General Counsel under 38 CFR 19.9 for any action essential for a proper appellate decision.

Under current § 14.633(g), the decision of the General Counsel to suspend or cancel the accreditation of an individual providing representation under § 14.630, representative, agent, or attorney is final. However, the regulation does not prescribe the procedure required to appeal such a decision. We propose to amend § 14.633(g) to provide that appeals of a General Counsel decision cancelling accreditation would be initiated and processed according to the provisions in 38 CFR parts 19 (subpart B) and 20 (subpart C). Proposed § 14.633(g) would also clarify that closing the record 30 days after the date the notice of intent to cancel accreditation was mailed or 10 days after the completion of the hearing would not affect the General Counsel's ability to issue a supplemental statement of the case pursuant to a remand from the Board as provided in § 19.9 of this title or to correct a deficient statement of the case as provided in § 19.31 of this title.

In section 5904(a)(4), Congress prohibited VA from recognizing any agent or attorney suspended or disbarred by any court, bar, or Federal or State agency to which the individual was admitted to practice and not subsequently reinstated. Similarly, in section 5904(b)(7), Congress added as grounds for suspension or exclusion of agents and attorneys from practice before the Department suspension or disbarment by any court, bar, or Federal or State agency to which the individual was admitted to practice and not subsequently reinstated. We interpret these provisions to reflect Congress' intent that the Office of the General Counsel should act upon any information that it receives concerning accredited agents and attorneys who have been barred from practice before any court, bar, or agency. Further, consistent with Congress' intent to maintain the integrity of judicial and administrative proceedings by excluding persons subject to disciplinary sanctions, we believe it is appropriate for VA to notify courts, bars, or agencies of VA's disciplinary proceedings. Accordingly, we propose in § 14.633(h) to provide notice, at the discretion of the General Counsel, of any suspension or cancellation of VA accreditation to the courts, bars, agencies, or jurisdictions in which the agent or attorney is admitted to practice.

**Section 14.636—Payment of Fees for Representation by Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans' Appeals**

Current 38 CFR 20.609, codified in the Board's Rules of Practice, governs the payment of fees for representation provided by accredited agents and attorneys. In section 5904(c)(1), Congress directed that agents and attorneys may be paid for services provided after a notice of disagreement is filed in a case, directed that fee agreements shall be filed with the Secretary rather than with the Board, and authorized VA to review fee agreements and order a reduction in the fee if it is found unreasonable or excessive, such decisions being appealable to the Board. Accordingly, we have determined that the fee provisions in current § 20.609 are no longer appropriate for inclusion in the Board's Rules of Practice and should be moved to part 14. We propose to redesignate § 20.609 as § 14.636, and amend it consistent with section 5904(c).

Proposed § 14.636(c) would implement section 5904(c)(1) by providing that agents and attorneys may charge fees for services rendered on a particular claim or claims only after an agency of original jurisdiction has rendered a decision on such particular claim or claims and a notice of disagreement has been filed with respect to the decision.

Proposed § 14.636(d)(2)(i) would clarify that a "disinterested third party" means an organization, government entity, or person that will not benefit financially from resolution of a claim. This clarification is necessary to prevent agents and attorneys from charging and/or receiving fees for representation provided before a notice of disagreement is filed in a case from third parties who will directly benefit from the outcome of a case. We intend to preclude conflicts of interest that would arise as a result of agents and attorneys receiving fees from these third parties by proposing, in § 14.636(g), that fee agreements involving alleged disinterested third-party payers must identify the relationship between the third-party payer and the veteran, claimant or appellant.

Proposed § 14.636(g) would establish new requirements for fee agreements between claimants and agents or attorneys. Agents and attorneys would be required to file fee agreements with the Office of the General Counsel in Washington, DC, and clearly specify in the agreements whether VA is to

directly pay agent or attorney fees out of an award of past-due benefits. Any fee agreement calling for fees exceeding 20 percent of past-due benefits would not be considered a direct-pay fee agreement and, as a result, the agent or attorney would be responsible for collecting any fees for representation from the claimant without assistance from VA.

Current § 20.609 provides that the Board may review a fee agreement between a claimant or appellant and an attorney or agent upon its own motion or that of any party to the agreement and may order a reduction in the fee called for if it finds that the fee is excessive or unreasonable. Proposed § 14.636(i) implements section 5904(c) by shifting the authority to review fee agreements for reasonableness to the Office of the General Counsel, subject to review by the Board. We also propose to clarify that, following a decision by the Office of the General Counsel that the terms of the fee agreement are unreasonable, the agent or attorney must refund any excess payment to the claimant unless the agent or attorney files a notice of disagreement concerning the General Counsel's decision. Such refund must occur within the time allowed for filing a notice of disagreement.

Current provisions in § 20.609 do not clearly establish a deadline for the introduction of evidence in a motion for review of a fee agreement. For the reasons discussed above concerning proceedings under § 14.633, we propose in § 14.636 to close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney files a response to the motion with the Office of the General Counsel or 30 days after the moving party served the motion on the agent or attorney if there is no response. The Assistant General Counsel will forward the record and a recommendation to the General Counsel for a final decision. To maintain the integrity of the record, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a fee review proceeding in no way limits the ability of the Board to conduct a de novo review of the material issues of fact and law in the record on appeal or to remand to the General Counsel under 38 CFR 19.9 for any other action essential for a proper appellate decision.

Provisions in current 38 CFR part 3 provide that the amount of compensation or pension paid to

incarcerated veterans shall be reduced. Provisions in current 38 CFR part 1 provide that a debt owed to VA resulting from participation in a benefits program may be collected through administrative offset. Current § 20.609 states that VA's payment of fees out of past-due benefits is to be paid out of a cash award to the claimant. We propose to clarify in § 14.636(h)(3)(iv) that, under current law, the amount of fees paid to an agent or attorney representing a claimant shall be based upon the amount of past-due benefits actually paid to the claimant after all applicable reductions.

In proposed § 14.636(h), we would implement section 5904(a)(6), which provides that VA may collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits. Such an assessment would be equal to five percent of the amount of the fee required to be paid to the agent or attorney, not to exceed \$100 for each such payment.

**Section 14.637—Payment of the Expenses of Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans' Appeals**

We propose to redesignate and amend current § 20.610 governing payment of expenses to agents and attorneys as § 14.637 for the same reasons as discussed above concerning current § 20.609.

Current provisions in § 20.610 do not clearly establish a deadline for the introduction of evidence in a motion for review of expenses. For the reasons discussed above concerning proceedings under § 14.633, we propose in § 14.637 to close the record in proceedings to review expenses 15 days after the date on which the agent or attorney files a response to the motion with the Office of the General Counsel or 30 days after the moving party served the motion on the agent or attorney if there is no response. The Assistant General Counsel will forward the record and a recommendation to the General Counsel for a final decision. To maintain the integrity of the record, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a review of expenses in no way limits the ability of the Board to conduct a de novo review of the material issues of fact and law in the record on appeal or to remand to the General Counsel under 38

CFR 19.9 for any other action essential for a proper appellate decision.

### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection requirements included in this proposed regulation are revisions of existing collections under Office of Management and Budget (OMB) Control No. 2900-0321, which pertains to the appointment of an individual as a claimant's representative, and OMB Control No. 2900-0605, which pertains to the application for accreditation as a claims agent.

We note that the proposed rules would affect two other collections of information. In proposed § 14.629(b), the appeal to the General Counsel of a decision by the Assistant General Counsel to deny an application for accreditation would involve a new collection of information; however, under the current regulations VA denies less than ten applications every year, which is outside the scope of the Paperwork Reduction Act. See 5 CFR 1320.3(c)(4). In proposed § 14.633, the General Counsel's decision to cancel accreditation is appealable to the Board. The Board currently maintains a collection of information under OMB Control No. 2900-0085 pertaining to appeals. In the last three years, accreditation cancellation actions have resulted in three appeals to the Board. Based on the infrequent nature of such appeals, a revision of the Board's existing collection of information is unwarranted under the Paperwork Reduction Act.

Comments on the information collections included in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM62," and must be received on or before June 6, 2007.

Comments by the public on proposed collections of information will help VA in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including

whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; and

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.

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.

*Title:* Accreditation of Service Organization Representatives and Agents.

*Summary of collection of information:* Section 14.629(b)—Under this section, VA requires individuals seeking accreditation to establish their good character, reputation, and qualifications to represent claimants before the Department. VA proposes to require attorneys to file with the Office of the General Counsel VA Form 21a, on which they would provide information relevant to establishing their good character, reputation, and qualifications for representing claimants. After an affirmative determination of character and fitness, VA proposes to require attorneys to demonstrate experience and training in veterans benefits law and procedure by successfully passing a written examination with a score of 75 percent or more. To initially demonstrate fitness for representation and annually thereafter, VA proposes to require agents and attorneys to provide information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear. Additionally, attorneys shall annually provide VA with a certification of good standing for every jurisdiction admitted.

Section 14.631(a)—Under this section, VA requires claimants to identify to VA the individual acting on their behalf in the preparation, presentation, and prosecution of claims before the Department. VA proposes to require all persons providing representation before the Department to sign this form to indicate acceptance of appointment of representation, and proposes to require

agents and attorneys to indicate on the form whether the agent or attorney desires to limit the scope of their representation with this claimant to a particular claim and, if so, to identify the limits of such representation.

*Description of need for information and proposed use of information:* The collection of information is necessary to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims. VA will use this information to determine whether particular individuals are qualified to represent claimants before VA and to ensure that claimants obtain representation and understand the limits of such representation.

*Description of likely respondents:* Individuals applying for accreditation as agents and attorneys to provide representation before the Department; individuals accepting appointment for purposes of representation before the Department.

*Estimated number of respondents:* For applications for accreditation under 38 CFR 14.629(b), in addition to the 20 applications we normally receive from prospective agents in a given year, at a minimum, we anticipate receiving 117 responses from attorneys seeking accreditation in 2007. This number (117) represents the number of attorneys who filed fee agreements with the Board under the predecessor law. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), we anticipate receiving a signature from each person accepting appointment for purposes of representation. Because each accredited service organization representative, agent, and attorney normally represents more than one claimant, we initially estimate 703 respondents (agents and attorneys) will indicate acceptance for purposes of representing an estimated 6,400 claimants before the Department.

It is important to note that our estimated number of respondents for collections of information under both 38 CFR 14.629(a) and 14.631(b) reflects data relating to representation under prior law. We anticipate that the number of respondents will increase slightly in 2007 and to a greater extent in future years based upon increased opportunities for paid agent and attorney representation, but we currently lack the information necessary to develop a reasonably accurate estimate. We may revise our estimated number of respondents based on comments received during the applicable public comment period.

*Estimated frequency of responses:* For applications for accreditation under 38 CFR 14.629(b), once with the initial application for accreditation, and annually thereafter for accredited agents and attorneys. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), once for each case.

*Estimated average burden per response:* For applications for accreditation under 38 CFR 14.629(b), 45 minutes. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), 5 minutes.

*Estimated total annual reporting burden:* For applications for accreditation under 38 CFR 14.629(b), 102 hours in 2007. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), 533 hours in 2007.

### 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 *et seq.* At a minimum, this proposed rule would affect the 117 attorneys who filed fee agreements with the Board under the predecessor law and the 47 agents currently accredited by VA. However, it would not have a significant economic impact on these individuals because it would only impose accreditation requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Order 12866

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create

a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866.

### 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 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance Numbers and Titles

There are no Federal Domestic Assistance programs associated with this proposed rule.

### List of Subjects

#### 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

#### 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.

#### 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 23, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans

Affairs proposes to amend 38 CFR parts 1, 14, 19 and 20 as follows:

### PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

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. Redesignate §§ 14.640 through 14.643 as §§ 1.600 through 1.603 respectively.

3. Revise § 14.626 to read as follows:

#### § 14.626 Purpose.

The purpose of the regulation of representatives, agents, attorneys, and individuals is to ensure that claimants for Department of Veterans Affairs (VA) 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)

4. Amend § 14.627 by:

- a. Revising the introductory text.
  - b. Revising paragraph (a).
  - c. Redesignating paragraphs (b) through (l) and (m) and (n) as paragraphs (c) through (m) and (p) and (q), respectively.
  - d. Adding new paragraphs (b), (n), and (o).
  - e. Revising newly redesignated paragraphs (d), (e), (g), (l), and (m).
- The revisions read as follows:

#### § 14.627 Definitions.

As used in regulations on representation of VA claimants:

(a) *Accreditation* means recognition by VA of representatives, attorneys, and agents to represent claimants.

(b) *Agency of original jurisdiction* means the VA activity or administration that made the initial determination on a claim or matter, including the proceedings before the General Counsel under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

\* \* \* \* \*

(d) *Attorney* means a member in good standing of a State bar who has met the standards and qualifications in § 14.629(b).

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

\* \* \* \* \*

(g) *Claim* means application made under title 38 U.S.C., and implementing directives, for entitlement to VA benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

\* \* \* \* \*

(l) *Recognition* means certification by VA of organizations to represent claimants.

(m) *Representative* means a person who has been recommended by a recognized organization and accredited by VA.

(n) *Representation* means the acts associated with the preparation, presentation, and prosecution of claims under laws administered by VA for a claimant as defined in paragraph (h) of this section. Representation includes but is not limited to counseling on veterans benefits, gathering information necessary to file a claim for benefits, preparing claim forms, submitting claim information to VA, and communicating with VA on behalf of a claimant.

(o) *Service* means the delivery of a motion, response, or reply to a person or entity to which it is directed. Proof of service consists of a statement by the person who made service certifying (1) the date and manner of service, (2) the names of the persons served, and (3) the addresses of the place of delivery. For service by mail, proof of service shall include the date and manner by which the document was mailed.

\* \* \* \* \*

5. Amend § 14.629 by:

a. Revising the introductory text.

b. In paragraph (a)(1), removing “the Department of Veterans Affairs, and adding, in its place, “VA”.

c. Revising paragraph (b) heading.

d. Redesignating paragraph (b)(2) as (b)(6), and paragraph (b)(1) as new paragraph (b)(2).

e. Adding a new paragraph (b)(1).

f. Revising newly redesignated paragraph (b)(2) introductory text and paragraph (b)(2)(i).

g. Redesignating paragraphs (b)(2)(vii) and (viii) as paragraphs (b)(2)(viii) and (ix), respectively.

h. Adding a new paragraph (b)(2)(vii).

i. Adding new paragraphs (b)(2)(x), (b)(3), (b)(4), and (b)(5).

j. Revising newly redesignated paragraph (b)(6).

k. Revising paragraph (c) heading.

l. Revising paragraphs (c)(1) and (c)(3).

m. Revising the note following paragraph (c)(4).

The additions and revisions read as follows:

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

The Assistant General Counsel of jurisdiction will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney. If the Assistant General Counsel determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Assistant General Counsel or the Assistant General Counsel's designee and will constitute authority to prepare, present, and prosecute claims before an agency of original jurisdiction or the Board of Veterans' Appeals. If the Assistant General Counsel determines that the prospective representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Assistant General Counsel concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. The determination of the Assistant General Counsel regarding the qualifications of a prospective service organization representative, agent, or attorney may be appealed by the applicant to the General Counsel. Appeals must be in writing and filed with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Assistant General Counsel's decision was mailed. In deciding the appeal, the General Counsel's decision shall be limited to the evidence of record before the Assistant General Counsel. A decision of the General Counsel is a final agency decision not subject to appeal.

\* \* \* \* \*

(b) *Accreditation of Agents and Attorneys.* (1) No individual may provide representation to claimants before the Department as an agent or attorney unless he or she has first been accredited by VA for such purpose. The accreditation process consists of a character and fitness determination, and after an affirmative determination of character and fitness, a written examination.

(2) An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise

and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department. An individual desiring accreditation as an agent or attorney must file a completed application (VA Form 21a) with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, on which the applicant submits the following:

(i) His or her full name and home and business addresses;

\* \* \* \* \*

(vii) Information concerning the applicant's level of education and academic history;

\* \* \* \* \*

(ix) Information relevant to whether the applicant has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel; and

(x) Certification that the applicant has satisfied the qualifications and standards required for accreditation as prescribed by VA in this section, and that the applicant will abide by the standards of conduct prescribed by VA in section 14.632 of this part.

(3) Evidence showing lack of good character and reputation includes, but is not limited to, one or more of the following: Conviction of a felony, conviction of a misdemeanor involving fraud, bribery, deceit, theft, or misappropriation; suspension or disbarment from a court, bar, or Federal or State agency on ethical grounds; or resignation from admission to a court, bar, or Federal or State agency while under investigation to avoid sanction.

(4) As a further condition of initial accreditation and annually thereafter, each person seeking accreditation as an agent or attorney shall submit to VA information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear.

Applicants shall provide identification numbers and membership information for each jurisdiction in which the applicant is admitted and a certification that the agent or attorney is in good standing in every jurisdiction in which admitted.

(5) VA will not accredit an individual as an agent or attorney if the individual has been suspended by any court, bar, or Federal or State agency in which the individual was previously admitted and not subsequently reinstated.

(6) After an affirmative determination of character and fitness for practice before the Department, 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.

(c) Representation by Attorneys, Law Firms, Law Students and Paralegals. (1) After accreditation by the General Counsel, an attorney may represent a claimant upon submission of a VA Form 21-22a, (Appointment of Attorney or Agent as Claimant's Representative).

(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), if the claimant's written consent is furnished to VA. 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. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant's file. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing as noted in paragraph (d).

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 as described in §§ 1.600 through § 1.603 in part 1 of this chapter.

- \* \* \* \* \*
6. Amend § 14.630 by:
a. Revising paragraph (a).
b. Revising paragraph (b)(1) introductory text.
c. Adding paragraphs (c) and (d) immediately preceding the authority citation at the end of the section.

The revisions and additions read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21-22a (Appointment of Attorney or Agent as Claimant's Representative), 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 agency of original jurisdiction where the claim is presented. The power of attorney identifies to VA the claimant's appointment of representation and authorizes VA's disclosure of information to the person representing the claimant.

(b) \* \* \* (1) The number of accredited representatives, agents, and attorneys operating in the claimant's geographic region;

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA including the rules of conduct in § 14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in § 14.633 of this part.

- \* \* \* \* \*
7. Amend § 14.631 by:
a. Revising the section heading.
b. Revising paragraph (a) introductory text.
c. Adding paragraph (a)(1)(iv).
d. In paragraph (a)(2), removing "Department of Veterans Affairs" and adding, in its place, "VA".
e. Removing paragraph (b).
f. Redesignating paragraphs (c) through (g) as paragraphs (b) through (f).
g. Revising newly redesignated paragraph (c).
h. In newly redesignated paragraph (e)(1), removing "the Department of

Veterans Affairs" and add, in its place, "VA".

i. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

§ 14.631 Powers of attorney; disclosure of claimant information.

(a) A power of attorney, executed on either VA Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative) or VA Form 21-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant before VA and to authorize VA's disclosure of information to any person or organization representing a claimant before the Department. Without the signature of a person providing representation for a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney, the appointment is invalid, and the person appointed to provide representation is under no obligation to do so. The power of attorney shall meet the following requirements:

- (1) \* \* \*
(iv) An individual providing representation on a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney; and

(b) VA 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.

(c) An organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may withdraw from representation if such withdrawal would not adversely impact the claimant's interests. Withdrawal is also permissible if a claimant persists in a course of action that the organization or individual providing representation reasonably believes is fraudulent or

criminal and is furthered through the representation of the organization or individual; the claimant fails to uphold an obligation to the organization or individual providing representation regarding the services of the organization or individual; or other good cause for withdrawal exists. An organization or individual providing representation withdraws from representation by notifying both the claimant and the agency of original jurisdiction in writing prior to taking any action to withdraw and takes steps necessary to protect the claimant's interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and surrendering any documents provided by VA in the course of the representation.

\* \* \* \* \*

(f)(1) A power of attorney may be revoked at any time, and an agent or attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney executed by the claimant and the organization or individual providing representation shall constitute a revocation of an existing power of attorney.

(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21-22a, 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.

\* \* \* \* \*

8. Revise § 14.632 to read as follows:

**§ 14.632 Standards of conduct for persons providing representation before the Department.**

(a)(1) All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under § 14.630, representatives, agents, or attorneys.

(2) All individuals providing representation are required to be truthful in their dealings with claimants and VA, and shall conduct themselves in accordance with the non-adversarial nature of practice before the agency of original jurisdiction and the Board. The general provision on non-adversarial

practice does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(b) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall:

(1) Provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations;

(2) Act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.

(c) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall not:

(1) Violate the standards of conduct as described in this section;

(2) Circumvent a rule of conduct through the actions of another;

(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;

(4) Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;

(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable, excessive, or otherwise prohibited by law or regulation;

(6) Solicit, receive, or enter into agreements for gifts in lieu of fees for representation provided before a notice of disagreement is filed with respect to the case;

(7) Delay, without good cause, the processing of a claim at any stage of the administrative process;

(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;

(9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;

(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation;

(11) Engage in any other unlawful, unprofessional, or unethical conduct.

(d) In addition to complying with standards of conduct for practice before VA in paragraphs (a) through (c), an

attorney shall not, in providing representation to a claimant before VA, engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law.

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

9. Amend § 14.633 by:

a. Revising the section heading.

b. Revising paragraphs (a), (b), (c) introductory text, and (c)(1).

c. Redesignating paragraph (c)(4) as paragraph (c)(7).

d. Revising newly redesignated paragraph (c)(7).

e. Adding new paragraphs (c)(4), (c)(5), and (c)(6).

f. Revising paragraphs (d) through (g).

g. Adding new paragraph (h).

The revisions and additions read as follows:

**§ 14.633 Termination of accreditation of individuals providing representation under § 14.630, representatives, agents, and attorneys.**

(a) Accreditation or authority to provide representation on a particular claim under § 14.630 may be canceled at the request of an organization, individual providing representation under § 14.630, representative, agent, or attorney.

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

(c) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:

(1) Violation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in § 14.632;

\* \* \* \* \*

(4) Presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under § 14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law;

(5) Suspension or disbarment by any court, bar, or Federal or State agency to which such individual providing representation under § 14.630, representative, agent, or attorney was previously admitted to practice, or disqualification from participating in or

appearing before any court, bar, or Federal or State agency and lack of subsequent reinstatement;

(6) Charging excessive or unreasonable fees for representation as determined by VA, the Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit; or

(7) Any other unlawful, unprofessional, or unethical practice.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds that the performance of an individual providing representation under § 14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

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

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

(2) If the result of the inquiry justifies further action, the Assistant General Counsel shall:

(i) Inform the General Counsel of the result of the inquiry and notify the individual providing representation under § 14.630, representative, agent or attorney of an intent to cancel accreditation or authority to provide representation on a particular claim. The notice will be sent to individuals providing representation on a particular claim by certified or registered mail to the individual's last known address of record as indicated on the VA Form 21-22a on file with the agency of original jurisdiction. The notice will be sent to accredited individuals by certified or registered mail to the individual's last known address of record as indicated in VA's accreditation records. The notice will state the reason(s) for the cancellation proceeding and advise the individual to file an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, within 30 days from the date the notice was mailed, responding to the stated reasons for cancellation and explaining why he or she should not be suspended or

excluded from practice before VA. The notice will also advise the individual of the right to submit additional evidence and the right to request a hearing on the matter. Requests for hearings must be made in the answer. If the individual does not file an answer with the Office of the General Counsel within 30 days of the date that the Assistant General Counsel mailed the notice, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(ii) In the event that a hearing is not requested, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(iii) The Assistant General Counsel may extend the time to file an answer or request a hearing for a reasonable period upon a showing of sufficient cause.

(f) If a hearing is requested, at the discretion of the General Counsel, it may be held at a VA Regional Office or at the VA Central Office. For hearings conducted at a Regional Office, the Regional Office Director involved will appoint a hearing officer and the Regional Counsel of jurisdiction or his or her designee will present the evidence. For hearings conducted at the VA Central Office, the Director of the Compensation and Pension Service shall appoint a hearing officer and the Assistant General Counsel or his or her designee shall present the evidence. The hearing officer shall not be from the Office of the General Counsel and shall provide notice of the hearing to the individual providing representation under § 14.630, representative, agent, or attorney by certified or registered mail at least 21 days before the date of the hearing. Hearings shall not be scheduled before the completion of the 30-day period for filing an answer to the notice of intent to cancel accreditation. The hearing officer will have authority to administer oaths. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the individual requesting the hearing, an appropriate VA official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The evidentiary record shall be closed 10 days after the completion of the hearing. The hearing officer shall submit the entire hearing transcript, any pertinent

records or information, and a recommended finding to the Assistant General Counsel within 30 days of closing the record. The Assistant General Counsel will review the record and forward it to the General Counsel with a recommendation for a final decision.

(g) The decision of the General Counsel is a final adjudicative determination of an agency of original jurisdiction and may be appealed to the Board of Veterans' Appeals. The effective date for cancellation of accreditation or authority to provide representation on a particular claim shall be the date upon which the General Counsel's final decision is rendered. Notwithstanding provisions in this section for closing the record at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(h) In cases where the accreditation of an agent or attorney is cancelled, the Office of the General Counsel may notify all agencies, courts, and bars to which the agent or attorney is admitted to practice.

\* \* \* \* \*

10. Add § 14.636 to read as follows:

**§ 14.636. Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.**

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized

organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, agents and attorneys may charge claimants and appellants for representation provided on a particular claim or claims within a case only after an agency of original jurisdiction has rendered a decision on such particular claim or claims and a notice of disagreement has been filed with respect to the decision.

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party.* (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment

of my fee or salary, including, but not limited to, reimbursement of any fees paid."

(e) *Fees permitted.* Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumption of reasonableness.* Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (h)(3) of this section shall be presumed to be reasonable. This presumption may be rebutted by a preponderance of the evidence relating to the factors in paragraph (e) of this section establishing that such fees are not reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

(i) The name of the veteran,

(ii) The name of the claimant or appellant if other than the veteran,

(iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,

(iv) The applicable VA file number, and

(v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or

attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement calling for payment of an amount exceeding 20 percent of past-due benefits shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420.

(h) *Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed \$100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 *et seq.* of this chapter.)

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the

claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent's or attorney's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(iv) In cases where an award of past-due benefits is reduced by law including administrative offset to collect a debt or overpayment, VA will calculate the amount of fees to be paid to an agent or attorney based on the cash

payment to the claimant or appellant after all applicable reductions.

(4) In addition to filing a copy of the fee agreement with the Office of the General Counsel as required by paragraph (g) of this section, the agent or attorney must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) *Motion for review of fee agreement.* The Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant's or appellant's motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel

served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Assistant General Counsel shall forward the record and a recommendation to the General Counsel for a final decision. Unless either party files a notice of disagreement with the Office of the General Counsel, the agent or attorney must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the agent's or attorney's accreditation to practice before VA.

(k) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Authority: 38 U.S.C. 5902, 5904, 5905)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0085)

11. Add § 14.637 to read as follows:

**§ 14.637. Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.**

(a) *Applicability of rule.* The provisions of this section apply to the

services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel under § 14.636 of this part. Expenses are not payable directly to the agent or attorney by VA out of benefits determined to be due to a claimant or appellant.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion. "Expenses" do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, and the cost of office supplies.

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of an agent or attorney may be obtained only if the expenses are reasonable. The Office of the General Counsel may review the expenses charged by an agent or attorney upon its own motion or the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable and must be accompanied by all evidence the claimant or appellant desires to submit. Factors considered in determining

whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, and whether travel expenses are in keeping with expenses normally incurred by other representatives.

(1) A claimant's or appellant's motion for review of expenses must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of expenses on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. Unless either party files a notice of disagreement with the General Counsel's decision, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result

in proceedings under § 14.633 of this part to terminate the agent's or attorney's accreditation to practice before VA.

(f) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0085)

## PART 1—GENERAL PROVISIONS

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

**Authority:** 38 U.S.C. 501(a), and as noted in specific sections.

13. Amend newly redesignated § 1.600 by:

- a. Adding an undesignated center heading before the section heading.
- b. In paragraph (a) introductory text, removing "14.640 through 14.643" and adding, in its place, "1.600 through 1.603".
- c. In paragraph (b)(1), removing "14.640 through 14.643" and adding, in its place, "1.600 through 1.603".
- d. In paragraph (b)(4), removing "14.640 through 14.643" and adding, in its place, "1.600 through 1.603".
- e. In paragraph (d) introductory text, removing "14.640 through 14.643" and adding, in its place, "1.600 through 1.603".

The revision and addition read as follows:

### Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

#### § 1.600 Purpose.

\* \* \* \* \*

#### § 1.602 [Amended]

14. Amend newly redesignated § 1.602 by:

- a. In paragraph (b), removing "14.643" and adding, in its place, "1.603".
- b. In paragraph (c)(3), removing "14.640 through 14.643" and adding, in its place, "1.600 through 1.603".

**§ 1.603 [Amended]**

15. Amend newly redesignated § 1.603 by:  
a. In paragraph (b)(1), removing “14.640 through 14.643” and adding, in its place, “1.600 through 1.603”.  
b. In paragraph (c), removing “14.643” and adding, in its place, “1.603”.

**PART 19—BOARD OF VETERANS’ APPEALS: APPEALS REGULATIONS**

16. The authority citation for part 19 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) unless otherwise noted.

17. Amend § 19.31 by adding a paragraph (d) and revising the authority citation at the end of the section to read as follows.

**§ 19.31 Supplemental statement of the case.**

\* \* \* \* \*

(d) *Exception.* Paragraph (b)(1) of this section does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d); 38 U.S.C. 5902, 5903, 5904)

18. Amend § 19.36 by adding a sentence at the end of the paragraph and revising the authority citation to read as follows:

**§ 19.36 Notification of certification of appeal and transfer of appellate record.**

\* \* \* Provisions in this section for submitting additional evidence and

references to § 20.1304 do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105; 38 U.S.C. 5902, 5903, 5904)

19. Amend § 19.37 by adding a paragraph (c) and revising the authority citation at the end of the section to read as follows.

**§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.**

\* \* \* \* \*

(c) The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d)(1), 5902, 5903, 5904)

**PART 20—BOARD OF VETERANS’ APPEALS: RULES OF PRACTICE**

20. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**§§ 20.609 and 20.610 [Removed]**

21. Remove §§ 20.609 and 20.610.

22. Amend § 20.800 by adding a sentence at the end of the paragraph and revising the authority citation to read as follows:

**§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.**

\* \* \* The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d)(1); 38 U.S.C. 5902, 5903, 5904)

23. Amend § 20.1304 by adding a paragraph (e) and revising the authority citation at the end of the section to read as follows.

**§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans’ Appeals.**

\* \* \* \* \*

(e) *Relationship to proceedings before the General Counsel to cancel accreditation or to review the reasonableness of fees and expenses.*

The provisions of paragraphs (a), (b), and (d) of this section allowing appellants to submit additional evidence do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7104, 7105, 7105A; 38 U.S.C. 5902, 5903, 5904)

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