

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3 and 4

RIN 2900-AH21

#### Total Disability Ratings Based on Inability of the Individual To Engage in Substantially Gainful Employment

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** In a document published in the *Federal Register* at 66 FR 49886 on October 1, 2001, the Department of Veterans Affairs (VA) proposed to amend those portions of its adjudication regulations and its Schedule for Rating Disabilities dealing with the issue of total disability ratings based on inability of the individual to engage in substantially gainful employment in claims for service-connected compensation or non-service-connected pension. This document withdraws that proposed rule.

**DATES:** The proposed rule is withdrawn as of December 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Beth Easter, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 273-7141.

**SUPPLEMENTARY INFORMATION:** The purpose of VA's notice of proposed rulemaking was to clarify the procedures and substantive standards for determining whether a veteran's disabilities, although they do not meet the schedular requirements for a total disability rating, nonetheless prevent him or her from engaging in substantially gainful employment. The intended effect of the rulemaking was to ensure consistency of decisions concerning claims for total disability ratings based upon individual unemployability. VA has carefully considered the issues relating to the payment of benefits under the proposed rule and determined that it does not

accomplish the stated purpose or intended effect. Accordingly, VA is withdrawing the proposal and is developing a new proposal, which it intends to publish at a later date.

Approved: December 14, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 14

RIN 2900-AM29

#### Accreditation of Service Organization Representatives and Agents

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing accreditation of representatives of claimants for veterans' benefits. These proposed changes would require that recognized organizations periodically recertify the qualifications of accredited representatives, and require that VA is notified when a recognized organization requests cancellation of a representative's accreditation based upon misconduct or lack of competence, or if a representative resigns to avoid cancellation of accreditation for misconduct or lack of competence. The proposed changes would also require that accredited claims agents periodically reestablish their good character and reputation and qualifications to assist claimants for VA benefits. We would also clarify that the authority to cancel accreditation includes the authority to suspend accreditation for a period of time. The purpose of these proposed changes is to ensure that claimants for veterans' benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims.  
**DATES:** Comments must be received on or before February 21, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to

(202) 273-9026; e-mail through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to "RIN 2900-AM29." All 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.

#### FOR FURTHER INFORMATION CONTACT:

Michelle D.D. Bernstein, Staff Attorney, Office of General Counsel (022G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6315. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Section 5902 of title 38, United States Code, authorizes the Secretary of Veterans Affairs to recognize representatives of approved organizations for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. Section 5904 of title 38, United States Code, authorizes the Secretary to recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. It further authorizes the Secretary to require such individuals to show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims as a prerequisite to recognition. Section 5901 of title 38, United States Code, prohibits an individual from acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary, unless such individual has been recognized for such purposes by the Secretary. The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for such benefits. See 38 CFR 14.626.

The Secretary has promulgated regulations specifying criteria that must be met for an individual to be approved as an accredited representative through a recognized organization or as an accredited claims agent. Pursuant to 38 CFR 14.629(a), recognized organizations