

November 9, 2021

The Honorable Denis McDonough
Secretary of Veterans Affairs
810 Vermont Ave., NW
Washington, DC 20420

Dear Secretary McDonough:

The signers below – concerned veteran and military serving organizations – plead our urgent request for an immediate review and revision of the Department of Veterans Affairs (VA) *Program of Comprehensive Assistance for Family Caregivers* (PCAFC) Final Rule Changes issued on July 31, 2020.

Despite the guidance provided by Congress on specific eligibility and participation criteria under the law, the Trump Administration's proposed and final Caregiver rule tightened the eligibility criteria substantially beyond that required by law. VA's regulation drastically changed the program's eligibility criteria, the process to determine a veteran's "need" for assistance, and the entire methodology and basis for the stipend paid to the caregiver. VA received more than 200 public comments voicing near universal opposition to these changes from veteran and caregiver support organizations. However, VA's Final Rule, issued on July 31, 2020, failed to incorporate any of the revisions recommended in the comments.

Now, we are seeing the harsh impact of those changes. First, as announced by the VA concurrent with the Interim Final Rule issued September 22, 2021, the VA believes about 6,700 Veterans will be discharged from the Caregiver program upon the expiration of the Legacy Applicants eligibility extension come October 1, 2022. Representing more than one-third of all the Legacy Caregivers, this wholesale dismissal of disabled Veterans from the Caregiver program is completely unwarranted, especially when one considers it was the VA who determined these Veterans eligible for the program in the first place.

Second, as you know with the recent court ruling in the Beaudette case, the court found the VA:

- Failed to meet the burdens required to deny Veterans access to the Board of Veterans Appeals for cases regarding the Caregiver program applications or status,
- Failed to show the Congressional intent to replace the Veterans' Judicial Review Act with the weak and historically troubled Caregiver eligibility adjudication and appeals process, and
- Therefore, prohibited the VA from denying Board of Veterans Appeals' review of future Caregiver program decisions.

This after numerous objections were raised to the proposed eligibility and appeals processes in the Proposed Rule, and after the VA promised, and failed, to provide greater clarity on that process during the public comment period.

Mr. Secretary, the Biden Administration now can correct a significant wrong visited upon Veterans and Caregivers by the Trump Administration with this regulation. Specifically, we believe the Department should eliminate and correct the following:

- Eliminate the arbitrary minimum 70% disability rating eligibility requirement,
- Reform the unreasonable requirement a Veteran fail at completing an activity of daily living 100% of the time, where if they only fail 99% of the time, they are ineligible for the Caregiver program altogether,
- Drop the strict prohibition on either the Veteran or the Caregiver working outside the home, even where the work has nothing to do with the Veteran's ability to complete or not complete the activities of daily living that led to their eligibility for the program, or the Caregiver's responsibilities to adequately care for them, and
- Revise the language the Caregiver must provide 100% of the caregiving to the veteran, language for which a strict reading would indicate the Caregiver cannot even sleep for fear he or she would miss a period of supervision, protection, or instruction.
- Revise and codify the eligibility standards under the supervision, protection, or instruction provision to also include such as safety-related instrumental activities of daily living as medication management, especially for blinded or vision disabled Veterans who cannot properly do so on their own.

VA officials have indicated a desire to review the efficacy of the new regulation, which VSOs and MSOs like the signatories below and others deeply appreciate and support. The responsible Department officials under your leadership have been responsive and engaging, but it appears their hands are tied. And such review efforts were overwhelmed by the Department's responsibility to provide access to the Board of Veterans Appeals per the court order. Now that the VA has that process established, the opportunity is ripe for the Department to correct this wrong and put Veterans and Caregivers first. Just as many Caregiver stakeholders offered during the Proposed Rulemaking period – but were not meaningfully engaged – we stand ready to assist the Department in making this program work for Veterans and Caregivers.

Sincerely,

The Independence Fund
Healing Household 6
Heroes Athletic Association
National Defense Committee
Chief Warrant Officers Association of the
U.S. Coast Guard
Sea Service Family, Foundation
American Retirees Association
Armed Forces Retirees Association
Jewish War Veterans
Blinded Veterans Association
Non Commissioned Officers Association
Vietnam Veterans of America

Enlisted Association of the National Guard
of the United States
Fleet Reserve Association
Save Our Allies
Association of the U.S. Navy
American Logistics Association
Military Order of the Purple Heart
Catholic War Veterans of the USA
Reserve Organization of America
Japanese American Veterans Association
Naval Enlisted Reserve Association
Veteran Warriors, Inc.
VetsFirst