

Signed at Washington, DC, this 27th day of October, 1998.

**Meredith Miller,**

*Deputy Assistant Secretary For Policy,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AJ44

#### Well Grounded Claims/Duty to Assist

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) to establish policy and guidance regarding what action, if any, VA should take to develop evidence pertaining to benefit claims that are not well grounded.

**DATES:** Written comments in response to this ANPRM must be received on or before January 28, 1999.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN: 2900-AJ44." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** Section 5107(a) of title 38, United States Code, states that, unless otherwise provided by the Secretary, it is the responsibility of any person who submits a claim for benefits under a law administered by VA to submit evidence to justify a belief by a fair and impartial individual that the claim is well grounded.

The U.S. Court of Veterans Appeals (the Court) has defined a well-grounded claim as a plausible claim, one which is meritorious on its own or capable of substantiation. To satisfy the initial

burden of 38 U.S.C. 5107(a), a claim need not be conclusive but only possible. The Court has further held that such a claim must be accompanied by supportive evidence and that such evidence must justify a belief by a fair and impartial individual that the claim is plausible. For example, generally for a claim for service-connected disability benefits to be well grounded there must be: (1) a medical diagnosis of a current disability; (2) medical evidence, or in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between an in-service disease or injury and the current disability.

After establishing the requirement that a claimant must submit a well-grounded claim, 38 U.S.C. 5107(a) requires the Secretary of Veterans Affairs to assist "such a claimant" in developing the facts pertinent to the claim. Both the Court and the U.S. Court of Appeals for the Federal Circuit have held that VA's statutory duty to assist attaches only after a claimant submits a well grounded claim.

In a substantial number of cases, both the Board of Veterans Appeals and the Court have found that claims developed and adjudicated at VA's regional offices were not well grounded.

This situation has raised concerns from a number of quarters. For example, some members of the Court have suggested that 38 U.S.C. 5107(a) reflects a statutory policy that implausible claims should not consume the limited resources of VA and force into backlog and delay well-grounded claims. The Veterans' Claims Adjudication Commission, established under Pub. L. 103-446, questioned whether it is prudent to invest the cost in time and resources of developing claims that are not well grounded. They maintained, among other things, that developing claims that are not well grounded (1) improperly lifts the burden of proof from the claimant and places it on VA; and (2) tends to unnecessarily expand issues and drive the adjudication system toward requesting and obtaining irrelevant evidence rather than concentrating resources on obtaining evidence focused on the issues.

Moreover, VA recognizes the need for clear claims-development guidelines that can be consistently applied. The Court has noted that if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment between claimants in this regard.

By this ANPRM, VA invites input as to what policies and procedures it

should adopt to govern the development of claims which are not well grounded.

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: September 24, 1998.

**Togo D. West, Jr.,**

*Secretary.*

[FR Doc. 98-29137 Filed 10-29-98; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### 42 CFR Part 63

RIN 0925-AA11

#### Traineeships

**AGENCY:** National Institutes of Health, DHHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Institutes of Health (NIH) proposes to amend its regulations governing traineeships to reflect additional conditions under which NIH may terminate traineeship awards and to reflect changes in the authorities for the awards.

**DATES:** Comments on the proposed changes must be received on or before December 29, 1998 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

**ADDRESSES:** Comments should be sent to Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20852. Comments may also be sent electronically by facsimile (301) 496-0169 or e-mail (jm40z@nih.gov).

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore, NIH Regulations Officer, at the address above, or telephone (301) 496-4607 (not a toll-free number). For information about traineeship awards contact James Alexander, Acting Director, Office of Education, Office of Intramural Research, National Institutes of Health, Building 10, Room 1C-129, 10 Center Dr MSC 1158, Bethesda, MD 20892-1158, telephone (301) 496-2427 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 405(b)(1)(C) of the Public Health Service (PHS) Act, as amended, authorizes the Secretary, acting through the directors of the national research institutes of NIH, to conduct and support research training for which fellowship support is

not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. Additionally, section 404E(d)(2) of the PHS Act authorizes the Director of the Office of Alternative Medicine to support research training for which fellowship support is not provided under section 487 of the PHS Act, and that is not residency training of physicians or other health professionals; and section 472 of the PHS Act authorizes the award of traineeships in medical library science and related fields. Under these authorities, NIH awards research traineeships to qualified individuals. These traineeships are governed by the regulations codified at 42 CFR Part 63. The regulations were revised in their entirety, February 27, 1995 (60 FR 10718). NIH proposes to amend § 63.9 by revising paragraph (b) to identify scientific misconduct as a basis for termination, and adding new paragraphs (c) and (d) which add conviction of a felony and certain other criminal offenses, and programmatic changes or lack of funds, respectively, as additional grounds for termination.

Additionally, NIH proposes to amend the authority citation by removing the United States Code citation, 42 U.S.C. 287c(b), section 485B(b) of the PHS Act, to reflect the renaming of the National Center for Human Genome Research (NCHGR) as the National Human Genome Research Institute (NHGRI), effective January 27, 1997 (62 FR 3900). As a result of the establishment of this new research institute, the current reference to section 485B is redundant and unnecessary. The reference to section 405(b)(1)(C) of the PHS Act (42 U.S.C. 284(b)(1)(C)) is sufficient, because it provides research training authority for all research institutes. The current references to the National Center for Human Genome Research and section 485B of the PHS Act in § 63.1 and § 63.2 are also redundant and unnecessary as a result of the renaming. Consequently, NIH proposes to remove references to the National Center for Human Genome Research and section 485B of the PHS Act in paragraph (a) of § 63.1 and in the definitions set forth in § 63.2 for the terms "award," "awardee," "director," and "traineeship." Also the definition of "misconduct in science," as prescribed in the PHS regulations governing the responsibility of awardees and applicants for dealing with misconduct in science, 42 CFR part 50, subpart A, is added to § 63.2.

Finally, NIH proposes to revise the references set forth in subparagraphs 8, 9, and 10 of § 63.10 to comply with

**Federal Register** format requirements. The purpose of this Notice of Proposed Rulemaking (NPRM) is to invite public comment with regard to the proposed changes. The following statements are provided as public information.

#### **Executive Order 12866**

This NPRM was reviewed by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) as required under Executive Order 12866, Regulatory Planning and Review, and was deemed to be not significant, as defined under the Order.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. The Director certifies that the proposed changes to the traineeship regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required.

#### **Paperwork Reduction Act**

This NPRM does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this NPRM is: 93.140 Intramural Research Training Award

#### **List of subjects in 42 CFR Part 63**

Grant programs-health, Health, Medical research.

Dated: August 14, 1998.

**Harold Varmus,**

*Director, National Institutes of Health.*

Accordingly, it is proposed to amend part 63 of title 42 of the Code of Federal Regulations to read as set forth below.

### **PART 63—TRAINEESHIPS**

1. The authority citation would be revised to read as set forth below:

**Authority:** 42 U.S.C. 216, 283g(d)(2), 284(b)(1)(C), 286b-3.

2. Section 63.1 would be amended by revising paragraph (a) to read as follows:

#### **§ 63.1 To what programs do these regulations apply?**

(a) The regulations in this part apply to research traineeships awarded by

each Director of a national research institute of NIH, the Director of the National Library of Medicine, and the Director of the Office of Alternative Medicine, or their designees, pursuant to sections 405(b)(1)(C), 472, and 404E(d)(2) of the Act, respectively.

\* \* \* \* \*

3. Section 63.2 would be amended by revising the definitions of "award," "awardee," "director," and "traineeship," and adding a new definition of "misconduct in science," to read as follows:

#### **§ 63.2 Definitions.**

\* \* \* \* \*

*Award* means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, or other sections of the Act, which authorize research training or traineeships.

*Awardee* means an individual awarded a traineeship under section 404E(d)(2), 405(b)(1)(C), 472, or other sections of the Act, which authorize research training or traineeships.

*Director* means the director of one of the national research institutes of NIH, the Director of the National Library of Medicine, and the Director of the Office of Alternative Medicine, or any official of NIH to whom the authority involved has been delegated.

\* \* \* \* \*

*Misconduct in science* shall have the same meaning as prescribed in § 50.102 of this chapter.

\* \* \* \* \*

*Traineeship* means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

4. Section 63.9 would be amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

#### **§ 63.9 How may NIH terminate awards?**

\* \* \* \* \*

(b) If it is determined that the awardee has committed misconduct in science, is ineligible, has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which the award was made; or

(c) If the awardee is convicted of a felony, or an offense involving any illegal drug or substance, or any offense involving a lack of financial integrity or business honesty; or

(d) Because of programmatic changes or lack of funds.

5. Section 63.10 would be amended by revising and rearranging unnumbered subparagraphs 8, 9, and 10 to read as follows:

**§ 63.101 Other HHS regulations and policies that apply.**

\* \* \* \* \*

59 FR 14508 (March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research.

**Note.** this policy is subject to change, and interested persons should contact the Office of Research on Women's Health, NIH, Room 201, Building 1, MSC 0161, Bethesda, MD 20892-0161, telephone (301) 402-1770 (not a toll-free number) to obtain reference to the current version and any amendments.

59 FR 34496 (July 5, 1998)—NIH Guidelines for Research Involving Recombinant DNA Molecules.

**Note.** this policy is subject to change, and interested persons should contact the Office of Recombinant DNA Activities, NIH, Suite 323, 6000 Executive Boulevard, MSC 7010, Bethesda, MD 20892-7010, telephone (301) 496-9838 (not a toll-free number) to obtain references to the current version and any amendments.

"Public Health Service Policy on Human Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986).

**Note.** this policy is subject to change, and interested persons should contact the Office for Protection from Research Risks, NIH, Suite 3B01, 6100 Executive Boulevard, MSC 7507, Rockville, MD 20852-7507, telephone (301) 496-7005 (not a toll-free number) to obtain references to the current version and any amendments.

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**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

**44 CFR Part 67**

[Docket No. FEMA-7262]

**Proposed Flood Elevation  
Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood

elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-3461.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: