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Description of document: Department of Veterans Affairs (VA) Regulatory Reform Task Force (RRTF) Report to the Secretary of Veterans Affairs (VAIQ 7805189), 2017

Requested date: 14-June-2017

Release date: 06-July-2018

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Source of document: FOIA SERVICE
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Washington, DC 20420
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DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

July 6, 2018

In Reply Refer To: 001B
FOIA Request: 17-09669-F

This is the Initial Agency Decision to your Freedom of Information Act (FOIA) request to the Department of Veterans Affairs (VA) dated and received in our FOIA office on June 14, 2017. You requested "a copy of the Regulatory Reform Task Force (RRTF) to the Secretary of Veterans Affairs as required by Executive Order 13777."

The Office of the Secretary, U.S. Department of Veterans Affairs (OSVA) is processing your FOIA request assigned tracking number **17-09669-F**.

July 5, 2018 Reasonable Search

On July 5, 2018, we requested that the Director, Office of Regulatory Policy and Management, submit all responsive records in his possession to the OSVA FOIA office with the search cut-off date of July 5, 2018. On July 6, 2018, the OSVA FOIA Officer received all responsive records. We consider this a reasonable search.

Initial Agency Decision

Please find attached one (1) document totaling sixteen (16) pages. 5 U.S.C. § 552(b)(5) exempts from required disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Under the deliberative process privilege, non-final VA deliberative reasoning within the report (including proposed Significant Determinations, Estimated Costs or Savings, and Proposed Modifications to Rule-Makings) are withheld under (b)(5). None of this information reflects final agency decisions, as the Office of Management and Budget, not the VA, is the final arbiter of Significance Determinations, Estimated Costs or Savings, and Modifications to Rule-Makings. Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168, 184 (1975) (not disclosing reasoning in the reports because "evidence [had] utterly fail[ed] to support the conclusion that the reasoning in the reports [had been] adopted"); Mead Data Cent., Inc. v. U.S. Dep't of the Air Force, 566 F.2d 242, 257 (D.C. Cir. 1977) ("exempt[ing] documents in which staff recommend certain action or offer their opinions on given issues").

Exposure of premature discussions before a final decision is made could create undue public confusion and jeopardize the integrity of the decision-making process. The release of the redacted information would negatively impact the ability of employees to openly and frankly consider issues amongst themselves when considering the merits of proposing Significance Determinations, Estimated Costs or Savings, and Proposed Modifications to Rule-Makings. Moreover, the predecisional character of a document is not altered by the passage of

time. Bruscino v. BOP, No. 94-1955, 1995 WL 444406 at *5 (D.D. C. May 15, 1995), aff'd in part, No. 95-5212, 1996 WL 393101 (D.C. Cir. June 24, 1996).

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: John Buck

Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration

8601 Adelphi Road

College Park, MD 20740-6001

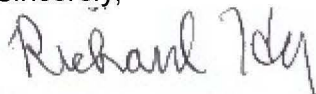
FOIA Appeal

This concludes OSVA's response to request **17-09669-F**. Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,



Richard Ha, JD, CIPP/G
OSVA FOIA Officer

Attachments – redacted one (1) document totaling sixteen (16) pages

Department of
Veterans Affairs

Memorandum

Date: JUN 26 2017

From: Regulatory Reform Officer (RRO), Deputy Chief of Staff (00A1)

Subj: Regulatory Reform Task Force Report (VAIQ 7805189)

To: Secretary (00)

1. On February 24, 2017, the President of the United States signed Executive Order (EO) 13777, titled "Enforcing the Regulatory Reform Agenda," in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform. The policy of this EO is to alleviate unnecessary regulatory burdens placed on the American people.
2. In compliance with EO 13777, the Department of Veterans Affairs (VA) designated an agency official as its RRO and established a Regulatory Reform Task Force to make recommendations to the Secretary regarding the reform and modification of VA regulations, consistent with applicable law, and lowering regulatory burdens on the American people by implementing and enforcing regulatory reform.
3. For the most part, VA is not an agency that regulates the activities of private sector entities, but rather an agency that issues regulations to implement mandatory Federal programs that provide benefits and services to eligible individuals. Consequently, its regulations generally do not create significant burdens on affected individuals or entities. Nonetheless, the regulatory reform task force identified several modifications that will alleviate approximately \$ (b) (6) million dollars in unnecessary regulatory cost burdens placed on the American people each year. We are continuing to review regulations to identify additional opportunities to relieve regulatory burdens.
4. Should you have any questions, please contact (b) (6) Director, Office of Regulation Policy and Management, at (202) 461-(b) (6)


Gina S. Farrisee

Attachments

The White House
Office of the Press Secretary
For Immediate Release
February 24, 2017

Presidential Executive Order on Enforcing the Regulatory Reform Agenda

EXECUTIVE ORDER

----- ENFORCING THE REGULATORY REFORM AGENDA

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

- (i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- (ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- (iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- (iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

- (i) the agency RRO;
- (ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;
- (iii) a representative from the agency's central policy office or equivalent central office; and
- (iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or

methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:

(i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and

(ii) identifying regulations for repeal, replacement, or modification.

Sec. 4. Accountability. Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. Waiver. Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
February 24, 2017

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

#	VA Program Office	RIN/Agency Identifier	Title of Rulemaking	Executive Order 12866 Significance Determination	PRA Costs or Cost Savings	Modification to the Rulemaking
1	CompSvc	AO19(P, F)	Schedule for Rating Disabilities: The Hematologic and Lymphatic Systems (VASRD)	(b) (5)	(b) (5)	(b) (5)
2	CompSvc	AO44(P, F)	Schedule for Rating Disabilities; The Endocrine System (VASRD)	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

3	CompSvc	AP14(P, F)	Schedule for Rating Disabilities; The Organs of Special Sense and Schedule of Ratings - Eye. (VASRD)	(b) (5)	(b) (5)	(b) (5)
4	CompSvc	AP16(P)	Schedule for Rating Disabilities; The genitourinary diseases and conditions (VASRD)	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

5	CompSvc	AP27(P, F)	Schedule for Rating Disabilities; Skin Conditions (VASRD)	(b) (5)	(b) (5)	(b) (5)
6	CompSvc	AP43(IF, F)	Presumption of Herbicide Exposure and Presumption of Disability During Service For Reservists Presumed Exposed to Herbicide	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

7	CompSvc	AP88(P)	Schedule for Rating Disabilities; Musculoskeletal System and Muscle Injuries (VASRD)	(b) (5)	(b) (5)	(b) (5)
8	CompSvc	AP92(P)	Brady Act Compliance and the National Instant Criminal Background Check Relief Program	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

9	LGY	AO65(IF,F)	Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth in Lending Act	(b) (5)	(b) (5)	(b) (5)
10	OALC	AP50(P,F)	VAAR Case 2014- V001	(b) (5)	(b) (5)	(b) (5)
11	OALC	AP58(P)	VAAR Case 2014- V005	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

12	OALC	AP81(P)	VAAR Case 2014-V004	(b) (5)		(b) (5)
13	OALC	AP82(P,F)	VAAR Case 2014-V002	(b) (5)	(b) (5)	(b) (5)

Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force

14	PenFid	AO53(P,F)	Fiduciary Activities	(b) (5)		(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

15	PenFid	AO73(P,F)	Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits	(b) (5)	(b) (5)	(b) (5)
16	VACO	AP72(IF, F)	Veterans Employment Pay for Success Grant Program	(b) (5)	(b) (5)	(b) (5)
17	VHA	A088(P,F)	Per Diem Paid to States for Care of Eligible Veterans in State Homes	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

18	VHA	AP02(P)	Civilian Health and Medical Program of the Department of Veterans Affairs	(b) (5)	(b) (5)	(b) (5)
19	VHA	AP06(P, F)	Ensuring a Safe Environment for Community Residential Care Residents	(b) (5)	(b) (5)	(b) (5)
20	VHA	AP54(P)	VA Homeless Providers Grant and Per Diem Program	(b) (5)	(b) (5)	(b) (5)
21	VHA	AP60(IF,F)	Expanded Access to Non-VA Care Through the Veterans Choice Program (VCP)	(b) (5)	(b) (5)	(b) (5)
22	VHA	AP83(P,F)	Ecclesiastical Endorsing Organization	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

23	VHA	AP90(IF)	Consent for Release of VA Medical Records	(b) (5)	(b) (5)	(b) (5)
24	VBA	AP67(P)	Apportionments	(b) (5)	(b) (5)	(b) (5)
25	VHA	AP61	Supportive Services for Veteran Families Program	(b) (5)	(b) (5)	(b) (5)

**Department of Veterans Affairs 90 Day Report to the Secretary
Regulatory Reform Task Force**

26	VHA	AP45	Fisher Houses and Other Temporary Lodging	(b) (5)	(b) (5)	(b) (5)			
					(b) (5)				
27	BVA	Information Collection	OMB Control #2900-0814	(b) (5)	(b) (5)	(b) (5)			
					(b) (5)				
Total Estimated Costs					(b) (5)				
Total Estimated Savings									