Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1446–3 is amended by adding paragraph (b)(2)(i)(B) to read as follows:

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) *Calculation rules when certificates are submitted under § 1.1446–6*—(*1*) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446–6(c)(1)(i) or (ii) and the amount of state and local taxes permitted to be considered under § 1.1446–6(c)(1)(iii). For the purposes of applying this paragraph (b)(2)(i)(B), a partnership shall first annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

(*i*) Considering under § 1.1446–6(c)(1)(i) the partner's certified deductions and losses;

(*ii*) Determining under § 1.1446–6(c)(1)(ii) whether the 1446 tax otherwise due with respect to that partner is less than $1,000 (determined with regard to any certified deductions or losses); or

(*iii*) Considering under § 1.1446–6(c)(1)(iii) the amount of state and local taxes withheld and remitted on behalf of the partner.

(*2*) The amount of the limitation provided in § 1.1446–6(c)(1)(i)(C) shall be based on the partner's allocable share of these annualized amounts. For any installment period in which the partnership considers a partner's certificate, the partnership must also consider the following events to the extent they occur prior to the due date for paying the 1446 tax for such installment period—

(*i*) The receipt of an updated certificate or status update from the partner under § 1.1446–6(c)(2)(ii)(B) certifying an amount of deductions or losses that is less than the amount reflected on the superseded certificate (see § 1.1446–6(e)(2) *Example 4*);

(*ii*) The failure to receive an updated certificate or status update from the partner that should have been provided under § 1.1446–6(c)(2)(ii)(B); and

(*iii*) The receipt of a notification from the IRS under § 1.1446–6(c)(3) or (5) (see § 1.1446–6(e)(2) *Example 5*).

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–11111 Filed 6–10–20; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA97

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a final rule that revises its Federal sector complaint processing regulations to address when a complainant may file a civil action after having previously filed an administrative appeal or request for reconsideration with the EEOC. The final rule also contains certain editorial changes.

DATES: Effective June 11, 2020.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 663–4681, or Gary J. Hozempa, Senior Staff Attorney, (202) 663–4666, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

On February 14, 2019, the EEOC published in the **Federal Register** a Notice of Proposed Rulemaking (hereinafter ''NPRM'') revising primarily 29 CFR 1614.407 (which pertains to a Federal sector complainant's right to file a civil action). 84 FR 4015 (2019). Currently, 29 CFR 1614.407 provides that an individual complainant, or a class agent or claimant, who has filed an administrative complaint alleging a violation of section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16 (hereinafter ''Title VII''); section 15 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a (hereinafter ''ADEA''); or section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 (hereinafter ''Rehabilitation Act''), may file a civil action within 90 days of receipt of the agency final action unless the complainant has filed an appeal with the EEOC, or 180 days after the complaint was filed if an appeal has not been filed and agency final action has not been taken. *See* 29 CFR 1614.407(a) & (b). When an appeal is filed with the EEOC, the current rule states that the complainant may file a civil action: (1) Within 90 days of receipt of the EEOC's final decision on the appeal; or (2) 180 days after the filing of the appeal if the EEOC has not issued a decision within that period. *See* 29 CFR 1614.407(c) & (d).

In *Bullock* v. *Berrien,* 688 F.3d 613, 618–19 (9th Cir. 2012), the court ruled that a Federal employee who had filed an administrative appeal with the EEOC could withdraw the appeal and file a civil action in district court within the 90-day period following receipt of the agency final action. The court reasoned that, because Title VII authorizes a Federal sector complainant to file a civil action ''[w]ithin 90 days of receipt of notice of [agency] final action,'' 42 U.S.C. 2000e–16(c), a complainant is not required to file an appeal with the EEOC before going to court. *See Bullock,* 688 F.3d at 618.

In accordance with *Bullock,* the NPRM proposed changing § 1614.407 to state that a complainant may withdraw an administrative appeal and instead file a civil action if the civil action is filed within 90 days of receipt of the notice of agency final action. The NPRM also proposed revising § 1614.407 to state that a complainant may withdraw a request for reconsideration and proceed to court if the civil action is filed within 90 days of receipt of the EEOC's initial appellate decision. The NPRM provided a 60-day comment period for the public.

Comments Generally

The EEOC received twenty comments in response to the NPRM. Comments were received from one agency, three organizations, three attorneys or law firms, and thirteen individuals, some of whom identified themselves as Federal or former Federal employees.

Of the thirteen comments submitted by individuals, four were non-responsive, six supported the proposed

changes, and three individuals expressed opposition. Two organizations and two attorneys opposed the changes proposed in the NPRM. A law firm also disagreed with the proposed revisions and recommended an alternative approach. The agency and one organization supported the changes. The comments are discussed in more detail below.

Comments Supporting the NPRM

One individual argued that filing a civil action without first having to file an appeal would be advantageous to complainants, as it would eliminate the 180-day maximum waiting period if an appeal were filed. Three other individuals concluded that the changes to 29 CFR 1614.407 would provide clarity to district court judges, resulting in uniform rulings that a complainant properly is in court if a civil action is filed within 90 days of receipt of the agency final action.

Another individual and an agency supported the proposed changes, stating that the revisions would eliminate what they regard as a barrier to obtaining prompt relief. The agency noted that the revisions will affect only ''the timing of a complainant's ability to exercise their rights; it does not affect the actual exercise of those rights.''

One organization supported the proposed changes because it disagrees with those courts that have dismissed civil actions on the grounds that the complainants failed to exhaust their administrative remedies. It argued that such dismissals place an added burden on complainants, who then must attempt to re-enter the administrative process. It also asserted that the dismissals prevent meritorious cases from being prosecuted, thereby depriving complainants of the relief to which they are entitled. The organization recommended that the EEOC further revise § 1614.407 to state explicitly that a complainant who files a civil action in a manner consistent with the proposed changes has exhausted his or her administrative remedies.

Further, this organization proposed that the EEOC add new sections to the regulation requiring agencies to ''give explicit notice to complainants on how to take cases to federal district court . . .'' at the end of the investigation, when the complainant is given a choice of requesting a hearing before an EEOC Administrative Judge, or a final decision by the agency. Lacking such notice, it argued, complainants are misled into believing that one must request a hearing before being able to proceed to court.

Comments Opposing the NPRM

One individual is opposed to the proposed revisions because she believes the changes will encourage complainants to opt out of the administrative process. She and an organization noted that pursuing a civil action, in contrast to pursuing an administrative appeal, is more formal, expensive, time consuming, and intimidating for *pro se* plaintiffs. Another individual and that organization characterized the proposed changes as an attempt by the EEOC to reduce its appellate caseload by steering complainants into the court system.

These two commenters further asserted that the EEOC should not change § 1614.407 based solely on a ruling from a single Circuit Court. Another individual argued that, aside from constituting the only Circuit Court to rule that an administrative appeal is optional, the *Bullock* court ruled the way it did because of the unique set of facts before it—the plaintiff was a former EEOC employee and, in her participation in the EEOC appellate process, she was asking the EEOC to rule against itself. Thus, this individual does not believe *Bullock* provides a convincing rationale for a rule change. Other commenters agreed that the facts in *Bullock* were exceptional given that the EEOC was the defendant. For this reason, four commenters do not believe *Bullock* rests on a solid legal foundation sufficient for other Circuits to find its reasoning persuasive. Their concern is that most of the civil actions filed in reliance on the proposed changes to § 1614.407 will result in dismissals for failure to exhaust administrative remedies.

Two commenters additionally asserted that the proposed changes are at odds with congressional intent, arguing that, in passing section 717 of Title VII, Congress intended complainants to receive relief primarily through the administrative process, thus ensuring that district courts would not be overburdened with adjudicating EEO cases. In a similar vein, two commenters expressed concern that the EEOC has not explained how its proposed changes would further the remedial purposes of Title VII.

One organization expressed concern that, if the proposed changes are made final, the Civil Division of the U.S. Department of Justice (hereinafter ''DOJ'') will continue to argue that a civil action filed by a complainant who also has filed an appeal is premature if it is filed less than 181 days after the appeal. Further, with respect to the proposed revisions to 29 CFR 1614.409 (''effect of filing a civil action''), three commenters asked whether the effect of the change will be that the EEOC will not enforce an appellate decision favorable to the complainant in the event the complainant subsequently files a civil action. One commenter recommended revising § 1614.409 to state that an agency is bound by a final action favorable to the complainant, even if the complainant later files an appeal or a civil action.

A commenter, noting that it has represented Federal sector complainants who have traversed what a district court called a ''Byzantine'' administrative process, opposed the proposed revisions, but mostly on grounds different from those discussed above. It argued that the EEOC's proposed changes to § 1614.407 will render the Federal sector administrative process even more Byzantine. This commenter further maintained that the EEOC's proposed revisions misinterpret section 717(c) of Title VII (which addresses a complainant's right to file a civil action), arguing that, when a complainant has filed an appeal with the EEOC, section 717(c) permits a complainant to file a civil action at any time during the pendency of the appeal, even if that means the complainant files a civil action *more than* 90 days after issuance of the agency's final action. The commenter further suggested that the Commission should revise § 1614.407 to state that a complainant's withdrawal of an appeal or a request for reconsideration constitutes a final administrative decision that triggers the statutory 90-day period for filing a civil action.

The EEOC's Response to the Comments

As some of the comments point out, the EEOC was the defendant-agency in *Bullock.* When the plaintiff initially filed her civil action, the EEOC argued, in part, that because plaintiff had previously filed a timely appeal with the EEOC, she had failed to exhaust her administrative remedies. *See Bullock* v. *Dominguez,* 2010 WL 1734964, at *2 (S.D. Cal. April 27, 2010). Relying on section 717(c) of Title VII and 29 CFR 1614.407(c) & (d), the EEOC argued that plaintiff was precluded from filing a civil action until after the Commission issued a decision or 180 days had expired following the filing of her administrative appeal. *See id.* The district court agreed and dismissed plaintiff's civil action as premature. *See id.* at *3. Plaintiff appealed to the Ninth Circuit.

In its initial appellate brief, the EEOC reiterated its position that the plaintiff had failed to exhaust her administrative

remedies. *See Bullock,* 688 F.3d at 615. The Ninth Circuit asked for a supplemental briefing, directing the parties to discuss the Ninth Circuit's decision in *Bankston* v. *White,* 345 F.3d 768 (9th Cir. 2003). *See Bullock,* 688 F.3d at 615.[1] In its supplemental brief, the EEOC asserted that *Bankston* need not be confined to the ADEA context because the EEOC's regulations addressing administrative appeals applied to Title VII, Rehabilitation Act, and ADEA claims equally. *See Bullock,* 688 F.3d at 618. The EEOC thus argued that the plaintiff in *Bullock* had exhausted her administrative remedies and the Ninth Circuit agreed. *See id.,* 688 F.3d at 615.

Thereafter, the EEOC reassessed 29 CFR 1614.407 in light of *Bullock,* and concluded that an appeal to the EEOC is an optional administrative step that a complainant need not take in order to exhaust administrative remedies. The EEOC published the NPRM in accordance with its revised view of the exhaustion issue. Having considered the comments, the EEOC has decided to issue this final rule making only slight changes to the NPRM, as explained below.

The EEOC disagrees that the revised § 1614.407 will encourage complainants to opt out of the administrative process. Nor is it the EEOC's intent to route complainants to state or Federal court. Assuming, as some have suggested, that pursuing a civil action is more formal and expensive than pursuing an administrative appeal, and more difficult for a *pro se* plaintiff to navigate, these factors will discourage most complainants from opting out of the administrative process. Nevertheless, we believe there is a small percentage of complainants who prefer to pursue their claims in court. The EEOC revised § 1614.407 with these complainants in mind.

When a complainant requests a final decision following the completion of an investigation or fails to reply to the notice that the complainant must request a hearing or a final agency decision, the agency must take final action by issuing a final decision. *See* 29 CFR 1614.110(b). If the complainant requests a hearing, the agency must take final action by issuing an order notifying the complainant whether the agency will fully implement the decision of the Administrative Judge. *See id.,* § 1614.110(a). In both situations, the agency's final action must contain a notice informing the complainant of, among other things, his or her right to file an appeal with the EEOC or a civil action in Federal district court. *See id.,* § 1614.110(a) & (b). An appeal to the EEOC must be filed within 30 days of receipt of the agency's final action. *See id.,* § 1614.402(a). Under the current rule, a civil action must be filed within 90 days of receipt of the agency's final action ''if no appeal has been filed.'' *Id.,* § 1614.407(a).

Because a complainant must decide whether to file an appeal within 30 days, the effect of the current regulation is to cause a complainant to decide whether to file a civil action within that same 30-day period, since the current rule allows a complainant to file a civil action only ''if no appeal has been filed.'' Therefore, in practice, the current rule reduces the statutory 90-day time period in which a complainant may file a civil action to 30 days. The revised rule, on the other hand, will afford the complainant the full 90-day statutory period in which to decide whether to go to court, since the complainant will not forfeit that right if he or she, being undecided, timely files an administrative appeal. The Commission believes that giving a complainant the full 90-day period in which to decide whether to go to court advances, rather than impedes, the remedial purposes of the EEO statutes, and preserves all avenues of recourse a complainant is entitled to pursue.

The EEOC also disagrees with the commenters arguing that the EEOC's reliance on *Bullock* to support its revisions as set forth in the NPRM will lead to inconsistencies among the courts regarding the exhaustion issue. As some comments accurately state, there have been courts outside the Ninth Circuit that have held that a complainant who withdraws an appeal and files a civil action less than 180 days after filing an appeal has failed to exhaust administrative remedies. The EEOC has examined these decisions and each court rests its ruling upon section 717(c) of Title VII and the EEOC's current § 1614.407.

The EEOC anticipates that these same courts, as well as others, will show deference to the revised § 1614.407 when presented with a plaintiff who has withdrawn an appeal and filed a civil action within 90 days of receipt of the agency's final action. In this regard, while section 717(c) explicitly sets forth when a complainant's right to file a civil action accrues, it is less clear about when exhaustion of administrative remedies occurs. While section 717(c) allows a complainant to appeal an agency's final action to the EEOC, nothing contained in that section requires that the complainant file an appeal. Given that section 717(c) specifies that a complainant can file a civil action ''[w]ithin 90 days of receipt of notice of final action taken by a[n] . . . agency . . . ,'' section 717(c) cannot be read as creating an exhaustion requirement that a complainant must file an appeal before proceeding in court. Thus, it is the EEOC's position that filing an appeal is an optional, rather than mandatory, administrative step, and that a complainant who initially files an appeal in accordance with the 30-day regulatory deadline may withdraw the appeal and go to court so long as the complainant does so within 90 days of receipt of the agency's final action.

The Commission thus finds merit in one organization's suggestion that a paragraph be added to § 1614.407 stating that a complainant who withdraws an appeal or a request for reconsideration within 90 days of receipt of the agency final action has exhausted his or her administrative remedies. The final rule thus adds a paragraph (g) to § 1614.407 stating that a complainant, class agent, or class claimant who withdraws an appeal or a request for reconsideration and files a civil action within 90 days of receipt of the applicable final action shall be deemed to have exhausted his or her administrative remedies. The Commission finds, however, that the notice requirement suggested by the same commenter is beyond the scope of the NPRM.

Some commenters expressed apprehension that DOJ's Civil Division will not agree with the Commission's revision to § 1614.407, arguing that the Civil Division will seek dismissal of a civil action as premature when filed by a complainant who withdraws an appeal within 90 days of receipt of the agency's final action. Relatedly, one commenter argued that the EEOC's proposed rule should not limit a complainant's right to go to court to the 90-day period following receipt of the agency final action.

Before the EEOC issued the NPRM for public comment, it was circulated to all Federal agencies pursuant to Executive Order 12067. *See* 84 FR at 4016. Section 1614.407 as it appeared in the draft NPRM circulated to the agencies did not mention a 90-day window in which an appeal could be withdrawn and a civil action filed. Most agencies objected to this omission, stating that the rule as

[1] In *Bankston,* the Ninth Circuit held that the plaintiff, who had filed an appeal with the Merit Systems Protection Board concerning his ADEA claim against the Occupational Safety and Health Administration, was not required to see his appeal through to completion or until the lapse of the requisite waiting period, but instead could withdraw his appeal and proceed directly to court. *See Bankston,* 345 F.3d at 776–77.

drafted could be read as allowing a complainant to withdraw an appeal any time after it was filed and instead go to court. The agencies suggested that the revised rule should limit the withdrawal period to the 90-day period following receipt of the agency final action, consistent with the ruling in *Bullock. See* 84 FR at 4016. Most agencies, including DOJ, stated they could support the NPRM if the EEOC revised § 1614.407 as suggested. Thus, before issuing the NPRM for public comment, the EEOC included the 90-day window for filing a civil action, consistent with the agencies' comments. *See* 84 FR at 4017. In light of the agency comments, the EEOC is confident that DOJ will not seek to dismiss a civil action that is filed within 90 days of the plaintiff's receipt of an agency final action, even if the plaintiff previously filed and withdrew an appeal or a request for reconsideration. With the agency comments in mind, the EEOC declines to follow the suggestion of the one commenter that the right to file a civil action not be limited to the 90-day period following receipt of the agency final action.

Finally, with respect to the revisions made to § 1614.409, it has been the long-standing practice of the Commission to cease processing an appeal when the Commission learns that the complainant has filed a civil action. This practice is based on the EEOC's position that a judicial adjudication of a plaintiff's EEO complaint supersedes an administrative decision addressing the same matter, regardless of the outcome of the decisions. The revisions to § 1614.409 reaffirm this long-standing position. Moreover, the EEOC often is not made aware of the fact that a complainant has filed a civil action, resulting in the Commission issuing a decision on an appeal it should have terminated under current § 1614.409. The Commission believes it is necessary to revise § 1614.409 to state that the Commission will not enforce a decision it issues after the complainant has gone to court since the Commission would not have issued the decision had it known the complainant had filed a civil action. This is why revised § 1614.409 encourages complainants to notify the EEOC when the complainant goes to court, so as to enable the EEOC to conserve resources and avoid issuing decisions that are null and void.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a ''significant regulatory action'' under section 3(f) of the order, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

Executive Order 13771

This rule is not subject to Executive Order 13771, Reducing Regulation and Controlling Regulatory Cost. Pursuant to guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs (April 5, 2017), an ''E.O. 13771 regulatory action'' is defined as ''[a] significant regulatory action as defined in Section 3(f) of E.O. 12866 . . . .'' As noted above, this rule is not a significant regulatory action under section 3(f) of E.O. 12866. Thus, this rule does not require the EEOC to issue two E.O. 13771 deregulatory actions.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees and agencies of the Federal Government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission,

Janet L. Dhillon,

Chair.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1614—[AMENDED]

■ 1. The authority citation for 29 CFR part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1614.201 [Amended]

■ 2. In § 1614.201, remove paragraph (c).

■ 3. In § 1614.407:

■ a. Revise the section heading.

■ b. In the introductory text, remove the word ''and'' after ''ADEA'' and add in its place a comma and add the words '', and Genetic Information Nondiscrimination Act'' after ''Rehabilitation Act.''

■ c. Revise paragraphs (a) and (b).

■ d. Add paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 1614.407 Civil action: Title VII, Age Discrimination in Employment Act, Rehabilitation Act, and Genetic Information Nondiscrimination Act.

* * * * *

(a) Within 90 days of receipt of the agency final action on an individual or class complaint;

(b) After 180 days from the date of filing an individual or class complaint if agency final action has not been taken;

* * * * *

(e) After filing an appeal with the Commission from an agency final action, the complainant, class agent, or class claimant may withdraw the appeal and file a civil action within 90 days of receipt of the agency final action. If the complainant, class agent, or class claimant files an appeal with the Commission from a final agency action

and more than 90 days have passed since receipt of the agency final action, the appellant may file a civil action only in accordance with paragraph (c) or (d) of this section.

(f) After filing a request for reconsideration of a Commission decision on an appeal, the complainant, class agent, or class claimant may withdraw the request and file a civil action within 90 days of receipt of the Commission's decision on the appeal. If the complainant, class agent, or class claimant files a request for reconsideration of a Commission decision on an appeal and more than 90 days have passed since the appellant received the Commission's decision on the appeal, the appellant may file a civil action only in accordance with paragraph (c) or (d) of this section.

(g) A complainant, class agent, or class claimant who follows the procedures described in paragraph (e) or (f) of this section shall be deemed to have exhausted his or her administrative remedies.

■ 4. Revise § 1614.409 to read as follows:

§ 1614.409 Effect of filing a civil action.

Filing a civil action under § 1614.407 or § 1614.408 shall terminate Commission processing of the appeal. A Commission decision on an appeal issued after a complainant files suit in district court will not be enforceable by the Commission. If private suit is filed subsequent to the filing of an appeal and prior to a final Commission decision, the complainant should notify the Commission in writing.

§ 1614.505 [Amended]

■ 5. In § 1614.505(a)(4), remove the reference ''(b)(2)'' and add in its place ''(a)(3).''

[FR Doc. 2020–10965 Filed 6–10–20; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AQ98

Extension of Veterans' Group Life Insurance (VGLI) Application Period in Response to the COVID–19 Public Health Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to extend the deadline for former members insured under Servicemembers' Group Life Insurance (SGLI) to apply for Veterans' Group Life Insurance (VGLI) coverage following separation from service in order to address the inability of members directly or indirectly affected by the 2019 Novel Coronavirus (COVID–19) public health emergency to purchase VGLI. This rule will be in effect for one year.

DATES:

Effective Date: This interim final rule is effective June 11, 2020.

Comment Date: Comments must be received on or before July 13, 2020.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to ''AQ98(IF)—Extension of Veterans' Group Life Insurance (VGLI) Application Period In Response To The COVID–19 Public Health Emergency.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has authority to prescribe regulations that are necessary or appropriate to carry out the laws administered by VA and that are consistent with those laws. 38 U.S.C. 501(a). Section 1977 of title 38, United States Code, authorizes the VGLI program, which provides former members separating from service with the option of converting existing SGLI coverage into renewable, 5-year term group life insurance coverage in amounts ranging from $10,000 to $400,000 based upon the amount of SGLI coverage. *See* 38 U.S.C. 1967(a), 1968(b)(1)(A), 1977(a), (b). Furthermore, section 1977(b)(5) states that VGLI shall ''contain such other terms and conditions as the Secretary determines to be reasonable and practicable which are not specifically provided for in'' section 1977.

Pursuant to these statutes, VA promulgated 38 CFR 9.2, which provides the effective dates of VGLI coverage and application requirements. VGLI coverage may be granted if an application, the initial premium, and evidence of insurability are received within 1 year and 120 days following termination of duty. 38 CFR 9.2(c). Evidence of insurability is not required during the initial 240 days following termination of duty. *Id.*

On March 13, 2020, President Donald J. Trump issued Proclamation 9994 proclaiming that the 2019 novel Coronavirus (COVID–19) outbreak in the United States constitutes a national emergency beginning March 1, 2020. 85 FR 15337 (Mar. 18, 2020). Because of mitigation strategies to flatten the curve of infections and reduce the spread of COVID–19, the United States economy has been severely impacted, with national unemployment claims reaching historic levels. Proclamation 10014 of April 22, 2020, 85 FR 23441 (Apr. 27, 2020); *see also* Executive Order on Regulatory Relief to Support Economic Recovery (May 19, 2020) (directing agencies to address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery). We believe that, as a result of the economic situation, former members, who otherwise may be eligible for VGLI coverage, currently may not be able to afford VGLI coverage or to provide evidence of insurability.

VA is therefore amending 38 CFR 9.2 by adding new subsection (f)(1) to extend by 90 days the time periods under 38 CFR 9.2(c) during which former members may apply for VGLI . Former members who submit a VGLI application and the initial premium within 330 days following separation from service will not be required to submit evidence of insurability. Former members who do not apply for VGLI within 330 days following separation from service may still receive VGLI coverage if they apply for the coverage within 1 year and 210 days following separation from service and submit the initial premium and evidence of insurability. These amendments will ease the financial consequences of the COVID–19 pandemic by extending the time limits for former members to enroll in VGLI, some of whom do not qualify for a private commercial plan of insurance due to their disabilities.