

Custom Federal Regulations Service™

**This is supplemental material  
for Book B of your set of  
Federal Regulations**

Title 38, Part 3

*Adjudication*

**Veterans Benefits Administration**

Supplement No. 105

Covering period of *Federal Register* issues  
through October 1, 2013

Copyright © 2012 Jonathan Publishing

## Need Assistance?

Questions concerning **MISSING SUPPLEMENTS**, need for **ADDITIONAL BOOKS**, and other **DISTRIBUTION LIST** issues for this loose-leaf service should be directed to:

Department of Veterans Affairs  
Veterans Benefits Administration  
Administration  
Mail Code: 20M33  
810 Vermont Avenue, N.W.  
Washington DC 20420  
Telephone: 202/273-7588  
Fax: 202/275-5947  
E-mail: [coarms@vba.va.gov](mailto:coarms@vba.va.gov)

Questions concerning the **FILING INSTRUCTIONS** for this loose-leaf service,  
or the reporting of **SUBSTANTIVE ERRORS** in the text,  
may be directed to:

Jonathan Publishing  
660 Laurel Street, B-103  
Baton Rouge LA 70802  
Telephone: 225-205-5873  
Fax: 702-993-6003  
E-mail: [info@jonpub.com](mailto:info@jonpub.com)

# GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

## Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

*Adjudication*

## Veterans Benefits Administration

Supplement No. 105

5 October 2013

Covering the period of Federal Register issues  
through October 1, 2013

When **Book B** was originally prepared, it was current through final regulations published in the *Federal Register* of 9 August 1991. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which begins on page B-5 of Book B, *Adjudication*.

**B-105-3**

**To ensure accuracy and timeliness of your materials,  
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page B-5) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page B-4.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page B-5)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

<b>FILING INSTRUCTIONS</b>
----------------------------

**Book B, Supplement No. 105  
October 5, 2013**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
B-15 to B-16	B-15 to B-16	Book B Lead Material
3.307-2 to 3.307-3	3.307-2 to 3.307-3	§3.307
3.309-7 to 3.309-8	3.309-7 to 3.309-8	§3.309
3.816-1 to 3.816-4	3.816-1 to 3.816-4	§3.816

**Do not file this supplement until you confirm that  
all prior supplements have been filed**

**Be sure to complete the  
*Supplement Filing Record* (page B-5)  
when you have finished filing this material.**

## HIGHLIGHTS

### Book B, Supplement No. 105 October 5, 2013

**Note:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book B (*Adjudication*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

### **Modifications in this supplement include the following:**

1. On 6 September 2013, the VA published a final rule effective that same day, amending its adjudication regulation regarding compensation for disabilities experienced by veterans who served in the Southwest Asia Theater of Operations during the Persian Gulf War. Change:
  - In §3.307, revised paragraph (a)(6)(ii),
  - In §3.309, revised paragraph (3), and
  - In §3.816, revised paragraph (b)(2).



3.814	Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea ....	3.814-1
3.815	Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.....	3.815-1
3.816	Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.....	3.816-1

### **Incompetents, Guardianship and institutional awards**

3.850	General.....	3.850-1
3.851	St. Elizabeths Hospital, Washington, D.C.....	3.851-1
3.852	Institutional awards.....	3.852-1
3.853	Incompetents; estate over \$25,000 .....	3.853-1
3.854	Limitation on payments for minor .....	3.854-1
3.855	Beneficiary rated or reported incompetent .....	3.855-1
3.856	Change of name of female fiduciary.....	3.856-1
3.857	Children's benefits to fiduciary of surviving spouse .....	3.857-1

### **Forfeiture**

3.900	General.....	3.900-1
3.901	Fraud.....	3.901-1
3.902	Treasonable acts.....	3.902-1
3.903	Subversive activities .....	3.903-1
3.904	Effect of forfeiture after veteran's death.....	3.904-1
3.905	Declaration of forfeiture or remission of forfeiture .....	3.905-1

### **Protection**

3.950	Helpless children; Spanish-American and prior wars .....	3.950-1
3.951	Preservation of disability ratings .....	3.951-1
3.952	Protected ratings .....	3.952-1
3.953	Public Law 85-56 and Public Law 85-857 .....	3.953-1
3.954	Burial allowance .....	3.954-1
3.955–3.956	[Reserved]	
3.957	Service connection.....	3.957-1
3.958	Federal employees' compensation cases .....	3.958-1
3.959	Tuberculosis.....	3.959-1
3.960	Section 306 and old-law pension protection.....	3.960-1

**B-16**

**Accrued**

3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid  
upon death of a beneficiary..... 3.1000-1

3.1001 Hospitalized competent veterans ..... 3.1001-1

3.1002 Political subdivisions of United States ..... 3.1002-1

3.1003 Returned and canceled checks ..... 3.1003-1

3.1004–3.1006 [Reserved]

3.1007 Hospitalized incompetent veterans ..... 3.1007-1

3.1008 Accrued benefits payable to foreign beneficiaries ..... 3.1008-1

3.1009 Personal funds of patients ..... 3.1009-1

**Subpart B—Burial Benefits**

3.1600 Payment of burial expenses of deceased veterans ..... 3.1600-1

3.1601 Claims and evidence ..... 3.1601-1

3.1602 Special conditions governing payments ..... 3.1602-1

3.1603 Authority for burial of certain unclaimed bodies..... 3.1603-1

3.1604 Payments from non-Department of Veterans Affairs sources ..... 3.1604-1

3.1605 Death while traveling under prior authorization or  
while hospitalized by the Department of Veterans Affairs..... 3.1605-1

3.1606 Transportation items ..... 3.1606-1

3.1607 Cost of flags..... 3.1607-1

3.1608 Nonallowable expenses ..... 3.1608-1

3.1609 Forfeiture ..... 3.1609-1

3.1610 Burial in National cemeteries ..... 3.1610-1

3.1611 Official Department of Veterans Affairs representation at funeral ..... 3.1611-1

3.1612 Monetary allowance in lieu of a Government-furnished  
headstone or marker..... 3.1612-1

**Subpart C—[Reserved]**

**Subpart D—Universal Adjudication Rules That Apply to Benefit Claims  
Governed by Part 3 of This Title**

3.2100 Scope of Applicability ..... 3.2100-1

3.2130 Will VA accept a signature by mark or thumbprint?..... 3.2130-1

*Section Title index begins on next page*

(ii) The diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and early-onset peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. *Service in the Republic of Vietnam* includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. (Authority: 38 U.S.C. 501(a) and 1116(a)(3))

(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. See also 38 CFR 3.814(c)(2). (Authority: 38 U.S.C. 501(a), 1116(a)(3), and 1821)

(b) *Evidentiary basis.* The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in §3.303(b) will be considered. The diseases listed in §3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except:

(1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or

(2) Where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease. (Authority: 38 U.S.C. 1112)

(c) *Prohibition of certain presumptions.* No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its

existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree.

(d) *Rebuttal of service incurrence or aggravation.*

(1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression “affirmative evidence to the contrary” will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under §3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition. (Authority: 38 U.S.C 1113 and 1153)

[26 FR 1581, Feb. 24, 1961, as amended at 35 FR 18281, Dec. 1 1970; 39 FR 34530, Sept. 26, 1974; 43 FR 45347, Oct. 2, 1978; 47 FR 11655, Mar. 18, 1982; 58 FR 29109, May 19, 1993; 59 FR 5106, Feb. 3, 1994; 59 FR 29724, June 9, 1994; 61 FR 57588, Nov. 7, 1996; 62 FR 35422, July 1, 1997; 67 FR 67793, Nov. 7, 2002; 68 FR 34541, June 10, 2003; 76 FR 4248, Jan. 25, 2011; 78 FR 54766, Sep. 6, 2013]

**Supplement *Highlights* references:** 7(8), 10(1), 12(1), 24(3), 30(1), 56(2), 57(1), 95(1), 105(1).

- (B) Can affirmatively show they worked within the areas set forth in paragraph (d)(3)(vii)(A) of this section although not interned within those areas, or
- (C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(3)(vi) of this section, or
- (D) Were repatriated through the port of Nagasaki. (Authority: 38 U.S.C. 1110, 1112, 1131)

(e) *Disease associated with exposure to certain herbicide agents.* If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

AL amyloidosis

Chloracne or other acneform disease consistent with chloracne

Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)

Hodgkin's disease

Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)

All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)

Multiple myeloma

Non-Hodgkin's lymphoma

Parkinson's disease

Early-onset peripheral neuropathy

Porphyria cutanea tarda

Prostate cancer

Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)

Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

**Note 1:** The term *soft-tissue sarcoma* includes the following:

Adult fibrosarcoma

Dermatofibrosarcoma protuberans

Malignant fibrous histiocyoma

Liposarcoma

Leiomyosarcoma

Epithelioid leiomyosarcoma (malignant leiomyoblastoma)

Rhabdomyosarcoma

Ectomesenchymoma

Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)  
 Proliferating (systemic) angioendotheliomatosis  
 Malignant glomus tumor  
 Malignant hemangiopericytoma  
 Synovial sarcoma (malignant synovioma)  
 Malignant giant cell tumor of tendon sheath  
 Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas  
 Malignant mesenchymoma  
 Malignant granular cell tumor  
 Alveolar soft part sarcoma  
 Epithelioid sarcoma  
 Clear cell sarcoma of tendons and aponeuroses  
 Extraskeletal Ewing's sarcoma  
 Congenital and infantile fibrosarcoma  
 Malignant ganglioneuroma

**Note 2:** For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

[41 FR 55873, Dec. 23, 1976 and 47 FR 11656, Mar. 18, 1982, as amended at 47 FR 54436, Dec. 3, 1982; 49 FR 47003, Nov. 30, 1984; 53 FR 23236, June 21, 1988; 54 FR 26029, June 21, 1989; 57 FR 10426, Mar. 26, 1992; 58 FR 25564, Apr. 27, 1993; 58 FR 29109, May 19, 1993; 58 FR 41636, Aug. 5, 1993; 59 FR 5107, Feb. 3, 1994; 59 FR 25329, May 16, 1994; 59 FR 29724, June 9, 1994; 59 FR 35465, July 12, 1994; 60 FR 31252, June 14, 1995; 61 FR 57589, Nov. 7, 1996; 65 FR 43700, July 14, 2000; 66 FR 23168, May 8, 2001; 67 FR 3615, Jan. 25, 2002; 67 FR 67793, Nov. 7, 2002; 68 FR 42603, July 18, 2003; 68 FR 59542, Oct. 16, 2003; 69 FR 31882, June 8, 2004; 69 FR 60089, Oct. 7, 2004; 70 FR 37040, June 28, 2005; 71 FR 44918, Aug. 8, 2006; 73 FR 30485, May 28, 2008; 73 FR 31753, June 4, 2008; 74 FR 21260, May 7, 2009; 74 FR 44289, Aug. 28, 2009; 75 FR 53216, Aug. 31, 2010; 75 FR 54496, Sept. 8, 2010; 78 FR 54766, Sep. 6, 2013]

**Supplement Highlights references:** 7(6, 8), 10(1), 11(1), 12(1,5), 16(3), 24(3), 43(1), 46(2), 50(1), 56(2), 58(1), 60(2), 62(1), 64(1), 67(1), 72(2), 79(2), 80(1), 86(1), 89(1), 92(1), 105(1).

**§3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.**

(a) *Purpose.* This section states effective-date rules required by orders of a United States district court in the class-action case of *Nehmer v. United States Department of Veterans Affairs*, No. CV-86-6160 TEH (N.D. Cal.).

(b) *Definitions.* For purposes of this section:

(1) *Nehmer class member* means:

- (i) A Vietnam veteran who has a covered herbicide disease; or
- (ii) A surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

(2) *Covered herbicide disease* means a disease for which the Secretary of Veterans Affairs has established a presumption of service connection pursuant to the Agent Orange Act of 1991, Public Law 102-4, other than chloracne, as provided in §3.309(e). Those diseases are:

(c) *Effective date of disability compensation.* If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied compensation for the same covered herbicide disease in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. Minor differences in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the prior decision denied compensation for the same covered herbicide disease.

(2) If the class member's claim for disability compensation for the covered herbicide disease was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, the effective date of the award will be the later of the date such claim was received by VA or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A claim will be considered a claim for compensation for a particular covered herbicide disease if:

(i) The claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability; or

(ii) VA issued a decision on the claim, between May 3, 1989 and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, in which VA denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded.

(3) If the class member's claim referred to in paragraph (c)(1) or (c)(2) of this section was received within one year from the date of the class member's separation from service, the effective date of the award shall be the day following the date of the class member's separation from active service.

(4) If the requirements of paragraph (c)(1) or (c)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§3.114 and 3.400.

(d) *Effective date of dependency and indemnity compensation (DIC)*. If a *Nehmer* class member is entitled to DIC for a death due to a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which such prior denial was based or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section.

(2) If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused the death, the effective date of the award will be the later of the date such claim was received by VA or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section. In accordance with §3.152(b)(1), a claim by a surviving spouse or child for death pension will be considered a claim for DIC. In all other cases, a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.

(3) If the class member's claim referred to in paragraph (d)(1) or (d)(2) of this section was received within one year from the date of the veteran's death, the effective date of the award shall be the first day of the month in which the death occurred.

(4) If the requirements of paragraph (d)(1) or (d)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§3.114 and 3.400.

(e) *Effect of other provisions affecting retroactive entitlement.*

(1) *General.* If the requirements specified in paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) of this section are satisfied, the effective date shall be assigned as specified in those paragraphs, without regard to the provisions in 38 U.S.C. 5110(g) or §3.114 prohibiting payment for periods prior to the effective date of the statute or regulation establishing a presumption of service connection for a covered herbicide disease. However, the provisions of this section will not apply if payment to a *Nehmer* class member based on a claim described in paragraph (c) or (d) of this section is otherwise prohibited by statute or regulation, as, for example, where a class member did not qualify as a surviving spouse at the time of the prior claim or denial.

(2) *Claims Based on Service in the Republic of Vietnam Prior To August 5, 1964.* If a claim referred to in paragraph (c) or (d) of this section was denied by VA prior to January 1, 1997, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective-date rules of this regulation do not apply. The effective date of benefits in such cases shall be determined in accordance with 38 U.S.C. 5110. If a claim referred to in paragraph (c) or (d) of this section was pending before VA on January 1, 1997, or was received by VA after that date, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective date shall be the later of the date provided by paragraph (c) or (d) of this section or January 1, 1997. (Authority: Public Law 104-275, sec. 505)

(f) *Payment of Benefits to Survivors or Estates of Deceased Beneficiaries.*

(1) *General.* If a *Nehmer* class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(3) of this section dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:

- (i) The class member's spouse, regardless of current marital status.

*Note to Paragraph (f)(1)(i):* For purposes of this paragraph, a spouse is the person who was legally married to the class member at the time of the class member's death.

(ii) The class member's child(ren), regardless of age or marital status (if more than one child exists, payment will be made in equal shares, accompanied by an explanation of the division).

*Note to Paragraph (f)(1)(ii):* For purposes of this paragraph, the term "child" includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death.

(iii) The class member's parent(s), regardless of dependency (if both parents are alive, payment will be made in equal shares, accompanied by an explanation of the division).

*Note to Paragraph (f)(1)(iii):* For purposes of this paragraph, the term “parent” includes natural and adoptive parents, but in the event of successive parents, the persons who last stood as parents in relation to the class member will be considered the parents.

(iv) The class member’s estate.

(2) *Inapplicability of certain accrued benefit requirements.* The provisions of 38 U.S.C. 5121(c) and §3.1000(c) requiring survivors to file claims for accrued benefits do not apply to payments under this section. When a *Nehmer* class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran’s claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) *Bar to accrued benefit claims.* Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and §3.1000.

(g) *Awards covered by this section.* This section applies only to awards of disability compensation or DIC for disability or death caused by a disease listed in paragraph (b)(2) of this section. (Authority: 38 U.S.C. 501)

[68 FR 50970, Aug. 25, 2003, as amended at 73 FR 61736, Oct. 17, 2008; 78 FR 54766, Sep. 6, 2013]

**Supplement *Highlights* references:** 59(1), 83(1), 105(1).

*Next Section is §3.850*