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Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 111

Covering period of *Federal Register* issues
through March 1, 2015

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Custom Federal Regulations Service™

Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 111

5 March 2015

Covering the period of Federal Register issues
through March 1, 2015

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1. Always file your supplemental materials immediately upon receipt.
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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.
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FILING INSTRUCTIONS

Book B, Supplement No. 111 March 5, 2015

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HIGHLIGHTS

Book B, Supplement No. 111 March 5, 2015

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 25 September 2014, the VA published a final rule effective 24 March 2015, to require that all claims governed by VA's adjudication regulations be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. Changes:

- In §3.1, revised the definition for *Claim*.
- Revised §3.108
- In §3.109, revised paragraph (a)(2)
- In §3.150, removed paragraph (c)
- Revised §3.151
- Revised §3.154
- Revised §3.155, including section title
- Revised §3.157
- Revised §3.160, including section title
- In §3.400, revised paragraph (o)(2)
- In §3.403, revised paragraph (a)(3)
- In §3.660, revised paragraph (c)
- In §3.665, revised paragraph (f)

- In §3.666, revised paragraphs (a)(4), (b)(3) and (c)
- In §3.701, revised paragraph (b)
- In §3.812, revised paragraphs (e) and (f)
- In §3.2600, revised paragraph (a)

2. On 25 February 2015, the VA published an interim final rule effective that same day, to amend its regulation regarding certificates of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. The amendment authorizes automatic issuance of a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment to all veterans with service-connected amyotrophic lateral sclerosis (ALS) and members of the Armed Forces serving on active duty with ALS.

Change:

- In §3.808, added paragraph (b)(5).



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(i) “State” means each of the several States, Territories and possessions of the United States, the District of Columbia, and Commonwealth of Puerto Rico.

(j) “Marriage” means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued. (Authority: 38 U.S.C. 103(c))

(k) “Service-connected” means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(l) “Nonservice-connected” means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(m) “In line of duty” means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran’s own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. A service department finding that injury, disease or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:

(1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.

(2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.

(3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court. (Authority: 38 U.S.C. 105)

Note: See §3.1(y)(2)(iii) for applicability of “in line of duty” in determining former prisoner of war status.

(n) “Willful misconduct” means an act involving conscious wrongdoing or known prohibited action. A service department finding that injury, disease or death was not due to misconduct will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the facts and the requirements of laws administered by the Department of Veterans Affairs.

(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.

(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death. (See §§3.301, 3.302)

(o) “Political subdivision of the United States” includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.

(p) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary.

(q) “Notice” means written notice sent to a claimant or payee at his or her latest address of record.

(r) “Date of receipt” means the date on which a claim, information or evidence was received in the Department of Veterans Affairs, except as to specific provisions for claims or evidence received in the State Department (§3.108), or in the Social Security Administration (§3.153, §3.201), or Department of Defense as to initial claims filed at or prior to separation. However, the Under Secretary for Benefits may establish, by notice published in the *Federal Register*, exceptions to this rule, using factors such as postmark or the date the claimant signed the correspondence, when he or she determines that a natural or man-made interference with the normal channels through which the Veterans Benefits Administration ordinarily receives correspondence has resulted in one or more Veterans Benefits Administration offices experiencing extended delays in receipt of claims, information, or evidence from claimants served by the affected office or offices to an extent that, if not addressed, would adversely affect such claimants through no fault of their own. (Authority: 38 U.S.C. 501(a), 512(a), 5110)

(s) “On the borders thereof” means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and the nations of Guatemala and British Honduras. (Authority: 38 U.S.C. 101(30))

(t) “In the waters adjacent thereto” means, with regard to service during the Mexican border period, the waters (including the islands therein) which are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico. (Authority: 38 U.S.C. 101(30))

(u) “Section 306 pension” means those disability and death pension programs in effect on December 31, 1978, which arose out of Pub. L. 86-211; 73 Stat. 432.

(v) “Old-Law pension” means the disability and death pension programs that were in effect on June 30, 1960. Also known as protected pension, i.e. protected under section 9(b) of the Veteran’s Pension Act of 1959 (Pub. L. 86-211; 73 Stat. 432).

(w) “Improved pension” means the disability and death pension programs becoming effective January 1, 1979, under authority of Pub. L. 95-588; 92 Stat. 2497.

(x) “Service pension” is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth. (Authority: 38 U.S.C. 1512, 1536)

(y) *Former prisoner of war.* The term “former prisoner of war” means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings.* The Department of Veterans Affairs shall accept the findings of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Other decisions.* In all other situations, including those in which the Department of Veterans Affairs cannot accept the service department findings, the following factors shall be used to determine prisoner of war status:

(i) *Circumstances of detention or internment.* To be considered a former prisoner of war, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. Each individual member of a particular group of detainees or internees shall, in the absence of evidence to the contrary, be considered to have experienced the same circumstances as those experienced by the group.

(ii) *Reason for detention or internment.* The reason for which a serviceperson was detained or interned is immaterial in determining POW status, except that a serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW on the basis of that period of detention or internment, unless the charges are a sham intended to legitimize the period of detention or internment.

(3) *Central Office approval.* The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations establishing or denying POW status, with the exception of those service department determinations accepted under paragraph (y)(1) of this section.

(4) *In line of duty.* The Department of Veterans Affairs shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detention or internment was the proximate result of the serviceperson’s own willful misconduct.

(5) *Hostile force.* The term “hostile force” means any entity other than an enemy or foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views or to attempt to embarrass the United States. (Authority: 38 U.S.C. 101(32))

(z) “Nursing home” means:

(1) Any extended care facility which is licensed by a State to provide skilled or intermediate-level nursing care,

(2) A nursing home care unit in a State veterans' home which is approved for payment under 38 U.S.C. 1742, or

(3) A Department of Veterans Affairs Nursing Home Care Unit.

(aa) "Fraud":

(1) As used in 38 U.S.C. 103 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining, or assisting an individual to obtain an annulment or divorce, with knowledge that the misrepresentation or failure to disclose may result in the erroneous granting of an annulment or divorce; and (Authority: 38 U.S.C. 210(c))

(2) As used in 38 U.S.C. 110 and 359 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining or retaining, or assisting an individual to obtain or retain, eligibility for Department of Veterans Affairs benefits, with knowledge that the misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits. (Authority: 38 U.S.C. 501(a))

[26 FR 1563, Feb. 24, 1961, as amended at 27 FR 4023, Apr. 27, 1962; 27 FR 11886, Dec. 1, 1962; 28 FR 320, Jan. 11, 1963; 32 FR 6840, May 4, 1967; 36 FR 5341, Mar. 20, 1971; 36 FR 8445, May 6, 1971; 40 FR 16064, Mar. 3, 1975; 44 FR 45931, Aug. 6, 1979; 47 FR 38122, Aug. 30, 1982; 48 FR 38821, Aug. 26, 1983; 54 FR 31828, Aug. 2, 1989; 54 FR 34981, Aug. 23, 1989; 55 FR 8141, Mar. 7, 1990; 56 FR 19579, Apr. 20, 1991; 60 FR 27408, May 24, 1995; 61 FR 56627, Nov. 4, 1996; 69 FR 42880, July 19, 2004; 70 FR 51590, Aug. 31, 2005; 71 FR 44918, Aug. 8, 2006; 79 FR 57694, Sep. 25, 2014]

Cross-References: Pension. See §3.3. Compensation. See §3.4. Dependency and indemnity compensation. See §3.5. Preservation of disability ratings. See §3.951. Service-connection. See §3.957.

Supplement *Highlights* references: 16(1), 24(2), 62(2), 68(1), 72(2), 111(1).

§3.108 State Department as agent of Department of Veterans Affairs.

Diplomatic and consular officers of the Department of State are authorized to act as agents of the Department of Veterans Affairs and therefore a complete claim as set forth in § 3.160(a) or an intent to file a claim as set forth in § 3.155(b) or evidence submitted in support of a claim filed in a foreign country will be considered as filed in the Department of Veterans Affairs as of the date of receipt by the State Department representative.

[26 FR 1569, Feb. 24, 1961; 79 FR 57695, Sep. 24, 2014]

Cross reference: Evidence from foreign countries. See §3.202.

Supplement *Highlights* References: 111(1).

§3.109 Time limit.

(a) *Notice of time limit for filing evidence.*

(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If the evidence is not received within 1 year from the date of such notification, pension, compensation, or dependency and indemnity compensation may not be paid by reason of that application (38 U.S.C. 5103(a)). Information concerning the whereabouts of a person who has filed claim is not considered evidence.

(2) The provisions of this paragraph are applicable to original initial applications, to applications for increased benefits by reason of increased disability, age, or the existence of a dependent, and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.

(b) *Extension of time limit.* Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues. (Authority: 38 U.S.C. 501(a))

[26 FR 1569, Feb. 24, 1961, as amended at 26 FR 2231, Mar. 15, 1961; 29 FR 1462, Jan. 29, 1964; 30 FR 133, Jan. 7, 1965; 55 FR 13529, Apr. 11, 1990; 79 FR 57695, Sep. 24, 2014]

Supplement *Highlights* References: 111(1).

§3.110 Computation of time limit.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) “The first day of the specified period” referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see §§20.302 and 20.305 of this chapter. (Authority: 38 U.S.C. 501(a))

[55 FR 13529, Apr. 11, 1990; 58 FR 32443, June 10, 1993]

Supplement *Highlights* reference: 8(1)

§3.111 [Reserved]

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§3.150 Forms to be furnished.

(a) Upon request made in person or in writing by any person applying for benefits under the laws administered by the Department of Veterans Affairs, the appropriate application form will be furnished. (Authority: 38 U.S.C. 5102)

(b) Upon receipt of notice of death of a veteran, the appropriate application form will be forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation, or dependency and indemnity compensation. If it is not indicated that any person would be entitled to such benefits, but there is payable an accrued benefit not paid during the veteran's lifetime the appropriate application form will be forwarded to the preferred dependent. Notice of the time limit will be included in letters forwarding applications for benefits.

[26 FR 1570, Feb. 14, 1961, as amended at 30 FR 133, Jan. 7, 1965; 67 FR 40867, June 14, 2002; 79 FR 57695, Sep. 25, 2014]

Cross reference: Extension of time limit. See §3.109(b).

Supplement *Highlights* References: 111(1).

§3.151 Claims for disability benefits.

(a) *General.* A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

(b) *Retroactive disability pension claims.* Where disability pension entitlement is established based on a claim received by VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in §3.400(b) of this part. (Authority: 38 U.S.C. 5110(b)(3))

[50 FR 25981, June 24, 1985; 79 FR 57695, Sep. 25, 2014]

Cross reference: Intent to file a claim. See §3.155(b).

Supplement *Highlights* References: 111(1).

§3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by §3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by VA. (See §3.400(c) concerning effective dates of awards.) (Authority: 38 U.S.C. 5101(a))

(b) (1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits. (Authority: 38 U.S.C. 5101(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits. (Authority: 38 U.S.C. 5101(b)(2))

(c) (1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 5110(e).) (See paragraph (c)(4) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from the date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim. (Authority: 38 U.S.C. 501(a))

[50 FR 25981, June 24, 1985, as amended at 71 FR 44918, Aug. 8, 2006]

Supplement *Highlight* reference: 72(2)

Cross references: State Department as agent of Department of Veterans Affairs. See §3.108. Change in status of dependents. See §3.651.

§3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Secretary and the Commissioner of Social Security filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Department of Veterans Affairs as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Department of Veterans Affairs will not preclude a request for any necessary evidence. (Authority: 38 U.S.C. 5105)

[26 FR 1570, Feb. 24, 1961, as amended at 71 FR 44918, Aug. 8, 2006]

Supplement *Highlights* reference: 72(2)

§3.154 Injury due to hospital treatment, etc.

Claimants must file a complete claim on the appropriate application form prescribed by the Secretary when applying for benefits under 38 U.S.C. 1151 and 38 CFR 3.361. See §§ 3.151, 3.160(a), and 3.400(i) concerning effective dates of awards; see § 3.155(b) regarding intent to file the appropriate application form. (Authority: 38 U.S.C. 501 and 1151.)

[27 FR 11887, Dec. 1, 1962, as amended at 69 FR 46432, Aug. 3, 2004; 79 FR 57695, Sep. 25, 2014]

Cross references: Effective Dates. See § 3.400(i). Disability or death due to hospitalization, etc. See §§ 3.358, 3.361 and 3.800

Supplement *Highlight* reference: 63(1), 111(1).

Reserved

§3.155 How to file a claims.

The following paragraphs describe the manner and methods in which a claim can be initiated and filed. The provisions of this section are applicable to all claims governed by part 3.

(a) *Request for an application for benefits.* A claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not of full age or capacity, who indicates a desire to file for benefits under the laws administered by VA, by a communication or action, to include an electronic mail that is transmitted through VA's electronic portal or otherwise, that does not meet the standards of a complete claim is considered a request for an application form for benefits under §3.150(a). Upon receipt of such a communication or action, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form or form prescribed by the Secretary.

(b) *Intent to file a claim.* A claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of claimant who is not of full age or capacity may indicate a claimant's desire to file a claim for benefits by submitting an intent to file a claim to VA. An intent to file a claim must provide sufficient identifiable or biographical information to identify the claimant. Upon receipt of the intent to file a claim, VA will furnish the claimant with the appropriate application form prescribed by the Secretary. If VA receives a complete application form prescribed by the Secretary, as defined in paragraph (a) of §3.160, appropriate to the benefit sought within 1 year of receipt of the intent to file a claim, VA will consider the complete claim filed as of the date the intent to file a claim was received.

(1) An intent to file a claim can be submitted in one of the following three ways:

(i) *Saved electronic application.* When an application otherwise meeting the requirements of this paragraph (b) is electronically initiated and saved in a claims-submission tool within a VA web-based electronic claims application system prior to filing of a complete claim, VA will consider that application to be an intent to file a claim.

(ii) *Written intent on prescribed intent to file a claim form.* The submission to an agency of original jurisdiction of a signed and dated intent to file a claim, on the form prescribed by the Secretary for that purpose, will be accepted as an intent to file a claim.

(iii) *Oral intent communicated to designated VA personnel and recorded in writing.* An oral statement of intent to file a claim will be accepted if it is directed to a VA employee designated to receive such a communication, the VA employee receiving this information follows the provisions set forth in §3217(b), and the VA employee documents the date VA received the claimant's intent to file a claim in the claimant's records.

(2) An intent to file a claim must identify the general benefit (e.g., compensation, pension), but need not identify the specific benefit claimed or any medical condition(s) on which the claim is based. To the extent a claimant provides this or other extraneous information on the designated form referenced in paragraph (b)(1)(ii) of this section that the form does not solicit, the provision of such information is of no effect other than that it is added to the file for appropriate consideration as evidence in support of a complete claim if filed. In particular, if a claimant identifies specific medical condition(s) on which the claim is based in an intent to file a claim, this extraneous information does not convert the intent to file a claim into a complete claim or a substantially complete application. Extraneous information provided in an oral communication under paragraph (b)(1)(iii) of this section is of no effect and generally will not be recorded in the record of the claimant's intent to file.

(3) Upon receipt of an intent to file a claim, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the appropriate application form prescribed by the Secretary.

(4) If an intent to file a claim is not submitted in the form required by paragraph (b)(1) of this section or a complete claim is not filed within 1 year of the receipt of the intent to file a claim, VA will not take further action unless a new claim or a new intent to file a claim is received.

(5) An intent to file a claim received from a service organization, an attorney, or agent indicating a represented claimant's intent to file a claim may not be accepted if a power of attorney was not executed at the time the communication was written. VA will only accept an oral intent to file from a service organization, an attorney, or agent if a power of attorney is of record at the time the oral communication is received by the designated VA employee.

(6) VA will not recognize more than one intent to file concurrently for the same benefit (e.g., compensation, pension). If an intent to file has not been followed by a complete claim, a subsequent intent to file regarding the same benefit received within 1 year of the prior intent to file will have no effect. If, however, VA receives an intent to file followed by a complete claim and later another intent to file for the same benefit is submitted within 1 year of the previous intent to file, VA will recognize the subsequent intent to file to establish an effective date for any award granted for the next complete claim, provided it is received within 1 year of the subsequent intent to file.

(c) *Incomplete application form.* Upon receipt of a communication indicating a belief in entitlement to benefits that is submitted on a paper application form prescribed by the Secretary that is not complete as defined in §3.160(a) of this section, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form prescribed by the Secretary. If a complete claim is submitted within 1 year of receipt of such incomplete application form prescribed by the Secretary, VA will consider it as filed as of the date VA received the incomplete application form prescribed by the Secretary that did not meet the standards of a complete claim. See §3.160(a) for Complete Claim.

(d) *Claims.*

(1) *Requirement for complete claim and date of claim.* A complete claim is required for all types of claims, and will generally be considered filed as of the date it was received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs. If VA receives a complete claim within 1 year of the filing of an intent to file a claim that meets the requirements of paragraph (b) of this section, it will be considered filed as of the date of receipt of the intent to file a claim. Only one complete claim for a benefit (e.g., compensation, pension) may be associated with each intent to file a claim for that benefit, though multiple issues may be contained within a complete claim. In the event multiple complete claims for a benefit are filed within 1 year of an intent to file a claim for that benefit, only the first claim filed will be associated with the intent to file a claim. In the event that VA receives both an intent to file a claim and an incomplete application form before the complete claim as defined in §3.160(a) is filed, the complete claim will be considered filed as of the date of receipt of whichever was filed first provided it is perfected within the necessary timeframe, but in no event will the complete claim be considered filed more than one year prior to the date of receipt of the complete claim.

(2) *Scope of claim.* Once VA receives a complete claim, VA will adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of the adjudication decision (e.g., entitlement to 38 U.S.C. Chapter 35 Dependents' Educational Assistance benefits, entitlement to special monthly compensation under 38 CFR 3.350, entitlement to adaptive automobile allowance, etc.). The claimant may, but need not, assert entitlement to ancillary benefits at the time the complete claim is filed. VA will also consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in 38 CFR Part 4, VA Schedule for Rating Disabilities. VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision. VA's decision that addresses all outstanding issues enumerated in the complete claim implies that VA has determined evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues enumerated in the complete claim.

[26 FR 1570, Feb. 24, 1961, as amended at 52 FR 27340, July 21, 1987; 79 FR 57695, Sep. 25, 2014]

Cross references: Complete claim. See § 3.160(a). Effective dates. See § 3.400.

Supplement *Highlights* References: 111(1).

§3.156 New and material evidence.

(a) *General.* A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. (Authority: 38 U.S.C. 501, 5103A(f), 5108)

(b) *Pending claim.* New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of §20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period. (Authority: 38 U.S.C. 501(a))

(c) *Service department records.*

(1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the Joint Services Records Research Center, or from any other official source.

(3) An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

(4) A retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly, except as it may be affected by the filing date of the original claim. (Authority: 38 U.S.C. 501(a))

[27 FR 11887, Dec. 1, 1962, as amended at 55 FR 20148, May 15, 1990; 55 FR 52275, Dec. 21, 1990; 58 FR 32443, June 10, 1993; 66 FR 45630, Aug. 29, 2001; 71 FR 52457, Sept. 6, 2006]

Cross references: Effective dates—general. See §3.400. Correction of military records. See §3.400(g).

Supplement *Highlights* references: 8(1), 47(1), 73(2).

Reserved

§3.157 [Removed]

[26 FR 1571, Feb. 24, 1961, as amended at 27 FR 4421, May 9, 1962; 31 FR 12055, Sept. 15, 1966; 40 FR 56434, Dec. 3, 1975; 52 FR 27340, July 21, 1987; 60 FR 27409, May 24, 1995; 79 FR 57696, Sep. 25, 2014]

Supplement *Highlights* reference: 16(2), 111(1).

§3.158 Abandoned claims.

(a) *General.* Except as provided in §3.652 of this part, where evidence requested in connection with an original claim, a claim for increase or to reopen or for the purpose of determining continued entitlement is not furnished within 1 year after the date of request, the claim will be considered abandoned. After the expiration of 1 year, further action will not be taken unless a new claim is received. Should the right to benefits be finally established, pension, compensation, dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. chapter 18 based on such evidence shall commence not earlier than the date of filing the new claim. (Authority: 38 U.S.C. 501(a))

(b) *Department of Veterans Affairs examinations.* Where the veteran fails without adequate reason to respond to an order to report for Department of Veterans Affairs examination within 1 year from the date of request and payments have been discontinued, the claim for such benefits will be considered abandoned.

(c) *Disappearance.* Where payments of pension, compensation, dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. chapter 18 have not been made or have been discontinued because a payee's present whereabouts is unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address.

[27 FR 11887, Dec. 1, 1962, as amended at 28 FR 13362, Dec. 10, 1963; 52 FR 43063, Nov. 9, 1987; 62 FR 51278, Sept. 30, 1997; 67 FR 49586, July 31, 2002]

Cross references: Periodic certification of continued eligibility. See §3.652. Failure to report for VA examination. See §3.655. Disappearance of veteran. See §3.656.

Supplement *Highlights* references: 31(1), 54(2).

§3.159 Department of Veterans Affairs assistance in developing claims.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Competent medical evidence* means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) *Competent lay evidence* means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) *Substantially complete application* means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, *event* means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) *Information* means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) *VA's duty to notify claimants of necessary information or evidence.*

(1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim (hereafter in this paragraph referred to as the "notice"). In the notice, VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. If the claimant has not responded to the notice within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the notice, VA must readjudicate the claim. (Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. (Authority: 38 U.S.C. 5102(b), 5103A(3))

(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:

(i) Upon receipt of a Notice of Disagreement; or

(ii) When, as a matter of law, entitlement to the benefit claimed cannot be established. (Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

(c) *VA's duty to assist claimants in obtaining evidence.* Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) *Obtaining records not in the custody of a Federal department or agency.* VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A(b))

(2) *Obtaining records in the custody of a Federal department or agency.* VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that

further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A(b))

(3) *Obtaining records in compensation claims.* In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. (Authority: 38 U.S.C. 5103A(c))

(4) *Providing medical examinations or obtaining medical opinions.*

(i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured. (Authority: 38 U.S.C. 5103A(d))

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law. (Authority: 38 U.S.C. 5103A(a)(2))

(e) *Duty to notify claimant of inability to obtain records.*

(1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that

VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA. (Authority: 38 U.S.C. 5103A(b)(2))

(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a))

(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations. (Authority: 38 U.S.C. 5103A(g))

[55 FR 52273, Dec. 21, 1990, as amended at 66 FR 45630, Aug. 29, 2001; 73 FR 23356, Apr. 30, 2008; 73 FR 24868, May 6, 2008]

Supplement *Highlights* references: 47(1), 79(1).

§3.160 Types of claims.

(a) *Complete claim.* A submission of an application form prescribed by the Secretary, whether paper or electronic, that meets the following requirements:

(1) A complete claim must provide the name of the claimant; the relationship to the veteran, if applicable; and sufficient service information for VA to verify the claimed service, if applicable.

(2) A complete claim must be signed by the claimant or a person legally authorized to sign for the claimant.

(3) A complete claim must identify the benefit sought.

(4) A description of any symptom(s) or medical condition(s) on which the benefit is based must be provided to the extent the form prescribed by the Secretary so requires; and

(5) For nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires.

(b) *Original claim.* The initial complete claim for one or more benefits on an application form prescribed by the Secretary.

(c) *Pending claim.* A claim which has not been finally adjudicated.

(d) *Finally adjudicated claim.* A claim that is adjudicated by the Department of Veterans Affairs as either allowed or disallowed is considered finally adjudicated by whichever of the following occurs first:

(1) The expiration of the period in which to file a notice of disagreement, pursuant to the provisions of §20.302(a) or §20.501(a) of this chapter, as applicable; or,

(2) Disposition on appellate review.

(e) *Reopened claim.* An application for a benefit received after final disallowance of an earlier claim that is subject to readjudication on the merits based on receipt of new and material evidence related to the finally adjudicated claim, or any claim based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans' Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter. (Authority: 38 U.S.C. 501)

(f) *Claim for increase.* Any application for an increase in rate of a benefit being paid under a current award, or for resumption of payments previously discontinued.

[27 FR 11887, Dec. 1, 1962, as amended at 31 FR 12056, Sept. 15, 1966; 55 FR 20148, May 15, 1990; 59 FR 32443, June 10, 1993; 79 FR 57696, Sep. 25, 2014]

Supplement *Highlights* references 8(1), 111(1).

§3.161 Expedited Claims Adjudication Initiative—Pilot Program.

Rules pertaining to the Expedited Claims Adjudication Initiative Pilot Program are set forth in part 20, subpart P, of this chapter. (Authority: 38 U.S.C. 501(a))

[73 FR 65732, Nov. 5, 2008]

Supplement *Highlights* reference: 84(1)

Next Section is §3.200

Note: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.

(o) *Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-71, 89 Stat. 395; §§3.109, 3.156, 3.157):*

(1) *General.* Except as provided in paragraph (o)(2) of this section and §3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) *Disability compensation.* Earliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred if a complete claim or intent to file a claim is received within 1 year from such date, otherwise, date of receipt of claim. When medical records indicate an increase in a disability, receipt of such medical records may be used to establish effective date(s) for retroactive benefits based on facts found of an increase in a disability only if a complete claim or intent to file a claim for an increase is received within 1 year of the date of the report of examination, hospitalization, or medical treatment. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established. (Authority: 38 U.S.C. 501, 5101).

(p) *Liberalizing laws and Department of Veterans Affairs issues.* See §3.114.

(q) *New and material evidence (§3.156) other than service department records.*

(1) *Received within appeal period or prior to appellate decision.* The effective date will be as though the former decision had not been rendered. See §§20.1103, 20.1104 and 20.1304(b)(1) of this chapter.

(2) *Received after final disallowance.* Date of receipt of new claim or date entitlement arose, whichever is later.

(r) *Reopened claims.* (§§3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in §20.1304(b)(1) of this chapter. (Authority: 38 U.S.C. 501(a))

(s) *Renouncement (§3.106).* Except as provided in §3.106(c), date of receipt of new claim.

(t) *Whereabouts now known.* (See §3.158(c).)

(u) *Void, annulled or terminated marriage of a child (38 U.S.C. 5110(a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; §3.55):*

(1) *Void.* Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

(2) *Annulled*. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) *Death*. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(b) of this part are met. (Authority: 38 U.S.C. 103)

(4) *Divorce*. Date the decree became final if claim is filed within 1 year of that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(b) of this part are met. (Authority: 38 U.S.C. 103)

(v) *Termination of remarriage of surviving spouse (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 5110(l) effective January 1, 1971; §3.55)*:

(1) *Void*. Date the parties ceased to cohabit or date of receipt of claim whichever is the later.

(2) *Annulled*. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) *Death*. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(a) of this part are met. (Authority: 38 U.S.C. 103)

(4) *Divorce*. Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of §3.55(a) of this part are met. (Authority: 38 U.S.C. 103)

(w) *Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 5110(m), effective January 1, 1971; §§3.50(b)(2) and 3.55)*. Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of §3.55(a), as applicable, of this part are met. (Authority: 38 U.S.C. 103)

(x) *Effective date of determination of incompetency (§3.353)*. Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 1922).

(y) *Effective date of determination restoring competency (§3.353)*. Date shown by evidence of record that competency was regained.

(z) *Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202)*.

(1) *Original claim*: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) *Reopened claim*: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.

[26 FR 1593, Feb. 24, 1961; 56 FR 25044, June 3, 1991; 57 FR 10426, Mar. 26, 1992; 58 FR 32443, June 10, 1993; 60 FR 18356, Apr. 11, 1995; 60 FR 5286, Oct. 11, 1995; 61 FR 67950, Dec. 26, 1996; 62 FR 5529, Feb. 6, 1997; 68 FR 34542, June 10, 2003; 69 FR 46434, Aug. 3, 2004; 71 FR 44919, Aug. 8, 2006; 71 FR 52457, Sept. 6, 2006; 79 FR 57696, Sep. 25, 2014]

Supplement *Highlights* references: 8(1), 15(3), 18(2), 25(1), 27(2), 57(1), 63(1), 72(2), 73(2), 111(1).

Editorial note: For other *Federal Register* citations affecting §3.400, see the List of CFR Sections Affected in the Finding Aids section of Title 38 of the *Code of Federal Regulations*.

§3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) *Aid and attendance and housebound benefits.*

(1) Except as provided in §3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary. (Authority: 38 U.S.C. 501(a))

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (2))

(b) *Dependent, additional compensation or pension for.* Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event otherwise.

(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action. (Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran's award. (Other increases, see §3.400(o). For school attendance see §3.667.) (Authority: 38 U.S.C. 5110 (f), (n))

(c) *Divorce of veteran and spouse.* See §3.501(d).

(d) *Institutional awards* (§3.852):

(1) *Chief officer of non-Department of Veterans Affairs hospital or institution.*
From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

Note: If apportionment under §§3.452(c) and 3.454 is in order or payment under §3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) *Director of a Department of Veterans Affairs medical center or domiciliary.*
From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) *Retirement pay* (§3.750):

- (1) *Election.* Date of entitlement if timely filed. Subject to prior payments of retirement pay.
- (2) *Waiver.* Day following date of discontinuance or reduction of retirement pay.
- (3) *Reelection.* Day the reelection is received by the Department of Veterans Affairs.

(f) *Service pension* (§3.3(a)). Date of receipt of claim.

(g) *Tuberculosis, special compensation for arrested.* As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than \$67. See §3.350(g).

(h) *Temporary increase “General Policy in Rating,” 1945 Schedule for Rating Disabilities:*

(1) *Section 4.29 of this chapter.* Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) *Section 4.30 of this chapter.* Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) *Increased disability pension based on attainment of age 78.* First day of the month during which veteran attains age 78.

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 39 FR 17222, Mar. 14, 1974; 41 FR 36493, Aug. 30, 1976; 41 FR 55874, Dec. 23, 1976; 41 FR 56804, Dec. 30, 1976; 45 FR 34886, May 23, 1980; 54 FR 34981, Aug. 23, 1989; 62 FR 5529, Feb. 6, 1997]

Supplement *Highlights* reference: 27(2)

§3.402 Surviving spouse.

Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:

(a) *Additional allowance of dependency and indemnity compensation for children §3.5(e).* Commencing date of surviving spouse's award. See §3.400(c).

(b) *Legal surviving spouse entitled.* See §3.657.

(c) *Aid and attendance and housebound benefits.*

(1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of dependency and indemnity compensation (DIC) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (Authority: 38 U.S.C. 501(a); 5110(d))

(2) Date of departure from hospital institutional or domiciliary care at Department of Veterans Affairs expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization at Department of Veterans Affairs expense. (Authority: 38 U.S.C. 501(a))

[45 FR 34887, May 23, 1980]

§3.403 Children.

(a) Awards of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be effective as follows:

(1) *Permanently incapable of self support (§3.57(a)(3))*. In original claims, date fixed by §§3.400(b) or (c) or 3.401(b). In claims for continuation of payments, 18th birthday if the condition is claimed prior to or within 1 year after that date; otherwise from date of receipt of claim.

(2) *Majority (§3.854)*. Direct payment to child if competent, from date of majority or, date of last payment, whichever is the earlier date.

(3) *Posthumous child*. Date of child's birth if proof of birth is received within 1 year of that date, or if a claim or an intent to file a claim as set forth in §3.155(b) is received within 1 year after the veteran's death; otherwise, date of claim. (Authority: 38 U.S.C. 5110(n))

(4) *School attendance*. (See §3.667.)

(5) *Adopted child*. Date of adoption either interlocutory or final or date of adoptive placement agreement, but not earlier than the date from which benefits are otherwise payable.

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran*. Except as provided in §3.814(e), an award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or the later of the date of claim or the date entitlement arose, but not earlier than October 1, 1997. (Authority: 38 U.S.C. 1805, 1832, 5110)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran*. Except as provided in §3.114(a) or §3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest. (Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) *Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea*. Except as provided in §3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003. (Authority: 38 U.S.C. 1821, 1832, 5110)

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 38 FR 872, Jan. 5, 1973; 39 FR 20204, June 7, 1974; 41 FR 36493, Aug. 30, 1976; 45 FR 34887, May 23, 1980; 62 FR 51279, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 76 FR 4248, Jan. 25, 2011; 79 FR 57697, Sep. 25, 2014]

Supplement Highlights references: 31(1), 54(2), 95(1), 111(1).

§3.404 Parents.

Awards of additional amounts of compensation and dependency and indemnity compensation based on a parent's need for aid and attendance will be effective the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of dependency and indemnity compensation based on an original or reopened claim is effective for a period prior to date of receipt of claim, any additional dependency and indemnity compensation payable by reason of need for aid and attendance may also be awarded for any part of the award's retroactive period for which entitlement to aid and attendance is established. When the parent is provided hospital, institutional or domiciliary care at Department of Veterans Affairs expense, the effective date will be the date of departure therefrom. (Authority: 38 U.S.C. 501(a); 5110(d))

[45 FR 34887, May 23, 1980]

(1) *Anticipated income.* Where payments were not made or were made at a lower rate because of anticipated income, pension or dependency and indemnity compensation may be awarded or increased in accordance with the facts found but not earlier than the beginning of the appropriate 12-month annualization period if satisfactory evidence is received within the same or the next calendar year. (Authority: 38 U.S.C. 5110(h))

(2) *Actual income.* Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given 12-month annualization period, pension or dependency and indemnity compensation may be awarded or increased, effective the beginning of the next 12-month annualization period, if satisfactory evidence is received within that period.

(c) *Increases; change in status.* Where there is change in the payee's marital status or status of dependents which would permit payment at a higher rate and the change in status is by reason of the claimant's marriage or birth or adoption of a child, the effective date of the increase will be the date of the event if the required evidence is received within 1 year of the event. Where there is a change in dependency status for any reason other than marriage, or the birth or adoption of a child, which would permit payment at a higher rate, the increased rate will be effective the date of receipt of a claim or an intent to file a claim as set forth in §3.155(b) if the required evidence is received within 1 year of Department of Veterans Affairs request. The rate payable for each period will be determined, as provided in §§3.260(f) or 3.273(c). (See §3.651 as to increase due to termination of payments to another payee. Also see §3.667 as to increase based on school attendance.)

(d) *Corpus of estate; net worth.* Where a claim has been finally disallowed or terminated because of the corpus of estate and net worth provisions of §§3.263 or 3.274 and entitlement is established on the basis of a reduction in estate or net worth, or a change in circumstances such as health, acquisition of a dependent, or increased rate of depletion of the estate, benefits or increased benefits will not be paid for any period prior to the date of receipt of a new claim.

[30 FR 3354, Mar. 12, 1965, as amended at 44 FR 45942, Aug. 6, 1979; 48 FR 34473, July 29, 1983; 57 FR 59300, Dec. 15, 1992; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* references: 6(2), 111(1).

§3.661 Eligibility Verification Reports.*(a) Determination and entitlement.*

(1) Where the report shows a change in income, net worth, marital status, status of dependents or change in circumstances affecting the application of the net worth provisions, the award will be adjusted in accordance with §3.660(a)(2).

(2) Where there is doubt as to the extent of anticipated income payment of pension or dependency and indemnity compensation will be authorized at the lowest appropriate rate or will be withheld, as provided in §3.260(b) or §3.271(f).

*(b) Failure to return report:**(1) Section 306 and old-law pension:*

(i) *Discontinuance.* Discontinuance of old-law or section 306 pension shall be effective the last day of the calendar year for which income (and net worth in a section 306 pension case) was to be reported.

(ii) *Resumption of benefits.* Payment of old-law or section 306 pension may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the calendar year following the calendar year for which income (and net worth in a section 306 pension case) was to be reported; otherwise pension may not be paid for any period prior to the date of receipt of a new claim.

(2) Improved pension and dependency and indemnity compensation:

(i) *Discontinuance.* Discontinuance of dependency and indemnity compensation (DIC) or improved pension shall be effective the first day of the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported or the effective date of the award, whichever is the later date.

(ii) *Adjustment of overpayment.* If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an Eligibility Verification Report is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an Eligibility Verification Report.

(iii) *Resumption of benefits.* Payment of improved pension and DIC may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the 12-month annualization period following the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported; otherwise pension or DIC may not be paid for any period prior to receipt of a new claim. (Authority: 38 U.S.C. 501(a))

[30 FR 3355, Mar. 12, 1965, as amended at 44 FR 45942, Aug. 6, 1979; 46 FR 55098 Nov. 6, 1981; 57 FR 59300, Dec. 15, 1992]

Supplement *Highlights* reference: 6(2).

§3.662 [Reserved]

§3.663 [Reserved]

§3.664 [Reserved]

§3.665 Incarcerated beneficiaries and fugitive felons—compensation.

(a) *General.* Any person specified in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony will not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration. VA will inform a person whose benefits are subject to this reduction of the rights of the person's dependents to an apportionment while the person is incarcerated, and the conditions under which payments to the person may be resumed upon release from incarceration. In addition, VA will also notify the person's dependents of their right to an apportionment if VA is aware of their existence and can obtain their addresses. However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (n) of this section.

(b) *Definitions.* For the purposes of this section the term "compensation" includes disability compensation under 38 U.S.C. 1151. The term "dependency and indemnity compensation" (DIC) includes death compensation payable under 38 U.S.C. 1121 or 1141, death compensation and DIC payable under 38 U.S.C. 1151, and any benefit payable under chapter 13 of title 38, United States Code. The term "release from incarceration" includes participation in a work release or halfway house program, parole, and completion of sentence. For purposes of this section a felony is any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

(c) *Applicability.* The provisions of paragraph (a) of this section are applicable to the following persons:

(1) A person serving a period of incarceration for conviction of a felony committed after October 7, 1980.

(2) A person serving a period of incarceration after September 30, 1980 (regardless of when the felony was committed) when the following conditions are met:

(i) The person was incarcerated on October 1, 1980; and

(ii) An award of compensation or DIC is approved after September 30, 1980.

(3) A veteran who, on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date, and who remains so incarcerated for a conviction of that felony as of December 27, 2001.

(d) *Amount payable during incarceration:*

(1) *Veteran rated 20 percent or more.* A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of 20 percent or more shall receive the rate of compensation payable under 38 U.S.C. 1114(a).

(2) *Veteran rated less than 20 percent.* A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of less than 20 percent (even though the rate for 38 U.S.C. 1114(k) or (q) is paid) shall receive one-half the rate of compensation payable under 38 U.S.C. 1114(a).

(3) *Surviving spouse, parent or child.* A surviving spouse, parent, or child, beneficiary to whom the provisions of paragraphs (a) and (c) of this section apply shall receive one-half the rate of compensation payable under 38 U.S.C. 1114(a).

(e) *Apportionment:*

(1) *Compensation.* All or part of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's spouse, child or children and dependent parents on the basis of individual need. In determining individual need consideration shall be given to such factors as the apportionee claimant's income and living expenses, the amount of compensation available to be apportioned, the needs and living expenses of other apportionee claimants as well as any special needs, if any, of all apportionee claimants.

(2) *DIC.* All or part of the DIC not paid to an incarcerated surviving spouse or other children not in the surviving spouse's custody may be apportioned to another child or children. All or part of the DIC not paid to an incarcerated child may be apportioned to the surviving spouse or other children. These apportionments shall be made on the basis of individual need giving consideration to the factors set forth in paragraph (e)(1) of this section.

(f) *Effective dates.* An apportionment under this section shall be effective the date of reduction of payments made to the incarcerated person, subject to payments to the incarcerated person over the same period, if a claim or intent to file a claim as set forth in §3.155(b) is received within 1 year after notice to the incarcerated person as required by paragraph (a) of this section, and any necessary evidence is received within 1 year from the date of request by the Department of Veterans Affairs; otherwise, payments may not be made for any period prior to the date of receipt of a new claim or intent to file a claim as set forth in §3.155(b).

(g) *Incarcerated dependent.* No apportionment may be made to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

(h) *Notice to dependent for whom apportionment granted.* A dependent for whom an apportionment is granted under this section shall be informed that the apportionment is subject to immediate discontinuance upon the incarcerated person's release or participation in a work release or halfway house program. A dependent shall also be informed that if the dependent and the incarcerated person do not live together when the incarcerated person is released (or participates in a work release or halfway house program) the dependent may submit a new claim for apportionment.

(i) *Resumption upon release:*

(1) *No apportionment or family reunited.* If there was no apportionment at the time of release from incarceration, or if the released person is reunited with all dependents for

whom an apportionment was granted, the released person's award shall be resumed the date of release from incarceration if the Department of Veterans Affairs receives notice of release within 1 year following release; otherwise the award shall be resumed the date of receipt of notice of release. If there was an apportionment award during incarceration, it shall be discontinued date of last payment to the apportionee upon receipt of notice of release of the incarcerated person. Payment to the released person shall then be resumed at the full rate from date of last payment to the apportionee. Payment to the released person from date of release to date of last payment to the apportionee shall be made at the rate which is the difference between the released person's full rate and the sum of (i) the rate that was payable to the apportionee and (ii) the rate payable during incarceration.

(2) *Apportionment granted and family not reunited.* If there was an apportionment granted during incarceration and the released person is not reunited with all dependents for whom an apportionment was granted, the released person's award shall be resumed as stated in paragraph (i)(1) of this section except that when the released person's award is resumed it shall not include any additional amount payable by reason of a dependent(s) not reunited with the released person. The award to this dependent(s) will then be reduced to the additional amount payable for the dependent(s).

(3) *Apportionment to a dependent parent.* An apportionment made to a dependent parent under this section cannot be continued beyond the veteran's release from incarceration unless the veteran is incompetent and the provisions of §3.452(c)(1) and (2) are for application. When a competent veteran is released from incarceration an apportionment made to a dependent parent shall be discontinued and the veteran's award resumed as provided in paragraph (i)(1) of this section.

(j) *Increased compensation during incarceration:*

(1) *General.* The amount of any increased compensation awarded to an incarcerated veteran that results from other than a statutory rate increase may be subject to reduction due to incarceration. This applies to a veteran whose compensation is subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation as well as to veteran whose compensation is not subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation.

(2) *Veteran subject to reduction under paragraphs (a) and (c) of this section.* If prior to approval of an award of increased compensation the veteran's compensation was reduced under the provisions of paragraphs (a) and (c) of this section, the amount of the increase shall be reduced as follows if the veteran remains incarcerated:

(i) If the veteran's schedular evaluation is increased from 10 percent to 20 percent or greater, the amount payable to the veteran shall be increased from one-half the rate payable under 38 U.S.C. 1114(a) to the rate payable under section 314(a).

(ii) If the veteran's schedular evaluation was 20 percent or more, none of the increased compensation shall be paid to the veteran while the veteran remains incarcerated.

(3) *Veteran's compensation not subject to reduction under paragraphs (a) and (c) of this section prior to award of increased compensation.* If prior to the approval of an award of increased compensation the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony and the veteran's compensation was not reduced under the provisions of paragraphs (a) and (c) of this section, none of the increased compensation shall be paid to the veteran for periods after October 7, 1980, subject to the following conditions:

(i) The veteran remains incarcerated after October 7, 1980, in a Federal, State, or local penal institution for conviction of a felony; and

(ii) The award of increased compensation is approved after October 7, 1980. If the effective date of the increase is prior to October 8, 1980, the amount payable for periods prior to October 8, 1980, shall not be reduced.

(4) *Apportionments.* The amount of any increased compensation reduced under this paragraph may be apportioned as provided in paragraph (e) of this section.

(k) *Retroactive awards.* Whenever compensation or DIC is awarded to an incarcerated person any amounts due for periods prior to date of reduction under this section shall be paid to the incarcerated person.

(l) *DIC parents.* If two parents are both entitled to DIC and were living together prior to the time of the DIC payable to one parent was reduced due to incarceration, they shall be considered as two parents not living together for the purpose of determining entitlement to DIC.

(m) *Conviction overturned on appeal.* If a conviction is overturned on appeal, any compensation or DIC withheld under this section as a result of incarceration for such conviction (less the amount of any apportionment) shall be restored to the beneficiary.

(n) *Fugitive felons.*

(1) Compensation is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Compensation or DIC is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (n) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (n) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran. (Authority: 38 U.S.C. 501(a), 5313, 5313B; section 506, Pub. L. 107-103, 115 Stat. 996-997)

[46 FR 47542, Sept. 29, 1981, as amended at 68 FR 34542, June 10, 2003; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* references: 57(1), 111(1).

§3.666 Incarcerated beneficiaries and fugitive felons—pension.

If any individual to or for whom pension is being paid under a public or private law administered by the Department of Veterans Affairs is imprisoned in a Federal, State or local penal institution as the result of conviction of a felony or misdemeanor, such pension payments will be discontinued effective on the 61st day of imprisonment following conviction. The payee will be informed of his or her rights and the rights of dependents to payments while he or she is imprisoned as well as the conditions under which payments to him or to her may be resumed on his or her release from imprisonment. However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (e) of this section. Payments of pension authorized under this section will continue until notice is received by the Department of Veterans Affairs that the imprisonment has terminated.

(a) *Disability pension.* Payment may be made to the spouse, child or children of a veteran disqualified under this section:

(1) If the veteran continues to be eligible except for the provisions of this section,
and

(2) If the annual income of the spouse or child is such that death pension would be payable.

(3) At the rate payable under the death pension law or the rate which the veteran was receiving at the time of imprisonment, whichever is less.

(4) From the day following the date of discontinuance of payments to the veteran, subject to payments made to the veteran over the same period, if a claim or intent to file a claim as set forth in §3.155(b) is received within 1 year after notice to the veteran as required by this section and any necessary evidence is received within 1 year from the date of request; otherwise payments may not be made for any period prior to the date of receipt of a new claim or intent to file a claim as set forth in §3.155(b).

(b) *Death pension.* Payment may be made to a child or children where a surviving spouse or child is disqualified under this section:

(1) If surviving spouse is disqualified to child or children at the rate of death pension payable if there were no such surviving spouse; or

(2) If a child is disqualified, to a surviving spouse or other child or children at the rate of death pension payable if there were no such child, and

(3) From the day following the date of discontinuance of payments to the disqualified person, subject to payments made to that person over the same period if evidence of income is received within 1 year after date of request; otherwise payments may not be made for any period prior to the date of receipt of a claim or intent to file a claim as set forth in §3.155(b).

(4) The income limitation applicable to eligible persons will be that which would apply if the imprisoned person did not exist.

(c) *Resumption of pension upon release from incarceration.* Pension will be resumed as of the day of release if notice is received within 1 year following release; otherwise resumption will be effective the date of receipt of such notice. Where an award or increased award was made to any other payee based upon the disqualification of the veteran, surviving spouse, or child while in prison, such award will be reduced or discontinued as of date of last payment and pension will be resumed to the released prisoner at a rate which will be the difference, if any, between the total pension payable and the amount which was paid to the other person or persons through the date of last payment and thereafter the full rate.

(d) *Veteran entitled to compensation.* If an imprisoned veteran is entitled to a lesser rate of disability compensation, it shall be awarded as of the 61st day of imprisonment in lieu of the pension the veteran was receiving if the veteran has neither spouse nor child. If the veteran has a spouse or a child, compensation will be awarded only after the veteran has been furnished an explanation of the effect of electing compensation on the amount available for apportionment. If the veteran then requests compensation, it shall be awarded from the date veteran requests the Department of Veterans Affairs to take such action.

(e) *Fugitive felons.*

(1) Pension is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Pension or death pension is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (e) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (e) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran. (Authority: 38 U.S.C. 501(a), 5313, 5313B)

[26 FR 1601, Feb. 24, 1961, as amended at 40 FR 6971, Feb. 18, 1975; 40 FR 22254, May 22, 1975; 44 FR 45943, Aug. 6, 1979; 46 FR 47543, Sept. 29, 1981; 62 FR 5529, Feb. 6, 1997; 68 FR 34543, June 10, 2003; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* references: 27(2), 57(1), 111(1).

Reserved

§3.701 Elections of pension or compensation.

(a) *General.* Except as otherwise provided, a person entitled to receive pension or compensation under more than one law or section of a law administered by the Department of Veterans Affairs may elect to receive whichever benefit, regardless of whether it is the greater or lesser benefit, even though the election reduces the benefits payable to his or her dependents. Such person may at any time elect or reelect the other benefit. An election by a veteran controls the rights of all dependents in that case. An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse. The election of improved pension by a surviving spouse however, shall not prejudice the rights of any child receiving an apportionment on December 31, 1978. Termination of a marriage or marital relationship which had been the reason for terminating an award of section 306 or old-law pension does not restore to the surviving spouse the right to receive section 306 or old-law pension. The claimant's entitlement, if otherwise established, is under the current provisions of 38 U.S.C. 1541. (Authority: 38 U.S.C. 501(a))

(b) *Form of election.* An election must be in writing and must specify the benefit the person wishes to receive.

(c) *Change from one law to another.* Except as otherwise provided, where payments of pension or compensation are being made to a person under one law, the right to receive benefits under another law being in suspension, and a higher rate of pension or compensation becomes payable under the other law, benefits at the higher rate will not be paid for any date prior to the date of receipt of an election.

[26 FR 1602, Feb. 24, 1961, as amended at 36 FR 12618, July 2, 1971; 44 FR 45943, Aug. 6, 1979; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* References: 111(1).

§3.808 Automobiles or other conveyances and adaptive equipment; certification.

(a) *Entitlement.* A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 3902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be provided to:

(1) A veteran who is entitled to compensation under chapter 11 of title 38, United States Code, for a disability described in paragraph (b) of this section; or

(2) A member of the Armed Forces serving on active duty who has a disability described in paragraph (b) of this section that is the result of an injury or disability incurred or disease contracted in or aggravated by active military, naval, or air service.

(b) *Disability.* One of the following must exist:

(1) Loss or permanent loss of use of one or both feet;

(2) Loss or permanent loss of use of one or both hands;

(3) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20° in the better eye.

(4) Severe burn injury: Deep partial thickness or full thickness burns resulting in scar formation that cause contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile.

(5) Amyotrophic lateral sclerosis.

(6) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips. (Authority: 38 U.S.C. 3901, 3902)

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(d) *Additional eligibility criteria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§17.156, 17.157, and 17.158 of this chapter.

(e) *Definition.* The term “adaptive equipment,” means generally, that equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant and to assist him or her in meeting the applicable standards of licensure of the proper licensing authority.

(1) With regard to automobiles and similar vehicles the term includes a basic automatic transmission as to a claimant who has lost or lost the use of a limb. In addition, the term includes, but is not limited to, power steering, power brakes, power window lifts and power seats. The term also includes air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(2) With regard to automobiles and similar vehicles the term includes such items of equipment as the Chief Medical Director may, by directive, specify as ordinarily necessary for any of the classes of losses specified in paragraph (b) of this section and for any combination of such losses. Such specifications of equipment may include a limit on the financial assistance to be provided based on judgment and experience.

(3) The term also includes other equipment which the Chief Medical Director or designee may deem necessary in an individual case. (Authority: 38 U.S.C. 501(a), 1151(c)(2), 3902))

[36 FR 7588, Apr. 22, 1971, as amended at 38 FR 14370, June 1 1973; 40 FR 37037 Aug. 25, 1975; 43 FR 4423, Feb. 2, 1978; 47 FR 24552, June 7, 1982; 53 FR 46607, Nov. 18, 1988; 66 FR 44528, Aug. 24, 2001; 71 FR 44919, Aug. 8, 2006; 78 FR 57487, Sep. 19, 2013; 80 FR 10003, Feb. 25, 2015]

Supplement *Highlights* references: 72(2), 105(2), 111(2).

§3.812 Special allowance payable under section 156 of Pub. L. 97-377.

The provisions of this section apply to the payment of a special allowance to certain surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or who died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. This special allowance is a replacement for certain social security benefits which were either reduced or terminated by provisions of the Omnibus Budget Reconciliation Act of 1981.

(a) Eligibility requirements.

(1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

(2) Once a favorable determination has been made under paragraph (a)(1) of this section, determinations as to the age, relationship and school attendance requirements contained in paragraphs (a)(1) and (b)(1) of section 156 of Pub. L. 97-377 will be made. In making these eligibility determinations VA shall apply the provisions of the Social Security Act, and any regulations promulgated pursuant thereto, as in effect during the claimant's period of eligibility. Unless otherwise provided in this section, when issues are raised concerning eligibility or entitlement to this special allowance which cannot be appropriately resolved under the provisions of the Social Security Act, or the regulations promulgated pursuant thereto, the provisions of Title 38, Code of Federal Regulations, are for application.

(b) Computation of payment rate:

(1) *Basic entitlement rate.* A basic entitlement rate will be computed for each eligible claimant in accordance with the provisions of subparagraphs (a)(2) and (b)(2) of section 156 of Pub. L. 97-377 using data to be provided by the Social Security Administration. This basic entitlement rate will then be used to compute the monthly payment rate as described in paragraphs (b)(2) to (b)(6) of this section.

(2) *Original or reopened awards to surviving spouses.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in dependency and indemnity compensation rates under 38 U.S.C. 1311 which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(3) *Original and reopened awards to children.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to

the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) *Subsequent legislative increases in rates.* The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 3531(b).

(5) *Amendment of awards.* Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) *Rounding of monthly rates.* Any monthly rate computed under the provisions of this paragraph, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) *Claimants not entitled to this special allowance.* The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

(d) *Appellate jurisdiction.* VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) *Claims.* Claimants must file or submit a complete claim on a paper or electronic form prescribed by the Secretary in order for VA to pay this special allowance. When VA receives an intent to file a claim or inquiries as to eligibility, VA will follow the procedures outlined in §3.155. Otherwise, the date of receipt of the complete claim will be accepted as the date of claim for this special allowance. See §§3.150, 3.151, 3.155, 3.400.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a complete claim, benefits shall be payable for all periods of eligibility beginning on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983. (Authority: Sec. 156, Pub. L. 97-377, 96 Stat. 1830, 1920 (1982))

[49 FR 21709, May 23, 1984, as amended at 54 FR 26030, June 21, 1989; 58 FR 34525, June 28, 1993; 60 FR 20643, Apr. 27, 1995; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* references: 8(5), 15(4), 111(1).

**§3.813 Interim benefits for disability or death due to chloracne
or porphyria cutanea tarda.**

(a) *Disability benefits.* Except as provided in paragraph (c) of this section, a veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) *Death benefits.* Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same eligibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) *Exceptions.* Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by VA (except chapters 11 and 13 of Title 38, United States Code), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986. (Authority: Pub. L. 98-542)

[50 FR 34460, Aug. 26, 1985]

Revisions

§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a Notice of Disagreement submitted in accordance with the provisions of §20.201 of this chapter, and either §20.302(a) or §20.501(a) of this chapter, as applicable, with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by a Veterans Service Center Manager, Pension Management Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under §3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))

[66 FR 21874, May 2, 2001, as amended at 67 FR 46868, July 17, 2002; 74 FR 26959, June 5, 2009; 79 FR 57697, Sep. 25, 2014]

Supplement *Highlights* references: 87(2), 111(1).

End of Subpart D

End of Book B