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Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 120

Covering period of *Federal Register* issues
through October 1, 2018

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 120

5 October 2018

Covering the period of Federal Register issues
through October 1, 2018

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FILING INSTRUCTIONS

Book B, Supplement No. 120 October 5, 2018

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HIGHLIGHTS

Book B, Supplement No. 120 October 5, 2018

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 18 September 2018, the VA published a final rule, effective 18 October 2018, to amend its regulations governing veterans' eligibility for VA pensions and other needs-based benefit programs. The amended regulations establish new requirements for evaluating net worth and asset transfers for pensions and identify which medical expenses may be deducted from countable income for VA's needs-based benefit programs. The amendments help to ensure the integrity of VA's needs-based benefit programs and the consistent adjudication of pension and parents' dependency and indemnity compensation claims. Lastly, the amendments effectuate: Statutory changes for pension beneficiaries who receive Medicaid-covered nursing home care; a statutory income exclusion for disabled veterans; and longstanding statutory income exclusions for all VA needs-based benefits. Changes:

- In §3.261, amend the table by revising in paragraph (a), entries (35) through (37),
- In §3.262, revised paragraph (l) and paragraphs (s) through (v),
- In §3.263, removed paragraphs (e) through (i), added new paragraph (e),
- In §3.270, revised paragraphs (a) and (b),
- In §3.271, added paragraph (i),
- In §3.272, revised paragraphs (g) through (t),
- Revised in full §§3.274, 3.275, and 3.276,
- In §3.277, revised paragraph (c)(2),
- Added §§3.278 and 3.279,
- In §3.503, added paragraph (c),
- In §3.551, revised paragraph (i),
- In §3.660, revised paragraph (d).

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| (a) <i>Income</i> | <i>Dependency (parents)</i> | <i>Dependency and indemnity compensation</i> | <i>Pension; old-law (veterans, Surviving spouses, and children)</i> | <i>Pension; Section 306 (veterans, Surviving spouses, and children)</i> | <i>See</i> |
|---|-----------------------------|--|---|---|---------------------|
| (33) The following programs administered by the ACTION agency: | | | | | |
| Foster Grandparent Program and Older Americans Community Service Programs payments (Pub. L. 93-29; 87 Stat. 55) | | | | | |
| | Excluded | Excluded | Excluded | Excluded | §3.262(q)(1) |
| Volunteers in Service to America (VISTA), | | | | | |
| University Year for ACTION (UYA), | | | | | |
| Program for Local Services (PLS), | | | | | |
| ACTION Cooperative Volunteers (ACV), | | | | | |
| Foster Grandparent Program (FGP), and | | | | | |
| Older American Community Service Programs, | | | | | |
| Retired Senior Volunteer Program (RSVP), | | | | | |
| Senior Companion Program (Pub. L. 93-113; 87 Stat. 394) | | | | | |
| | Excluded | Excluded | Excluded | Excluded | §3.262(q)(2) |
| (34) The Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) administered by the Small Business Administration. (Pub. L. 93-113; 87 Stat. 394) | | | | | |
| | Excluded | Excluded | Excluded | Excluded | §3.262(q)(2) |
| (35) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426) | | | | | |
| | Excluded | Excluded | Included | Included | §3.262(t) |
| (36) Income received from income tax returns | | | | | |
| | Excluded | Excluded | Excluded | Excluded | §3.262(u) |
| (37) Other amounts excluded from income by statute | | | | | |
| | Excluded | Excluded | Excluded | Excluded | §3.262(v) §3.279 |

| (b) <i>Deduction of Amounts Paid by Claimant</i> | <i>Dependency (parents)</i> | <i>Dependency and indemnity compensation</i> | <i>Pension; old-law (veterans, Surviving spouses, and children)</i> | <i>Pension; Section 306 (veterans, Surviving spouses, and children)</i> | <i>See</i> |
|--|-----------------------------|--|---|---|----------------------|
| (1) Unusual medical expenses | | | | | |
| | Not authorized | Authorized | Not authorized | Authorized | §§3.262(b)(1), & (l) |
| (2) Veteran: just debts, expenses of last illness, and burial | | | | | |
| | Not authorized | Authorized, except debts | Not authorized | Authorized | §§3.262(m) & (o) |
| (3) Veteran's spouse or child: expenses of last illness and burial | | | | | |
| | Not authorized | Not authorized | Not authorized | Authorized | §3.262(n) |
| (4) Parent's spouse: just debts; expenses of last illness and burial | | | | | |
| | Not authorized | Authorized | --- | --- | §3.262(o) |
| (5) Prepayments on real property mortgage after death of spouse (Pub. L. 91-588) | | | | | |
| | Not authorized | Not authorized | Not authorized | Authorized | §3.262(k)(6) |
| (c) <i>Corpus of estate</i> | <i>Dependency (parents)</i> | <i>Dependency and indemnity compensation</i> | <i>Pension; old-law (veterans, Surviving spouses, and children)</i> | <i>Pension; Section 306 (veterans, Surviving spouses, and children)</i> | <i>See</i> |
| | Considered Conditionally | Not considered | Not considered | Considered | §3.263 |

1. The compensation received through a crime victim compensation program will be excluded from income computations unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

[28 FR 31, Jan. 1, 1963, as amended at 29 FR 15205, Nov. 11, 1964; 31 FR 15632, Dec. 13, 1966; 33 FR 15286, Oct. 15, 1968; 36 FR 8446, May 6, 1971; 37 FR 6677, Apr. 1, 1972; 37 FR 7092, Apr. 8, 1972; 37 FR 21436, Oct. 11, 1972; 38 FR 872, Jan. 5, 1973; 38 FR 26804, Sept. 26, 1973; 38 FR 28826, Oct. 17, 1973; 40 FR 13305, Mar. 26, 1975; 40 FR 57459, Dec. 10, 1975; 41 FR 17386, Apr. 26, 1976; 42 FR 43834, Aug. 31, 1977; 57 FR 59298, Dec. 15, 1992; 58 FR 12174, Mar. 3, 1993; 58 FR 31909, June 7, 1993; 58 FR 33766, June 21, 1993; 59 FR 37695, July 25, 1994; 60 FR 2522, Jan. 10, 1995; 60 FR 18355, Apr. 11, 1995; 62 FR 35970, July 3, 1997; 62 FR 51278, Sept. 30, 1997; 67 FR 49586, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 76 FR 4248, Jan. 25, 2011; 83 FR 47268, Sep. 18, 2018]

Supplement *Highlights* references: 6(2), 8(3), 12(7), 14(4), 15(3), 31(1), 54(2), 61(1), 65(1), 95(1), 120(1).

[Reserved]

shall not be considered income of a survivor for section 306 pension purposes. With the foregoing exception, if property is owned jointly each person will be considered as owning a proportionate share. The claimant's share of property held in partnership will be determined on the facts found. In the absence of evidence to the contrary, the claimant's statement as to the terms of ownership will be accepted. (Authority: Sec. 306, Public Law 95-588; 92 Stat. 2508)

(2) *Income-producing property.* Income received from real or personal property owned by the claimant will be counted. The claimant's share will be determined in proportion to his right according to the rules of ownership.

(3) *Sale of property.* Except as provided in paragraphs (k)(4) and (5) of this section, net profit from the sale of real or personal property will be counted. In determining net profit from the sale of property owned prior to the date of entitlement, the value at the date of entitlement will be considered in relation to the selling price. Where payments are received in installments, payments will not be considered income until the claimant has received amounts equal to the value of the property at the date of entitlement. Principal and interest will not be counted separately.

(4) *Homes.* Net profit from the sale of the claimant's residence which is received during the calendar year of sale will not be considered as income under the following conditions:

(i) To the extent that it is applied within the calendar year of the sale, or the succeeding calendar year, to the purchase price of another residence as his principal dwelling;

(ii) Such application of the net profit is reported within 1 year following the date so applied, and

(iii) The net profit is so applied after January 10, 1962, to a purchase made after said date.

This exclusion will not apply where the net profit is applied to the price of a home purchased earlier than the calendar year preceding the calendar year of sale of the old residence.

(5) *Sale of property; section 306 pension and dependency and indemnity compensation.* For pension under section 306 pension and for dependency and indemnity compensation, profit from the sale of real or personal property other than in the course of a business will not be considered income. This applies to property acquired either before or after the date of entitlement. Any amounts received in excess of the sales price will be counted as income. Where payments are received in installments, principal and interest will not be counted separately. For pension, this provision is effective January 1, 1965; for dependency and indemnity compensation, January 1, 1967. (Authority: 38 U.S.C. 1503(a)(10); 38 U.S.C. 1315(g))

(6) *Payments on mortgages on real property; section 306 pension.* Effective January 1, 1971, for the purposes of section 306 pension, an amount equaling any prepayments made by a veteran or surviving spouse on a mortgage or similar type security instrument in existence at the death of veteran or spouse on real property which prior to the death was the

principal residence of the veteran and spouse will be excluded from consideration as income if such payment was made after the death and prior to the close of the year succeeding the year of death. (Authority: 38 U.S.C. 1503(a)(14))

(1) *Unusual medical expenses.* Within the provisions of paragraphs (1)(1) through (4) of this section there will be excluded from the amount of the claimant's annual income any unreimbursed amounts which have been paid within the calendar year for unusual medical expenses regardless of the year the indebtedness was incurred. The term "unusual" means "excessive." It does not describe the nature of a medical condition but rather the amount expended for medical treatment in relationship to the claimant's resources available for sustaining a reasonable mode of life. Unreimbursed expenditures which exceed 5 percent of the claimant's reported annual income will be considered unusual. Health, accident, sickness and hospitalization insurance premiums will be included as medical expenses in determining whether the claimant's unreimbursed medical expenses meet the criterion for "unusual." A claimant's statement as to amounts expended for medical expenses ordinarily will be accepted unless the circumstances create doubt as to its credibility. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate or after the end of the calendar year upon receipt of an income questionnaire. For the definition of what constitutes a medical expense, see §3.278, Deductible medical expenses.

(1) *Veterans.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the veteran for unusual medical expenses of self, spouse, and other relatives of the veteran in the ascending as well as descending class who are members or constructive members of the veteran's household and whom the veteran has a moral or legal obligation to support.

(2) *Surviving spouses.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the surviving spouse for the unusual medical expenses of self, the veteran's children, and other relatives of the surviving spouse in the ascending as well as descending class who are members or constructive members of the surviving spouse's household and whom the surviving spouse has a moral or legal obligation to support.

(3) *Children.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by a child for the unusual medical expenses of self, parent, and brothers and sisters of the child.

(4) *Parents.* For dependency and indemnity compensation purposes there will be excluded unreimbursed amounts paid by the parent for the unusual medical expenses of self, spouse, and other relatives of the parent in the ascending as well as descending class who are members or constructive members of the parent's household and whom the parent has a moral or legal obligation to support. If the combined annual income of the parent and the parent's spouse is the basis for dependency and indemnity compensation, the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives in the ascending as well as descending class who are members or constructive

members of the household and whom the parent's spouse has a moral or legal obligation to support. (Authority: 38 U.S.C. 1315(f)(3); Sec. 306, Pub. L. 95-588; 92 Stat. 2508)

(m) *Veteran's final expenses; pension.* In claims for pension under section 306, there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a surviving spouse, amounts equal to amounts paid for the expenses of the veteran's last illness;

(2) From the income of a surviving spouse, or of a child of a deceased veteran where there is no surviving spouse, amounts equal to amounts paid by the surviving spouse or child for the veteran's just debts, the veteran's last illness, and the veteran's burial to the extent such expenses are not reimbursed by the Department of Veterans Affairs. The term "just debts" does not include any debt that is secured by real or personal property. (Authority: Sec. 306, Pub. L. 95-588; 92 Stat. 2508)

(n) *Final expenses of veteran's spouse or child; pension.* In claims for pension under section 306, there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a veteran, amounts equal to amounts paid by the veteran for the last illness and burial of the veteran's deceased spouse or child; and

(2) From the income of a spouse or surviving spouse, amounts equal to amounts paid by the spouse or surviving spouse of the deceased veteran for the last illness and burial of a child of such veteran. (Authority: Sec. 306, Pub. L. 95-588; 92 Stat. 2508)

(o) *Final expenses of veteran or parent's spouse; dependency and indemnity compensation.* In claims for dependency and indemnity compensation there will be excluded from the income of a parent, as provided in paragraph (p) of this section, amounts equal to amounts paid by the parent for:

(1) The expenses of the veteran's last illness and burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23.

(2) The parent's deceased spouse's just debts, the expenses of the spouse's last illness to the extent such expenses are not reimbursed under 38 U.S.C. ch. 51 and the expenses of the spouse's burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23 or 51. The term "just debts" does not include any debt that is secured by real or personal property. (Authority: 38 U.S.C. 1315(f))

(p) *Final expenses; year of exclusion.* For the purpose of paragraphs (m), (n) and (o) of this section, in the absence of contradictory information, the claimant's statement will be accepted as to the nature, amount and date of payment, and identity of the creditor. Except as provided in this paragraph, payments will be deducted from annual income for the year in which such payments are made. Payments made by a veteran, spouse or surviving spouse of a veteran, child or, in dependency and indemnity compensation claims, by a parent during the calendar year following the year in which the veteran, spouse or child died may be deducted from the

claimant's income for the year of last illness or burial if this deduction is advantageous to the claimant.

(q) *Volunteer programs:*

(1) *Payments under Foster Grandparent Program and Older Americans Community Service Programs.* Effective May 3, 1973, compensation received under the Foster Grandparent Program and the Older Americans Community Service Programs will be excluded from income in claims for compensation, pension and dependency and indemnity compensation. (Authority: Pub. L. 93-29; 87 Stat. 55)

(2) *Payments under domestic volunteer service act programs.* Effective October 1, 1973, compensation or reimbursement received under a Domestic Volunteer Service Act Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), will be excluded from income in claims for compensation pension and dependency and indemnity compensation. (Authority: Pub. L 93-113; 87 Stat. 394)

(r) *Survivor benefit annuity.* For the purposes of old law pension and section 306 pension, there shall be excluded from computation of income annuity paid by the Department of Defense under the authority of section 653, Public Law 100-456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988) (Authority: Sec. 653, Pub. L. 100-456; 102 Stat. 1991)

(s) *Reimbursement for casualty loss.* The following sources of reimbursements for casualty loss will not be considered as income in determining entitlement to benefits under the programs specified. Amounts to be excluded from computation in parents' dependency and indemnity compensation claims are limited to amounts of reimbursement which do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss.

(1) Reimbursement for casualty loss of any kind in determining entitlement to parents' dependency and indemnity compensation benefits. For purposes of paragraph (t) of this section, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(2) Proceeds from fire insurance in determining dependency of a parent for compensation purposes or in determining entitlement to old-law and section 306 pension benefits. (Authority: 38 U.S.C. 1315(f))

(t) *Radiation Exposure Compensation Act.* For the purposes of parents' dependency and indemnity compensation and dependency of parents under §3.250, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990. (Authority: 42 U.S.C. 2210 note)

(u) *Income tax returns.* VA will exclude from income payments from income tax returns. See §3.279(e)(1). (Authority: 26 U.S.C. 6409)

(v) *Statutory exclusions.* Other amounts excluded from income by statute. See §3.279. VA will exclude from income any amount designated by statute as not countable as income, regardless of whether or not it is listed in this section or in §3.279.

[28 FR 32, Jan. 1, 1963; 57 FR 59298, Dec. 15, 1992; 58 FR 33767, June 21, 1993; 59 FR 35266, July 11, 1994; 59 FR 37696, July 25, 1994; 60 FR 2522, Jan. 10, 1995; 60 FR 18355, Apr. 11, 1995; 62 FR 5529, Feb. 6, 1997; 62 FR 51278, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 76 FR 4248, Jan. 25, 2011; 83 FR 47268, Sept. 18, 2018]

Supplement *Highlights* references: 6(2), 8(3), 12(4, 7), 14(4), 15(3), 27(2), 31(1), 54(2), 61(1), 65(1), 95(1), 120(1).

[Reserved]

§3.263 Corpus of estate; net worth.

(a) *General.* The following rules are for application in determining the corpus of estate of a parent where dependency is a factor under §3.250, and the net worth of a veteran, surviving spouse or child where pension is subject to Pub. L. 86-211 (73 Stat. 432) under §3.252(b). Only the estate of the parent, in claims based on dependency, or the estate of the veteran, surviving spouse or child-claimant in claims for pension, will be considered. In the absence of contradictory information, the claimant's statement as to ownership and estimate of value will be accepted.

(b) *Definition.* "Corpus of estate" and "net worth" mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant except the claimant's dwelling (single-family unit) including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) *Ownership.* See §3.262(k).

(d) *Evaluation.* In determining whether some part of the claimant's estate should be consumed for his or her maintenance, consideration will be given to the amount of the claimant's income, together with the following factors: whether the property can be readily converted into cash at no substantial sacrifice; ability to dispose of property as limited by community property laws; life expectancy; number of dependents who meet the requirements of §3.250(b)(2); potential rate of depletion, including unusual medical expenses under the principles outlined in §3.262(l) for the claimant and his or her dependents.

(e) VA will exclude from the corpus of estate or net worth any amount designated by statute as not countable as a resource. See §3.279

[28 FR 33, Jan. 1, 1963, as amended at 39 FR 28527, Aug. 8, 1974; 44 FR 45936, Aug. 6, 1979; 57 FR 59299, Dec. 15, 1992; 58 FR 33767, June 21, 1993; 62 FR 51279, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 76 FR 4248, Jan. 25, 2011; 83 FR 47269, Sept. 18, 2018]

Cross references: Reductions and discontinuances; dependency. See §3.500(h). Material change in income, net worth or change in status. See §3.660. Income and net worth questionnaires. See §3.661.

Supplement *Highlights* references: 6(2), 8(3), 31(1), 54(2), 61(1), 65(1), 95(1), 120(1).

Next Section is §3.270

§3.270 Applicability of various dependency, income and estate regulations.

(a) *Sections 3.250 through 3.263 and 3.278 through 3.279.* These sections are applicable to dependency, income and estate determinations needed to determine entitlement or continued entitlement for the following programs:

- (1) Parents' death compensation.
- (2) Old-law pension.
- (3) Section 306 pension.
- (4) Parents' dependency and indemnity compensation.

Note: Citations to Title 38, United States Code in §§3.250 through 3.263 and 3.278 through 3.279 referring to section 306 or old-law pension generally refer to provisions of law in effect on December 31, 1978.

(b) *Sections 3.271 through 3.279.* These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.

[44 FR 45936, Aug. 6, 1979; as amended at 83 FR 47269, Sept. 18, 2018]

Dependency, Income, and Estate

Regulations Applicable to the Improved Pension Program which became Effective January 1, 1979

Source: Sections 3.271 to 3.277 appear at 44 FR 45936, Aug. 6, 1979, unless otherwise noted.

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| 3.278 | Deductible medical expenses..... | 3.278-1 |
| 3.279 | Statutory exclusions from income or assets (net worth or corpus of the estate) | 3.279-1 |

§3.271 Computation of income.

(a) *General.* Payments of any kind from any source shall be counted as income during the 12-month annualization period in which received unless specifically excluded under §3.272. (Authority: 38 U.S.C. 501(a))

(1) *Recurring income.* Recurring income means income which is received or anticipated in equal amounts and at regular intervals (e.g., weekly, monthly, quarterly, etc.), and which will continue throughout an entire 12-month annualization period. The amount of recurring income for pension purposes will be the amount received or anticipated during a 12-month annualization period. Recurring income which terminates prior to being counted for at least one full 12-month annualization period will be treated as nonrecurring income for computation purposes.

(2) *Irregular income.* Irregular income means income which is received or anticipated during a 12-month annualization period, but which is received in unequal amounts or at irregular intervals. The amount of irregular income for pension purposes will be the amount received or anticipated during a 12-month annualization period following initial receipt of such income.

(3) *Nonrecurring income.* Nonrecurring income means income received or anticipated on a one-time basis during a 12-month annualization period (e.g., an inheritance). Pension computations of income will include nonrecurring income for a full 12-month annualization period following receipt of the income.

(b) *Salary.* Salary means the gross amount of a person’s earnings or wages before any deductions are made for such things as taxes, insurance, retirement plans, social security, etc.

(c) *Business, farm or professional income.*

(1) This includes gross income from a business, farm or profession as reduced by the necessary operating expenses such as cost of goods sold, or expenditures for rent, taxes, and

upkeep, or costs of repairs or replacements. The value of an increase in stock inventory of a business is not considered income.

(2) Depreciation is not a deductible expense.

(3) A loss sustained in operating a business, profession, farm, or from investments, may not be deducted from income derived from any other source.

(d) *Income from property.* Income from real or personal property is countable as income of the property's owner. The terms of a recorded deed or other evidence of title shall constitute evidence of ownership. This includes property acquired through purchase, gift, devise, or descent. If property is owned jointly, income of the various owners shall be determined in proportion to shares of ownership of the property. The owner's shares of income held in partnership shall be determined on the basis of the facts found.

(e) *Installments.* Income shall be determined by the total amount received or anticipated during a 12-month annualization period. (Authority: 38 U.S.C. 501(a))

(f) *Deferred determinations.*

(1) When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the 12-month annualization period, when total income received during that period will be determined and adjustments in pension payable made accordingly. (Authority: 38 U.S.C. 501(a))

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of §3.204, §3.205, §3.209, or §3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of evidence necessary to establish the dependency. (Authority: 38 U.S.C. 501(a))

(g) *Compensation (civilian) for injury or death.* Compensation paid by the United States Department of Labor, Office of Workers' Compensation Programs, Social Security Administration, or the Railroad Retirement Board, or pursuant to any worker's compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income as received. However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the amount of the award or settlement, may be deducted. The criteria in §3.272(g) apply as to all medical expenditures after the award or settlement. (Authority: 38 U.S.C. 501(a))

(h) *Fractions of dollars.* Fractions of dollars will be disregarded in computing annual income.

(i) *Waiver of receipt of income.* Potential income that is not excludable under §3.272 or §3.279 but is waived by an individual is included as countable income of the individual. However, if an individual withdraws a claim for Social Security benefits, after a finding of entitlement to those benefits, in order to maintain eligibility for unreduced Social Security benefits upon reaching a particular age, VA will not regard this potential income as having been waived and will therefore not count it. (Authority: 38 U.S.C. 1503(a))

[44 FR 45936, Aug. 6, 1979, as amended at 53 FR 23235, June 21, 1988; 57 FR 59299, Dec. 15, 1992; 83 FR 47269, Sept, 18, 2018]

Supplement *Highlights* references: 6(2), 120(1).

[Reserved]

§3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension. Unless otherwise provided, expenses deductible under this section are deductible only during the 12-month annualization period in which they were paid. (Authority: 38 U.S.C. 501(a))

(a) *Welfare.* Donations from public or private relief, welfare, or charitable organizations. (Authority: 38 U.S.C. 1503(a)(1))

(b) *Maintenance.* The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the individual is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or the individual to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend, or charitable organization. The expense of maintenance is not deductible if it is paid from the individual's income. (Authority: 38 U.S.C. 501(a), 1503(a)(1))

(c) *Department of Veterans Affairs pension benefits.* Payments under chapter 15 of title 38, United States Code, including accrued pension benefits payable under 38 U.S.C. 5121. (Authority: 38 U.S.C. 1503(a)(2))

(d) *Reimbursement for casualty loss.* Reimbursement of any kind for any casualty loss. The amount to be excluded is not to exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. For purposes of this paragraph, the term *casualty loss* means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature. (Authority: 38 U.S.C. 1503(a)(5))

(e) *Profit from sale of property.* Profit realized from the disposition of real or personal property other than in the course of business, except amounts received in excess of the sales price, for example, interest on deferred sales is included as income. In installment sales, any payments received until the sales price is recovered are not included as income, but any amounts received which exceed the sales price are included, regardless of whether they represent principal or interest. (Authority: 38 U.S.C. 1503(a)(6))

(f) *Joint accounts.* Amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner. (Authority: 38 U.S.C. 1503(a)(7))

(g) *Medical expenses.* Within the provisions of the following paragraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the 12-month annualization period for medical expenses regardless of when the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the 12-month annualization period upon receipt of an

eligibility verification report. For the definition of what constitutes a medical expense, see §3.278, Deductible medical expenses. (Authority: 38 U.S.C. 501(a))

(1) *Veteran's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a veteran or spouse for medical expenses of the veteran, spouse, children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the veteran's or spouse's household; and

(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(2) *Surviving spouse's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a surviving spouse for medical expenses of the spouse, veteran's children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the spouse's household; and

(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid. (Authority: 38 U.S.C. 501(a))

(3) *Children's income.* Unreimbursed amounts paid by a child for medical expenses of self, parent, brothers and sisters, to the extent that such amounts exceed 5 percent of the maximum annual pension rate or rates payable to the child during the 12-month annualization period in which the medical expenses were paid. (Authority: 38 U.S.C. 501(a))

(h) *Expenses of last illnesses, burials, and just debts.* Expenses specified in paragraphs (h)(1) and (h)(2) of this section which are paid during the calendar year following that in which death occurred may be deducted from annual income for the 12-month annualization period in which they were paid or from annual income for any 12-month annualization period which begins during the calendar year of death, whichever is to the claimant's advantage. Otherwise, such expenses are deductible only for the 12-month annualization period in which they were paid. (Authority: 38 U.S.C. 501(a))

(1) *Veteran's final expenses.*

(i) Amounts paid by a spouse before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse. (Authority: 38 U.S.C. 1503(a)(3))

(ii) Amounts paid by a surviving spouse or child of a veteran for the veteran's just debts, expenses of last illness and burial (to the extent such burial expenses are not reimbursed under Chapter 23 of Title 38, United States Code) will be deducted from the income of the surviving spouse or child. The term "just debts" does not include any debt that is secured by real or personal property. (Authority: 38 U.S.C. 1503(a)(3))

(2) *Spouse or child's final expenses.*

(i) Amounts paid by a veteran for the expenses of the last illness and burial of the veteran's deceased spouse or child will be deducted from the veteran's income.

(ii) Amounts paid by a veteran's spouse or surviving spouse for expenses of the last illness and burial of the veteran's child will be deducted from the spouse's or surviving spouse's income. (Authority: 38 U.S.C. 1503(a)(4))

(i) *Educational expenses.* Amounts equal to expenses paid by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, to include amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course. Unusual transportation expenses are those exceeding the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available). (Authority: 38 U.S.C. 1503(a)(9))

(j) *Child's income.* In the case of a child, any current work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of the following:

(1) The lowest amount of gross income for which a Federal income tax return must be filed, as specified in section 6012(a) of the Internal Revenue Code of 1954, by an individual who is not married (as determined under section 143 of such Code), and is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(2) If the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by the child for those educational expenses including the amount paid for tuition, fees, books, and materials. (Authority: 38 U.S.C. 1503(a)(10))

(k) *Veterans' benefits from States and municipalities.* VA will exclude from income payments from a State or municipality to a veteran of a monetary benefit that is paid as a veterans' benefit due to injury or disease. VA will exclude up to \$5,000 of such benefit in any annualization period. (Authority: 38 U.S.C. 1503(a)(11))

(l) *Distributions of funds under 38 U.S.C. 1718.* Distributions from the Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund as a result of participation in a therapeutic or rehabilitation activity under 38 U.S.C. 1718 and payments from participation in a program of rehabilitative services provided as part of the care furnished by a State home and which is approved by VA as conforming to standards for activities under 38 U.S.C. 1718 shall be considered donations from a public or private relief or welfare organization and shall not be countable as income for pension purposes. (Authority: 38 U.S.C. 1718(f))

(m) *Hardship exclusion of child's available income.* When hardship is established under the provisions of §3.23(d)(6) of this part, there shall be excluded from the available income of any child or children an amount equal to the amount by which annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement computed without consideration of this exclusion. The amount of this exclusion shall not exceed the available income of any child or children, and annual expenses necessary for reasonable family maintenance shall not include any expenses which were considered in determining the available income of the child or children or the countable annual income of the veteran or surviving spouse. (Authority: 38 U.S.C. 1521(h), 1541(g))

(n) *Survivor benefit annuity.* Annuity paid by the Department of Defense under the authority of section 653, Public Law 100-456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988) (Authority: Sec. 653, Pub. L. 100-456; 102 Stat. 1991)

(o) *Cash surrender value of life insurance.* That portion of proceeds from the cash surrender of a life insurance policy which represents a return of insurance premiums. (Authority: 38 U.S.C. 501(a))

(p) *Radiation Exposure Compensation Act.* Any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990. (Authority: 42 U.S.C. 2210 note)

(q) *Life insurance proceeds.* Lump-sum proceeds of any life insurance policy on a veteran. (Authority: 38 U.S.C. 1503(a)(12))

(r) *Income tax returns.* VA will exclude from income payments from income tax returns. See §3.279(e)(1). (Authority: 26 U.S.C. 6409)

(s) *Reimbursements for loss.* VA will exclude from income payments described in 38 U.S.C. 1503(a)(5). (Authority: 38 U.S.C. 1503(a)(5))

(t) *Statutory exclusions.* Other amounts excluded from income by statute. See §3.279. VA will exclude from income any amount designated by statute as not countable as income, regardless of whether or not it is listed in this section or in §3.279.

[44 FR 45936, Aug. 6, 1979, as amended at 46 FR 9580, Jan. 29, 1981; 53 FR 23235, June 21, 1988; 53 PR 24831, June 30, 1988; 56 FR 65846, Dec. 19, 1991; 57 FR 59300, Dec. 15, 1992; 58 FR 25563, Apr. 27, 1993; 59 FR 35266, July 11, 1994; 59 FR 37696, July 25, 1994; 59 FR 45976, Sept. 6, 1994; 60 FR 2523, Jan. 10, 1995; 60 FR 18355, Apr. 11, 1995; 62 FR 5528, Feb. 6, 1997; 62 FR 51279, Sept. 30, 1997; 67 FR 9209, Feb. 28, 2002; 67 FR 49587, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 71 FR 44918, Aug. 8, 2006; 76 FR 4248, Jan. 25, 2011; 83 FR 47269, Sept. 18, 2018]

Supplement *Highlights* references: 6(2), 7(5), 12(4, 7), 13(2), 14(4), 15(3), 27(1), 31(1), 51(1), 54(2), 61(1), 65(1), 72(2), 95(1), 120(1).

§3.273 Rate computation.

The commencement date of change in benefit payments based on rate computations under the provisions of this section will be determined under the provisions of §3.31 or §3.660.

(a) *Initial award.* For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable maximum pension rate by the beneficiary's countable income on the effective date of entitlement and dividing the remainder by 12. Effective June 1, 1983, the provisions of §3.29(b) apply to this paragraph. Recomputation of rates due to changes in the maximum annual pension rate or rate of income following the initial date of entitlement are subject to the provisions of paragraph (b) of this section.

(b) *Running awards:*

(1) *Change in maximum annual pension rate.* Whenever there is change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's countable income on the effective date of the change in the applicable maximum annual pension rate, and dividing the remainder by 12. Effective June 1, 1983, the provisions of §3.29(b) apply to this paragraph.

(2) *Change in amount of income.* Whenever there is a change in a beneficiary's amount of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new amount of countable income on the effective date of the change in the amount of income, and dividing the remainder by 12. Effective June 1, 1983, the provisions of §3.29(b) apply to this paragraph.

(c) *Nonrecurring income.* The amount of any nonrecurring countable income (e.g. an inheritance) received by a beneficiary shall be added to the beneficiary's annual rate of income for a 12-month annualization period commencing on the effective date on which the nonrecurring income is countable. (Authority: 38 U.S.C. 501(a))

(d) *Recurring and irregular income.* The amount of recurring and irregular income anticipated or received by a beneficiary shall be added to determine the beneficiary's annual rate of income for a 12-month annualization period commencing at the beginning of the 12-month annualization, subject to the provisions of §3.660(a)(2) of this chapter.

[44 FR 45936, Aug. 6, 1979, as amended at 48 FR 34472, July 29, 1983; 57 FR 59300, Dec. 15, 1992]

Supplement Highlights reference: 6(2).

§3.274 Net worth and VA pension.

(a) *Net worth limit.* For purposes of entitlement to VA pension, the net worth limit effective October 18, 2018 is \$123,600. This limit will be increased by the same percentage as the Social Security increase whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act (42 U.S.C. 415(i)). VA will publish the current limit on its website at www.benefits.va.gov/pension/.

(b) *When a claimant's or beneficiary's net worth exceeds the limit.* Except as provided in paragraph (h)(2) of this section, VA will deny or discontinue pension if a claimant's or beneficiary's net worth exceeds the net worth limit in paragraph (a) of this section.

(1) *Net worth.* Net worth means the sum of a claimant's or beneficiary's assets and annual income.

(2) *Asset calculation.* VA will calculate a claimant's or beneficiary's assets under this section and §3.275.

(3) *Annual income calculation.* VA will calculate a claimant's or beneficiary's annual income under §3.271, and will include the annual income of dependents as required by law. See Sec. §3.23(d)(4), 3.23(d)(5), and 3.24 for more information on annual income included when VA calculates a claimant's or beneficiary's pension entitlement rate. In calculating annual income for this purpose, VA will subtract all applicable deductible expenses, to include appropriate prospective medical expenses under §3.272(g).

(4) *Example of net worth calculation.* For purposes of this example, presume the net worth limit is \$123,600. A claimant's assets total \$117,000 and annual income is \$9,000. Therefore, adding the claimant's annual income to assets produces net worth of \$126,000. This amount exceeds the net worth limit.

(c) *Assets of other individuals included as claimant's or beneficiary's assets—*

(1) *Claimant or beneficiary is a veteran.* A veteran's assets include the assets of the veteran as well as the assets of his or her spouse, if the veteran has a spouse.

(2) *Claimant or beneficiary is a surviving spouse.* A surviving spouse's assets include only the assets of the surviving spouse.

(3) *Claimant or beneficiary is a surviving child.*

(i) If a surviving child has no custodian or is in the custody of an institution, the child's assets include only the assets of the child.

(ii) If a surviving child has a custodian other than an institution, the child's assets include the assets of the child as well as the assets of the custodian. If the child is in the joint custody of his or her natural or adoptive parent and a stepparent, the child's assets also include the assets of the stepparent. See §3.57(d) for more information on child custody for pension purposes.

(d) *How a child's net worth affects a veteran's or surviving spouse's pension entitlement.* VA will not consider a child to be a veteran's or surviving spouse's dependent child for pension purposes if the child's net worth exceeds the net worth limit in paragraph (a) of this section.

(1) *Dependent child and potential dependent child.* For the purposes of this section--

(i) "Dependent child" refers to a child for whom a veteran or a surviving spouse is entitled to an increased maximum annual pension rate.

(ii) "Potential dependent child" refers to a child who is excluded from a veteran's or surviving spouse's pension award solely or partly because of this paragraph (d). References in this section to "dependent child" include a potential dependent child.

(2) *Dependent child net worth.* A dependent child's net worth is the sum of his or her annual income and the value of his or her assets.

(3) *Dependent child asset calculation.* VA will calculate the value of a dependent child's assets under this section and §3.275. A dependent child's assets include the child's assets only.

(4) *Dependent child annual income calculation.* VA will calculate a dependent child's annual income under §3.271, and will include the annual income of the child as well as the annual income of the veteran or surviving spouse that would be included if VA were calculating a pension entitlement rate for the veteran or surviving spouse.

(e) *When VA calculates net worth.* VA calculates net worth only when:

(1) VA has received--

(i) An original pension claim;

(ii) A new pension claim after a period of non-entitlement;

(iii) A request to establish a new dependent; or

(iv) Information that a veteran's, surviving spouse's, or child's net worth has increased or decreased; and

(2) The claimant or beneficiary meets the other factors necessary for pension entitlement as provided in §3.3(a)(3) and (b)(4).

Note to Paragraph (e). If the evidence shows that net worth exceeds the net worth limit, VA may decide the pension claim before determining if the claimant meets other entitlement factors. VA will notify the claimant of the entitlement factors that have not been established.

(f) *How net worth decreases.* Net worth may decrease in three ways: Assets can decrease, annual income can decrease, or both assets and annual income can decrease.

(1) *How assets decrease.* A veteran, surviving spouse, or child, or someone acting on their behalf, may decrease assets by spending them on any item or service for which fair market value is received unless the item or items purchased are themselves part of net worth. See §3.276(a)(4) for the definition of "fair market value." The expenses must be those of the veteran, surviving spouse, or child, or a relative of the veteran, surviving spouse, or child. The relative must be a member or constructive member of the veteran's, surviving spouse's, or child's household.

(2) *How annual income decreases.* See Sec. §3.271 through 3.273.

(3) *Example 1.* For purposes of this example, presume the net worth limit is \$123,600 and the maximum annual pension rate (MAPR) is \$12,000. A claimant has assets of \$115,000 and annual income of \$9,000. Adding annual income to assets produces a net worth of \$124,000, which exceeds the net worth limit. However, the claimant is a patient in a nursing home and pays annual unreimbursed nursing home fees of \$29,000. Reasonably predictable unreimbursed medical expenses are deductible from annual income under §3.272(g) to the extent that they exceed 5 percent of the applicable MAPR. VA subtracts the projected expenditures that exceed 5 percent of the applicable MAPR (here, \$28,400) from annual income, which decreases annual income to zero. The claimant's net worth is now \$115,000; therefore, net worth is within the limit to qualify for VA pension.

(4) *Example 2.* For purposes of this example, presume the net worth limit is \$123,600 and the MAPR is \$12,000. A claimant has assets of \$123,000 and annual income of \$9,500. Adding annual income to assets produces a net worth of \$132,500, which exceeds the net worth limit. The claimant pays reasonably predictable annual unreimbursed medical expenses of \$9,000. Unreimbursed medical expenses are deductible from annual income under §3.272(g) to the extent that they exceed 5 percent of the applicable MAPR. VA subtracts the projected expenditures that exceed 5 percent of the applicable MAPR (here, \$8,400) from annual income, which decreases annual income to \$1,100. This decreases net worth to \$124,100, which is still over the limit. VA must deny the claim for excessive net worth.

(g) *Effective dates of pension entitlement or increased entitlement after a denial, reduction, or discontinuance based on excessive net worth—*

(1) *Scope of paragraph.* This paragraph (g) applies when VA has:

(i) Discontinued pension or denied pension entitlement for a veteran, surviving spouse, or surviving child based on the veteran's, surviving spouse's, or surviving child's excessive net worth; or

(ii) Reduced pension or denied increased pension entitlement for a veteran or surviving spouse based on a dependent child's excessive net worth.

(2) *Effective date of entitlement or increased entitlement.* The effective date of entitlement or increased entitlement is the day net worth ceases to exceed the limit. For this effective date to apply, the claimant or beneficiary must submit a certified statement that net worth has decreased and VA must receive the certified statement before the pension claim has become finally adjudicated under §3.160. This means that VA must receive the certified statement within 1 year after its decision notice to the claimant concerning the denial, reduction, or discontinuance unless the claimant appeals VA's decision. Otherwise, the effective date is the date VA receives a new pension claim. In accordance with §3.277(a), VA may require the claimant or beneficiary to submit additional evidence as the individual circumstances may require.

(h) *Reduction or discontinuance of beneficiary's pension entitlement based on excessive net worth—*

(1) *Effective date of reduction or discontinuance.* When an increase in a beneficiary's or dependent child's net worth results in a pension reduction or discontinuance because net worth exceeds the limit, the effective date of reduction or discontinuance is the last day of the calendar year in which net worth exceeds the limit.

(2) *Net worth decreases before the effective date.* If net worth decreases to the limit or below the limit before the effective date provided in paragraph (h)(1) of this section, VA will not reduce or discontinue the pension award on the basis of excessive net worth.

(i) *Additional effective-date provisions for dependent children--*

(1) *Establishing a dependent child on veteran's or surviving spouse's pension award results in increased pension entitlement.* When establishing a dependent child on a veteran's or surviving spouse's pension award results in increased pension entitlement for the veteran or surviving spouse, VA will apply the effective-date provisions in paragraphs (g) and (h) of this section.

(2) *Establishing a dependent child on veteran's or surviving spouse's pension award results in decreased pension entitlement.*

(i) When a dependent child's non-excessive net worth results in decreased pension entitlement for the veteran or surviving spouse, the effective date of the decreased pension entitlement rate (i.e., VA action to add the child to the award) is the end of the year that the child's net worth decreases.

(ii) When a dependent child's excessive net worth results in increased pension entitlement for the veteran or surviving spouse, the effective date of the increased pension entitlement rate (i.e., VA action to remove the child from the award) is the date that VA receives a claim for an increased rate based on the child's net worth increase. (Authority: 38 U.S.C. 1522, 1543, 5110, 5112)

[44 FR 45936, Aug. 6, 1979; as amended at 83 FR 47269, Sept. 18, 2018]

Supplement *Highlight Reference(s):* 120(1).

§3.275 How VA determines the asset amount for pension net worth determinations.*(a) Definitions pertaining to assets—*

(1) *Assets.* The term assets means the fair market value of all property that an individual owns, including all real and personal property, unless excluded under paragraph (b) of this section, less the amount of mortgages or other encumbrances specific to the mortgaged or encumbered property. VA will consider the terms of the recorded deed or other evidence of title to be proof of ownership of a particular asset. See also §3.276(a)(4), which defines “fair market value.”

(2) Claimant.

(i) Except as provided in paragraph (a)(2)(ii) of this section, for the purposes of this section and §3.276, claimant means a pension beneficiary, a dependent spouse, or a dependent or potential dependent child as described in §3.274(d), as well as a veteran, surviving spouse, or surviving child pension applicant.

(ii) For the purpose of paragraph (b)(1) of this section, claimant means a pension beneficiary or applicant who is a veteran, a surviving spouse, or a surviving child.

(3) *Residential lot area.* For purposes of this section, residential lot area means the lot on which a residence sits that does not exceed 2 acres (87,120 square feet), unless the additional acreage is not marketable.

(b) Exclusions from assets. Assets do not include the following:

(1) *Primary residence.* The value of a claimant's primary residence (single-family unit), including the residential lot area, in which the claimant has an ownership interest. VA recognizes one primary residence per claimant. If the residence is sold after pension entitlement is established, any net proceeds from the sale is an asset except to the extent the proceeds are used to purchase another residence within the same calendar year as the year in which the sale occurred.

(i) *Personal mortgage not deductible.* VA will not subtract from a claimant's assets the amount of any mortgages or encumbrances on a claimant's primary residence.

(ii) *Claimant not residing in primary residence.* Although rental income counts as annual income as provided in §3.271(d), VA will not include a claimant's primary residence as an asset even if the claimant resides in any of the following as defined in §3.278(b):

(A) A nursing home or medical foster home;

(B) A care facility other than a nursing home; or

(C) The home of a family member for health care or custodial care.

(2) *Personal effects.* Value of personal effects suitable to and consistent with a reasonable mode of life, such as appliances and family transportation vehicles.

(3) *Radiation Exposure Compensation Act payments.* Payments made under section 6 of the Radiation Exposure Compensation Act of 1990. (Authority: 42 U.S.C. 2210 (note))

(4) *Ricky Ray Hemophilia Relief Fund payments.* Payments made under section 103(c) and excluded under section 103(h)(2) of the Ricky Ray Hemophilia Relief Fund Act of 1998. (Authority: 42 U.S.C. 300c-22 (note))

(5) *Energy Employees Occupational Illness Compensation Program payments.* Payments made under the Energy Employees Occupational Illness Compensation Program. (Authority: 42 U.S.C. 7385e(2))

(6) *Payments to Aleuts.* Payments made to certain Aleuts under 50 U.S.C. App. 1989c-5. (Authority: 50 U.S.C. App. 1989c-5(d)(2))

(7) *Statutory exclusions.* Other amounts excluded from assets by statute. See §3.279. VA will exclude from assets any amount designated by statute as not countable as a resource, regardless of whether or not it is listed in this section or in §3.279. (Authority: 38 U.S.C. 1522, 1543)

[44 FR 45936, Aug. 6, 1979, as amended at 57 FR 59300, Dec. 15, 1992; 60 FR 2523, Jan. 10, 1995; 62 FR 51279, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 76 FR 4248, Jan. 25, 2011; 83 FR 47271, Sept. 18, 2018]

Supplement *Highlights* references: 6(2), 14(4), 31(1), 54(2), 61(1), 65(1), 95(1), 120(1).

§3.276 Asset transfers and penalty periods.

(a) *Asset transfer definitions.* For purposes of this section--

(1) *Claimant* has the same meaning as defined in §3.275(a)(2)(i).

(2) *Covered asset means an asset that--*

(i) Was part of a claimant's net worth;

(ii) Was transferred for less than fair market value; and

(iii) If not transferred, would have caused or partially caused the claimant's net worth to exceed the net worth limit under §3.274(a).

(3) *Covered asset amount* means the monetary amount by which a claimant's net worth would have exceeded the limit due to the covered asset alone if the uncompensated value of the covered asset had been included in net worth.

(i) *Example 1.* For purposes of this example, presume the net worth limit under §3.274(a) is \$123,600. A claimant's assets total \$115,900 and his annual income is zero. However, the claimant transferred \$30,000 by giving it to a friend. If the claimant had not transferred the \$30,000, his net worth would have been \$145,900, which exceeds the net worth limit. The claimant's covered asset amount is \$22,300, because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered asset.

(ii) *Example 2.* For purposes of this example, presume the net worth limit under §3.274(a) is \$123,600. A claimant's annual income is zero and her total assets are \$125,000, which exceeds the net worth limit. In addition, the claimant transferred \$30,000 by giving \$20,000 to her married son and giving \$10,000 to a friend. The claimant's covered asset amount is \$30,000 because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered assets alone.

(4) *Fair market value* means the price at which an asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. VA will use the best available information to determine fair market value, such as inspections, appraisals, public records, and the market value of similar property if applicable.

(5) *Transfer for less than fair market value means--*

(i) Selling, conveying, gifting, or exchanging an asset for an amount less than the fair market value of the asset; or

(ii) A voluntary asset transfer to, or purchase of, any financial instrument or investment that reduces net worth by transferring the asset to, or purchasing, the instrument or investment unless the claimant establishes that he or she has the ability to liquidate the entire balance of the asset for the claimant's own benefit. If the claimant establishes that the asset can be liquidated, the asset is included as net worth. Examples of such instruments or investments include--

(A) *Annuities*. Annuity means a financial instrument that provides income over a defined period of time for an initial payment of principal.

(B) *Trusts*. Trust means a legal instrument by which an individual (the grantor) transfers property to an individual or an entity (the trustee), who manages the property according to the terms of the trust, whether for the grantor's own benefit or for the benefit of another individual.

(6) *Uncompensated value* means the difference between the fair market value of an asset and the amount of compensation an individual receives for it. In the case of a trust, annuity, or other financial instrument or investment described in paragraph (a)(5)(ii) of this section, uncompensated value means the amount of money or the monetary value of any other type of asset transferred to such a trust, annuity, or other financial instrument or investment.

(7) *Look-back period* means the 36-month period immediately preceding the date on which VA receives either an original pension claim or a new pension claim after a period of non-entitlement. This definition does not include any date before October 18, 2018.

(8) *Penalty period* means a period of non-entitlement, calculated under paragraph (e) of this section, due to transfer of a covered asset.

(b) *General statement of policy pertaining to pension and covered assets*. VA pension is a needs-based benefit and is not intended to preserve the estates of individuals who have the means to support themselves. Accordingly, a claimant may not create pension entitlement by transferring covered assets. VA will review the terms and conditions of asset transfers made during the 36-month look-back period to determine whether the transfer constituted transfer of a covered asset. However, VA will disregard asset transfers made before October 18, 2018. In accordance with §3.277(a), for any asset transfer, VA may require a claimant to provide evidence such as a Federal income tax return transcript, the terms of a gift, trust, or annuity, or the terms of a recorded deed or other evidence of title.

(c) *Exception for transfers as a result of fraud or unfair business practice*. An asset transferred as the result of fraud, misrepresentation, or unfair business practice related to the sale or marketing of financial products or services for purposes of establishing entitlement to VA pension will not be considered a covered asset. Evidence supporting this exception may include, but is not limited to, a complaint contemporaneously filed with State, local, or Federal authorities reporting the incident.

(d) *Exception for transfers to certain trusts.* VA will not consider as a covered asset an asset that a veteran, a veteran's spouse, or a veteran's surviving spouse transfers to a trust established on behalf of a child of the veteran if:

(1) VA rates or has rated the child incapable of self-support under §3.356; and

(2) There is no circumstance under which distributions from the trust can be used to benefit the veteran, the veteran's spouse, or the veteran's surviving spouse.

(e) *Penalty periods and calculations.* When a claimant transfers a covered asset during the look-back period, VA will assess a penalty period not to exceed 5 years. VA will calculate the length of the penalty period by dividing the total covered asset amount by the monthly penalty rate described in paragraph (e)(1) of this section and rounding the quotient down to the nearest whole number. The result is the number of months for which VA will not pay pension.

(1) *Monthly penalty rate.* The monthly penalty rate is the maximum annual pension rate (MAPR) under 38 U.S.C. 1521(d)(2) for a veteran in need of aid and attendance with one dependent that is in effect as of the date of the pension claim, divided by 12, and rounded down to the nearest whole dollar. The monthly penalty rate is located on VA's website at www.benefits.va.gov/pension.

(2) *Beginning date of penalty period.* When a claimant transfers a covered asset or assets during the look-back period, the penalty period begins on the first day of the month that follows the date of the transfer. If there was more than one transfer, the penalty period will begin on the first day of the month that follows the date of the last transfer.

(3) *Entitlement upon ending of penalty period.* VA will consider that the claimant, if otherwise qualified, is entitled to benefits effective the last day of the last month of the penalty period, with a payment date as of the first day of the following month in accordance with §3.31.

(4) *Example of penalty period calculation.* VA receives a pension claim in November 2018. The claimant's net worth is equal to the net worth limit. However, the claimant transferred covered assets totaling \$10,000 on August 20, 2018, and September 23, 2018. Therefore, the total covered asset amount is \$10,000, and the penalty period begins on October 1, 2018. Assume the MAPR for a veteran in need of aid and attendance with one dependent in effect in November 2018 is \$24,000. The monthly penalty rate is \$2,000. The penalty period is $\$10,000/\$2,000$ per month = 5 months. The fifth month of the penalty period is February 2019. The claimant may be entitled to pension effective February 28, 2019, with a payment date of March 1, 2019, if other entitlement requirements are met.

(5) *Penalty period recalculations.* VA will not recalculate a penalty period under this section unless--

(i) The original calculation is shown to be erroneous; or

(ii) VA receives evidence showing that some or all covered assets were returned to the claimant before the date of claim or within 60 days after the date of VA's notice to the claimant of VA's decision concerning the penalty period. If covered assets are returned to the claimant, VA will recalculate or eliminate the penalty period. For this exception to apply, VA must receive the evidence not later than 90 days after the date of VA's notice to the claimant of VA's decision concerning the penalty period. Once covered assets are returned, a claimant may reduce net worth at the time of transfer under the provisions of §3.274(f). (Authority: 38 U.S.C. 1522, 1543, 1506(1))

(The Office of Management and Budget has approved the information collection requirement in this section under control numbers 2900-0002, and 2900-0004.)

[44 FR 45936, Aug. 6, 1979, as amended at 83 FR 47271, Sept. 18, 2018]

Supplement *Highlights* references: 120(1).

§3.277 Eligibility reporting requirements.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Department of Veterans Affairs may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child from whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as a dependent child), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a surviving child), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension must promptly notify the Secretary of any change affecting entitlement in any of the following:

- (1) Income;
- (2) Net worth or corpus of estate;
- (3) Marital status;
- (4) Nursing home patient status;
- (5) School enrollment status of a child 18 years of age or older; or
- (6) Any other factor that affects entitlement to benefits under the provisions of this part.

(c) *Eligibility verification reports.*

(1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

(2) The Secretary may require an eligibility verification report under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;

(ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in §3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim. (Authority: 38 U.S.C. 1506)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624.)

[44 FR 45936, Aug. 6, 1979, as amended at 57 FR 59300, Dec. 15, 1992; 60 FR 51922, Oct. 4, 1995; 63 FR 53595, Oct. 6, 1998; 65 FR 16827, Mar. 30, 2000; 66 FR 56614, Nov. 9, 2001; 83 FR 47272, Sept. 18, 2018]

Supplement *Highlights* references: 6(2), 18(1), 34(2), 48(1), 120(1).

§3.278 Deductible medical expenses.

(a) *Scope.* This section identifies medical expenses that VA may deduct from countable income for purposes of three of its needs-based programs: Pension, section 306 pension, and parents' dependency and indemnity compensation (DIC). Payments for such medical expenses must be unreimbursed to be deductible from income.

(b) *Definitions.* For the purposes of this section--

(1) *Health care provider means:*

(i) An individual licensed by a State or country to provide health care in the State or country in which the individual provides the health care. The term includes, but is not limited to, a physician, physician assistant, psychologist, chiropractor, registered nurse, licensed vocational nurse, licensed practical nurse, and physical or occupational therapist; or

(ii) A nursing assistant or home health aide who is supervised by a licensed health care provider as defined in paragraph (b)(1)(i) of this section.

(2) *Activities of daily living (ADLs)* mean basic self-care activities and consist of bathing or showering, dressing, eating, toileting, transferring, and ambulating within the home or living area. Transferring means an individual's moving himself or herself from one position to another, such as getting in and out of bed.

(3) *Instrumental activities of daily living (IADLs)* mean independent living activities, such as shopping, food preparation, housekeeping, laundering, managing finances, handling medications, using the telephone, and transportation for non-medical purposes.

(4) *Custodial care* means regular:

(i) Assistance with two or more ADLs; or

(ii) Supervision because an individual with a physical, mental, developmental, or cognitive disorder requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment.

(5) *Nursing home* means a facility defined in §3.1(z)(1) or (2). If the facility is not located in a State, the facility must be licensed in the country in which it is located.

(6) *Medical foster home* means a privately-owned residence, recognized and approved by VA under 38 CFR 17.73(d), that offers a non-institutional alternative to nursing home care for veterans who are unable to live alone safely due to chronic or terminal illness.

(7) *Care facility other than a nursing home* means a facility in which a disabled individual receives health care or custodial care under the provisions of paragraph (d) of this section. A facility must be licensed if facilities of that type are required to be licensed in the State or country in which the facility is located. A facility that is residential must be staffed 24 hours per day with care providers. The providers do not have to be licensed health care providers.

(8) *Needs A&A or is housebound* refers to a disabled individual who meets the criteria in §3.351 for needing regular aid and attendance (A&A) or being housebound and is a:

- (i) Veteran;
- (ii) Surviving spouse;
- (iii) Parent (for parents' DIC purposes); or
- (iv) Spouse of a living veteran with a service-connected disability rated at least 30 percent disabling, who is receiving pension.

(c) *Medical expenses for VA purposes.* Generally, medical expenses for VA needs-based benefit purposes are payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. Medical expenses may include, but are not limited to, the payments specified in paragraphs (c)(1) through (7) of this section.

(1) *Care by a health care provider.* Payments to a health care provider for services performed within the scope of the provider's professional capacity are medical expenses. Cosmetic procedures that a health care provider performs to improve a congenital or accidental deformity or related to treatment for a diagnosed medical condition are medical expenses.

(2) *Medications, medical supplies, medical equipment, and medical food, vitamins, and supplements.* Payments for prescription and non-prescription medication procured lawfully under Federal law, as well as payments for medical supplies or medical equipment, are medical expenses. Medically necessary food, vitamins, and supplements as prescribed or directed by a health care provider authorized to write prescriptions are medical expenses.

(3) *Adaptive equipment.* Payments for adaptive devices or service animals, including veterinary care, used to assist a person with an ongoing disability are medical expenses. Medical expenses do not include non-prescription food, boarding, grooming, or other routine expenses of owning an animal.

(4) *Transportation expenses.* Payments for transportation for medical purposes, such as the cost of transportation to and from a health care provider's office by taxi, bus, or other form of public transportation are medical expenses. The cost of transportation for medical purposes by privately owned vehicle (POV), including mileage, parking, and tolls, is a medical expense. For transportation in a POV, VA limits the deductible mileage rate to the current POV mileage reimbursement rate specified by the United States General Services Administration (GSA). The current amount can be obtained from www.gsa.gov or on VA's website at www.benefits.va.gov/pension/. Amounts by which transportation expenses set forth in this paragraph (c)(4) exceed the amounts of other VA or non-VA reimbursements for the expense are medical expenses.

(i) *Example.* In February 2013, a veteran drives 60 miles round trip to a VA medical center and back. The veteran is reimbursed \$24.90 from the Veterans Health Administration. The POV mileage reimbursement rate specified by GSA is \$0.565 per mile, so the transportation expense is $\$0.565/\text{mile} * 60 \text{ miles} = \33.90 . For VA needs-based benefits

purposes, the unreimbursed amount, here, the difference between \$33.90 and \$24.90, is a medical expense.

(ii) [Reserved]

(5) *Health insurance premiums.* Payments for health, medical, hospitalization, and long-term care insurance premiums are medical expenses. Premiums for Medicare Parts A, B, and D and for long-term care insurance are medical expenses.

(6) *Smoking cessation products.* Payments for items and services specifically related to smoking cessation are medical expenses.

(7) *Institutional forms of care and in-home care.* As provided in paragraph (d) of this section.

(d) *Institutional forms of care and in-home care.* This paragraph (d) applies with respect to claims for a medical expense deduction for institutional forms of care or in-home care received on or after October 18, 2018 that VA has not previously granted.

(1) *Hospitals, nursing homes, medical foster homes, and inpatient treatment centers.* Payments to hospitals, nursing homes, medical foster homes, and inpatient treatment centers (including inpatient treatment centers for drug or alcohol addiction), including the cost of meals and lodging charged by such facilities, are medical expenses.

(2) *In-home care.* Payments for assistance with ADLs and IADLs by an in-home attendant are medical expenses as long as the attendant provides the disabled individual with health care or custodial care. Payments must be commensurate with the number of hours that the provider attends to the disabled person. The attendant must be a health care provider unless--

(i) The disabled individual needs A&A or is housebound; or

(ii) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that, due to a physical, mental, developmental, or cognitive disorder, the individual requires the health care or custodial care that the in-home attendant provides.

(3) *Care facilities other than nursing homes.*

(i) Care in a facility may be provided by the facility, contracted by the facility, obtained from a third-party provider, or provided by family or friends.

(ii) Payments for health care provided by a health care provider are medical expenses.

(iii) The provider does not need to be a health care provider, and payments for assistance with ADLs and IADLs are medical expenses, if the disabled individual is receiving health care or custodial care in the facility and--

(A) The disabled individual needs A&A or is housebound; or

(B) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that, due to a physical, mental, developmental, or cognitive disorder, the individual needs to be in a protected environment.

(iv) Payments for meals and lodging (and other facility expenses not directly related to health care or custodial care) are medical expenses if:

(A) The facility provides or contracts for health care or custodial care for the disabled individual; or

(B) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that the individual must reside in the facility (or a similar facility) to separately contract with a third-party provider to receive health care or custodial care or to receive (paid or unpaid) health care or custodial care from family or friends.

(e) *Non-medical expenses for VA purposes.* Payments for items and services listed in paragraphs (e)(1) through (4) of this section are not medical expenses for VA needs-based benefit purposes. The list is not all-inclusive.

(1) *Maintenance of general health.* Payments for items or services that benefit or maintain general health, such as vacations and dance classes, are not medical expenses.

(2) *Cosmetic procedures.* Except as provided in paragraph (c)(1) of this section, cosmetic procedures are not medical expenses.

(3) *Meals and lodging.* Except as provided in paragraph (d) of this section, payments for meals and lodging are not medical expenses.

(4) *Assistance with IADLs.* Except as provided in paragraph (d) of this section, payments for assistance with IADLs are not medical expenses.

CROSS REFERENCES: For the rules governing how medical expenses are deducted, see §3.272(g) (regarding pension) and §3.262(l) (regarding section 306 pension and parents' DIC).

(Authority: 38 U.S.C. 501(a), 1315(f)(3), 1503(a)(8), 1506(1))

(The Office of Management and Budget has approved the information collection requirement in this section under control numbers 2900-0002, 2900-0004, and 2900-0161.)

[83 FR 47272, Sept. 18, 2018]

Supplement *Highlights* references: 120(1).

§3.279 Statutory exclusions from income or assets (net worth or corpus of the estate).

This section sets forth payments that Federal statutes exclude from income for the purpose of determining entitlement to any VA-administered benefit that is based on financial need. Some of the exclusions also apply to assets (pension), also known as net worth or the corpus of the estate (section 306 pension and parents as dependents for compensation). VA will exclude from income or assets any amount designated by statute as not countable as income or resources, regardless of whether or not it is listed in this section.

| Program or payment | Income | Assets (corpus of the estate) | Authority |
|--|----------|-------------------------------------|----------------------------|
| (a) COMPENSATION OR RESTITUTION PAYMENTS: | | | |
| (1) <i>Relocation payments.</i> Payments to individuals displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. | Excluded | Included | 42 U.S.C. 4636. |
| (2) <i>Crime victim compensation.</i> Amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime. | Excluded | Excluded | 42 U.S.C. 10602(c). |
| (3) <i>Restitution to individuals of Japanese ancestry.</i> Payments made as restitution under Public Law 100-383 to an individual of Japanese ancestry who was interned, evacuated, or relocated during the period of December 7, 1941, through June 30, 1946, pursuant to any law, Executive Order, Presidential proclamation, directive, or other official action respecting these individuals. | Excluded | Excluded | 50 U.S.C. App. 1989b-4(f). |
| (4) <i>Victims of Nazi Persecution.</i> Payments made to individuals because of their status as victims of Nazi persecution. | Excluded | Excluded | 42 U.S.C. 1437a note. |
| (5) <i>Agent Orange settlement payments.</i> Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). | Excluded | Excluded | Sec. 1, Public Law 101-201 |
| (6) <i>Chapter 18 benefits.</i> Allowances paid under 38 U.S.C. chapter 18 to a veteran's child with a birth defect. | Excluded | Excluded | 38 U.S.C. 1833(c). |
| (7) <i>Flood mitigation activities.</i> Assistance provided under the National Flood Insurance Act of 1968, as amended. | Excluded | Excluded | 42 U.S.C. 4031 |

| Program or payment | Income | Assets (corpus of the estate) | Authority |
|---|-----------------------|-------------------------------------|------------------------------|
| (b) PAYMENTS TO NATIVE AMERICANS: | | | |
| (1) <i>Indian Tribal Judgment Fund distributions.</i> All Indian Tribal Judgment Fund distributions excluded from income and assets while such funds are held in trust. First \$2,000 per year of income received by individual Indians under the Indian Tribal Judgment Funds Use or Distribution Act in satisfaction of a judgment of the United States Court of Federal Claims excluded from income. | Excluded | Excluded | 25 U.S.C. 1407 |
| (2) <i>Interests of individual Indians in trust or restricted lands.</i> Interests of individual Indians in trust or restricted lands excluded from assets. First \$2,000 per year of income received by individual Indians that is derived from interests in trust or restricted lands excluded from income. | Excluded | Excluded | 25 U.S.C. 1408 |
| (3) <i>Per Capita Distributions Act.</i> First 25 U.S.C. 1407. \$2,000 per year of per capita distributions to members of a tribe from funds held in trust by the Secretary of the Interior for an Indian tribe. All funds excluded from income and assets while funds are held in trust. | Excluded | Excluded | 25 U.S.C. 117b |
| (4) <i>Submarginal land.</i> Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes. | Excluded | Excluded | 25 U.S.C. 459e |
| (5) <i>Old Age Assistance Claims Settlement Act.</i> Up to \$2,000 per year of per capita distributions under the Old Age Assistance Claims Settlement Act. | Excluded | Excluded | 25 U.S.C. 2307 |
| (6) <i>Alaska Native Claims Settlement Act.</i> Any of the following, if received from a Native Corporation, under the Alaska Native Claims Settlement Act: | Excluded | Excluded | 43 U.S.C. 1626(c). |
| (i) Cash, including cash dividends on stocks and bonds, up to a maximum of \$2,000 per year; | | | |
| (ii) Stock, including stock issued as a dividend or distribution; | | | |
| (iii) Bonds that are subject to the protection under 43 U.S.C. 1606(h) until voluntarily and expressly sold or pledged by the shareholder after the date of distribution; | | | |
| (iv) A partnership interest; | | | |
| (v) Land or an interest in land, including land received as a dividend or distribution on stock; | | | |
| (7) <i>Maine Indian Claims Settlement Act.</i> Payments received under the Maine Indian Claims Settlement Act of 1980. | Excluded | Excluded | 25 U.S.C. 1728 |
| (8) <i>Cobell Settlement.</i> Payments received under year. Cobell v. Salazar, Civil Action No. 96-1285 (TFH) (D.D.C.). | Excluded for one year | Excluded for one year | Sec. 101, Public Law 111-291 |

| Program or payment | Income | Assets (corpus of the estate) | Authority |
|--|----------|-------------------------------------|----------------------------|
| (c) WORK-RELATED PAYMENTS: | | | |
| (1) <i>Workforce investment.</i> Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998. | Excluded | Included | 29 U.S.C. 3241(a)(2). |
| (2) <i>AmeriCorps participants.</i> Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990. | Excluded | Included | 42 U.S.C. 12637(d) |
| (3) <i>Volunteer work.</i> Compensation or reimbursement to volunteers involved in programs administered by the Corporation for National and Community Service, unless the payments are equal to or greater than the minimum wage. The minimum wage is either that under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or that under the law of the State where the volunteers are serving, whichever is greater. | Excluded | Excluded | 42 U.S.C. 5044(f). |
| (d) MISCELLANEOUS PAYMENTS: | | | |
| (1) <i>Income tax refunds.</i> Income tax refunds, including the Federal Earned Income Credit and advance payments with respect to a refundable credit. | Excluded | Excluded for one year | 26 U.S.C. 6409 |
| (2) <i>Food stamps.</i> Value of the allotment provided to an eligible household under the Food Stamp Program. | Excluded | Excluded | 7 U.S.C. 2017(b). |
| (3) <i>Food for children.</i> Value of free or reduced-price for food under the Child Nutrition Act of 1966. | Excluded | Excluded | 42 U.S.C. 1780(b). |
| (4) <i>Child care.</i> Value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990. | Excluded | Included | 42 U.S.C. 9858q |
| (5) <i>Services for housing recipients.</i> Value of services, but not wages, provided to a resident of an eligible housing project under a congregate services program under the Cranston-Gonzalez National Affordable Housing Act. | Excluded | Included | 42 U.S.C. 8011(j)(2). |
| (6) <i>Home energy assistance.</i> The amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under the Low-Income Home Energy Assistance Act of 1981. | Excluded | Excluded | 42 U.S.C. 8624(f). |
| (7) <i>Programs for older Americans.</i> Payments, other than wages or salaries, received from programs funded under the Older Americans Act of 1965, 42 U.S.C. 3001. | Excluded | Included | 42 U.S.C. 3020a(b). |
| (8) <i>Student financial aid.</i> Amounts of student financial assistance received under Title IV of the Higher Education Act of 1965, including Federal work-study programs, Bureau of Indian Affairs student assistance programs, or vocational training under the Carl D. Perkins Vocational and Technical Education Act of 1998. | Excluded | Excluded | 20 U.S.C. 1087uu, 2414(a). |
| (9) <i>Retired Serviceman's Family Protection Plan annuities.</i> Annuities received under subchapter I of the Retired Serviceman's Family Protection Plan. | Excluded | Included | 10 U.S.C. 1441 |

(Authority: 38 U.S.C. 501(a))

3.279-4

§3.279— Statutory exclusions from income or assets (net worth or corpus of the estate).

3.279-4

[83 FR 47274, Sept. 18, 2018]

Supplement *Highlights* references: 120(1).

Next Section is §3.301

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(c) Medicaid-covered nursing home care (§3.551(i)).

(1) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under §3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or

(2) If the child or the child's custodian willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.

(Authority: 38 U.S.C. 501, 1832, 5112(b), 5503(d))

[26 FR 1597, Feb. 24, 1961, as amended at 27 FR 11890, Dec. 1, 1962; 30 FR 14983, Dec. 3, 1965; 34 FR 839, Jan. 18, 1969; 38 FR 872, Jan. 5, 1973; 41 FR 55875, Dec. 23, 1976; 53 FR 23237, June 21, 1988; 62 FR 51279, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 76 FR 4248, Jan. 25, 2011; 83 FR 47275, Sept. 18, 2018]

Supplement *Highlights* references: 31(1), 54(2), 95(1), 120(1).

Reserved

(i) The veteran remains hospitalized or in a nursing home after the expiration of the additional period provided by paragraph (h)(1) of this section; and

(ii) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing continued hospital or nursing home care after the additional period provided by paragraph (h)(1) of this section is to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community.

(3) *Termination of hospitalization for rehabilitation.* Pension in excess of \$60 monthly or \$90, if reduction is under paragraph (e)(1), payable to a veteran under this paragraph shall be reduced the end of the calendar month in which the primary purpose of hospitalization or nursing home care is no longer to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community. (Authority: 38 U.S.C. 5503(a))

(i) Certain beneficiaries receiving Medicaid-covered nursing home care. This paragraph (i) applies to a veteran without a spouse or child, to a surviving spouse without a child, and to a surviving child. Effective November 5, 1990, and terminating on the date provided in 38 U.S.C. 5503(d)(7), if such a beneficiary is receiving Medicaid-covered nursing home care, no pension or survivors pension in excess of \$90 per month will be paid to or for the beneficiary for any period after the month in which the Medicaid payments begin. A beneficiary is not liable for any pension paid in excess of the \$90 per month by reason of the Secretary's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment, by the beneficiary, of information necessary to make that reduction. (Authority: 38 U.S.C. 5503)

[27 FR 7677, Aug. 3, 1962, as amended at 27 FR 8793, Sept. 1, 1962; 37 FR 19133, Sept. 19, 1972; 39 FR 32988, Sept. 13, 1974; 40 FR 45169, Oct. 1, 1975; 41 FR 18412, May 4, 1976; 44 FR 45941, Aug. 6 1979; 45 FR 35327, May 27, 1980; 46 FR 47541, Sept. 29, 1981; 47 FR 24551, June 7, 1982; 56 FR 25045, June 3, 1991; 56 FR 65848, Dec. 19, 1991; 57 FR 8578, Mar. 11, 1992; 58 FR 32445, June 10, 1993; 59 FR 62584, Dec. 6, 1994; 64 FR 32807, June 18, 1999; 66 FR 48560, Sept. 21, 2001; 68 FR 34542, June 10, 2003; 83 FR 47275, Sept. 18, 2018]

Cross references: Time limits. See §3.109. Apportionment. See §3.400(e). Reductions and discontinuances; general. See §3.500. Incompetents; resumption. See §3.558.

Supplement *Highlights* references: 8(2d), 14(2), 38(4), 47(2), 57(1), 120(1).

§3.552 Adjustment of allowance for aid and attendance.

(a) (1) When a veteran who is already entitled to the aid and attendance allowance is hospitalized, the additional compensation or increased pension for aid and attendance shall be discontinued as provided in paragraph (b) of this section except as to disabilities specified in paragraph (a)(2) of this section. (See paragraph (k) of this section for rules applicable to a veteran who establishes entitlement to the aid and attendance allowance on or after date of admission to hospitalization).

(2) The allowance for aid and attendance will be continued during hospitalization where the disability is paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, or Hansen's disease, except where discontinuance is required by paragraph (b)(2) of this section. In addition, in pension cases only, the aid and attendance allowance will be continued where the pensionable disability is blindness (visual acuity 5/200 or less) or concentric contraction of visual field to 5 degrees or less. Awards are, however, subject to the provisions of §3.551 (except where the disabling condition is Hansen's disease).

(3) Additional compensation for dependents under §3.4(b)(2) is payable during hospitalization in addition to the rates authorized by this section. The rates specified will also be increased by amounts authorized under 38 U.S.C. 1114(k) based on independently ratable disability, subject to the statutory ceiling on the total amount of compensation payable as set forth in §3.350(a).

(b) (1) Where a veteran is admitted for hospitalization on or after October 1, 1964, the additional compensation or increased pension for aid and attendance will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization at the expense of the Department of Veterans Affairs.

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 1114(r)(1) or (2) or 38 U.S.C. 1114(t) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

(3) Where a veteran affected by the provisions of paragraph (b)(1) and (2) or paragraph (k) of this section is discharged or released from the hospital against medical advice or as the result of disciplinary action and is readmitted to such hospitalization within 6 months after that date, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. A readmission 6 months or more after such discharge or release will be considered as a new admission.

(c) Reduction will not be made where the same monthly rate of compensation would be payable without consideration of need for regular aid and attendance. This can only be determined after careful review of the current maximum entitlement without regard to any amount for aid and attendance.

(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 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; 83 FR 47275, Sept. 18, 2018]

Supplement *Highlights* references: 6(2), 111(1), 120(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).