Pensions, Bonuses, and Veterans’ Relief

38

PARTS 0 to 17
Revised as of July 1, 1998

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT
AS OF JULY 1, 1998

With Ancillaries

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the Federal Register
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To cite the regulations in this volume use title, part and section number. Thus, 38 CFR 0.735-1 refers to title 38, part 0, section 735-1.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- **Title 1 through Title 16**..............................................................as of January 1
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The appropriate revision date is printed on the cover of each volume.

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To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1998), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 1998.
Title 38—PENSIONS, BONUSES AND VETERANS’ RELIEF is composed of two volumes, parts 0-17 and part 18 to End. The contents of these volumes represent all current regulations of the Department of Veterans Affairs codified under this title of the CFR as of July 1, 1998.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.
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Source: 31 FR 5828, Apr. 15, 1966, unless otherwise noted.

Editorial Note: Nomenclature changes to part 0 appear at 61 FR 7216, Feb. 27, 1996.

Subpart A—General Provisions

§ 0.735-1 Agency ethics officials.

(a) Designated Agency Ethics Official (DAEO). The Assistant General Counsel (023) is the designated agency ethics official (DAEO) for the Department of Veterans Affairs. The Deputy Assistant General Counsel (023C) is the alternate DAEO, who is designated to act in the DAEO's absence. The DAEO has primary responsibility for the administration, coordination, and management of the VA ethics program, pursuant to 5 CFR 2638.201-204.

(b) Deputy ethics officials. (1) The Regional Counsel are deputy ethics officials. They have been delegated the authority to act for the DAEO within their jurisdiction, under the DAEO's supervision, pursuant to 5 CFR 2638.201-204.

(2) The alternate DAEO, the DAEO's staff, and staff in the Offices of Regional Counsel, may also act as deputy ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO or the Regional Counsel.


§ 0.735-2 Government-wide standards.

For government-wide standards of ethical conduct and related responsibilities for Federal employees, see 5 CFR Part 735 and Chapter XVI.

[61 FR 11309, Mar. 20, 1996. Redesignated at 63 FR 33579, June 19, 1998]

Subpart B—Standards of Ethical Conduct and Related Responsibilities of Employees

Source: 58 FR 38184, Nov. 23, 1993, unless otherwise noted.

§ 0.735-10 Cross-reference to employee ethical and other conduct standards and financial disclosure regulations.

Employees of the Department of Veterans Affairs (VA) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the executive branch-wide Employee Responsibilities and Conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

§ 0.735-11 Other conduct on the job.

Relationship with beneficiaries and claimants. Employees are expected to be helpful to beneficiaries, patients and claimants, but:

(a) An employee shall not procure intoxicants or drugs for, or attempt to sell intoxicants or drugs to, patients or members, or give or attempt to give intoxicants or drugs to them unless officially prescribed for medical use;

(b) An employee shall not abuse patients, members, or other beneficiaries, whether or not provoked.

§ 0.735-12 Standards of conduct in special areas.

(a) Safety. (1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.

(2) An employee shall report each work-connected injury, accident or disease he or she suffers.

(b) Furnishing testimony. Employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters.
Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or is involved in a violation of law wherein there is a possibility of self-incrimination.

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Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.9  Use of the official seal, replicas, reproductions, and embossing seals.

(i) The official seal includes an American eagle clutching a cord in its talons. The cord binds a 13-star U.S. flag and a 50-star U.S. flag. In the field over the eagle is a pentagon formation of stars, with one point down. The words Department of Veterans Affairs and United States of America surround the eagle, stars, and flags. A rope motif makes up the outermost ring of the seal.

(ii) The eagle represents the eternal vigilance of all our nation's veterans. The stars represent the five branches of military service. The crossed flags represent our nation's history. The gold cord that binds the two flags, which is shown clutched in the eagle's talons is symbolic of those who have fallen in the defense of liberty. Each of the various individual items placed together in the seal is a salute to the past, present, and future.

(iii) The colors used in the configuration are gold, brown, blue, white, silver, yellow, black, and red.

(iv) The colors are derived from the American flag and from nature. By invoking this symbolism, the color scheme represents the Nation's commitment to its veterans.

(2) Use of the official seal, replicas, reproductions, and embossing seals.

(i) The Secretary or designees are authorized to affix replicas, reproductions, and embossed seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(ii) Replicas may be used only for:

- (A) Display in or adjacent to VA facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.
- (B) Offices of senior officials.
- (C) Official VA distinguishing flags, adopted and utilized pursuant to paragraph (e)(2) of this section.
- (D) Official awards, certificates, medals, and plaques.
- (E) Motion picture film, video tape, and other audiovisual media prepared by or for VA and attributed thereto.
- (F) Official prestige publications which represent the achievements or mission of VA.
- (G) For other similar official purposes.

(ii) Reproductions may be used only on:

- (A) VA letterhead stationery.
- (B) Official VA identification cards and security credentials.
- (C) Business cards for VA employees.
- (D) Official VA signs.
- (E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.
- (F) Official awards, certificates, and medals.
- (G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.
- (H) For other similar official purposes.

(i) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iii) Reproductions may be used only:

- (A) VA letterhead stationery.
- (B) Official VA identification cards and security credentials.
- (C) Business cards for VA employees.
- (D) Official VA signs.
- (E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.
- (F) Official awards, certificates, and medals.
- (G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.
- (H) For other similar official purposes.

(iv) Use of the official seal and embossed seals:

- (A) Embossed seals may be used only on VA legal documents, including interagency or intergovernmental agreements with States, foreign patent applications, and similar official documents.
- (B) The official seal may be used only for those purposes related to the conduct of Departmental affairs in furtherance of the VA mission.
(e) Distinguishing flag.

(1) Description of distinguishing flag.
   (i) The base or field of the flag shall be blue and a replica of the official seal shall appear on both sides thereof.
   (ii) A Class 1 flag shall be of nylon banner, measure 4’4” on the hoist by 5’6” on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½” wide.
   (iii) A Class 2 flag shall be of nylon banner, measure 3’ on the hoist by 5’ on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½” wide.
   (iv) Each flag shall be manufactured in accordance with Department of Veterans Affairs Specification X-497G. The replica of the official seal shall be screen printed or embroidered on both sides.

(2) Use of distinguishing flag.
   (i) VA distinguishing flags may be used only:
       (A) In the offices of the Secretary, Deputy Secretary, Assistant Secretaries, Deputy Assistant Secretaries and heads of field locations designated below:
           (1) Regional Offices.
           (2) Medical Centers and Outpatient Clinics.
           (3) Domiciliaries.
           (4) Marketing Centers and Supply Depots.
           (5) Data Processing Centers.
           (6) National Cemetery Offices.
           (7) Other locations as designated by the Deputy Assistant Secretary for Administration.
       (B) At official VA ceremonies.
       (C) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-VA facilities in connection with events or displays sponsored by VA, and public appearances of VA officials.
       (D) On or in front of VA installation buildings.
   (f) Unauthorized uses of the seal and flag.

(1) The official seal, replicas, reproductions, embossed seals, and the distinguished flag shall not be used, except as authorized by the Secretary or Deputy Secretary, in connection with:
   (i) Contractor-operated facilities.
   (ii) Souvenir or novelty items.
   (iii) Toys or commercial gifts or premiums.
   (iv) Letterhead design, except on official Departmental stationery.
   (v) Matchbook covers, calendars and similar items.
   (vi) Civilian clothing or equipment.
   (vii) Any article which may disparage the seal or flag or reflect unfavorably upon VA.
   (viii) Any manner which implies Departmental endorsement of commercial products or services, or of the commercial user’s policies or activities.

(2) Penalties for unauthorized use.
Any person who uses the distinguishing flag, or the official seal, replicas, reproductions or embossed seals in a manner inconsistent with this section shall be subject to the penalty provisions of 18 U.S.C. 506, 701, or 1017, providing penalties for their wrongful use, as applicable.

[55 FR 49518, Nov. 29, 1990]
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(iii) Any person who has died while in military or naval service of the United States after May 27, 1941. This subdivision authorizes and requires the furnishing of a flag only where the military or naval service does not furnish a flag immediately. The only cases wherein a flag is not supplied immediately are those of persons whose remains are interred outside the continental limits of the United States, or whose remains are not recovered or are recovered and not identified.

(iv) Any person who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President of the United States, dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who dies after separation from such service under conditions other than dishonorable, on or after April 25, 1951.

(Authority: 38 U.S.C. 107(a))

(b) Disposition of burial flags. (1) When a flag is actually used to drape the casket of a deceased veteran, it must be delivered to the next of kin following interment. Where the flag is not claimed by the next of kin it may be given upon request to a close friend or associate of the deceased veteran. Such action will constitute final and conclusive determination of rights under this section. (38 U.S.C. 2301)

(2) The phrase next of kin for the purpose of disposing of the flag used for burial purposes is defined as follows, with preference to entitlement in the order listed:

(i) Widow or widower.

(ii) Children, according to age (minor child may be issued a flag on application signed by guardian).

(iii) Parents, including adoptive, stepparents, and foster parents.

(iv) Brothers or sisters, including brothers or sisters of the halfblood.

(v) Uncles or aunts.

(vi) Nephews or nieces.

(vii) Others—cousins, grandparents, etc. (but not in-laws).

(3) The phrase close friend or associate for the purpose of disposing of the burial flag means any person who because of his or her relationship with the deceased veteran arranged for the burial or assisted in the burial arrangements. In the absence of a person falling in either of these categories, any person who establishes by evidence that he or she was a close friend or associate of the veteran may be furnished the burial flag. Where more than one request for the burial flag is received and each is accompanied by satisfactory evidence of relationship or association, the head of the field facility having jurisdiction of the burial flag quota will determine which applicant is the one most equitably entitled to the burial flag.

(Authority: 72 Stat. 1114, 1169, as amended; 38 U.S.C. 501, 2301)

§ 1.11 Quarters for Department of Veterans Affairs employees overseas

Pursuant to the provisions of 5 U.S.C. 5912, a U.S. citizen employee of the Department of Veterans Affairs permanently stationed in a foreign country may be furnished, without cost to him or her, living quarters, including heat, fuel, and light, in a Government-owned or rented building overseas. In the interest of the service and when administratively feasible, an agreement may be entered into by the Chief Benefits Director or designee with another Federal agency, which is authorized to furnish quarters, to provide such quarters for Department of Veterans Affairs employees under the provisions of 31 U.S.C. 686. Quarters provided will be in lieu of any living quarters allowance to which the employee may otherwise be entitled.

(Authority: 72 Stat. 1114; 38 U.S.C. 501)

[33 FR 362, Jan. 10, 1968]
§ 1.15 Standards for program evaluation.

(a) The Department of Veterans Affairs will evaluate all programs authorized under title 38 U.S.C. These evaluations will be conducted so as to determine each program's effectiveness in achieving its stated goals and in achieving such goals in relation to their cost. In addition, these evaluations will determine each program's impact on related programs and its structure and mechanism for delivery of services. All programs will be evaluated on a continuing basis and all evaluations will be conducted by Department of Veterans Affairs staff assigned to an organizational entity other than those responsible for program administration. These evaluations will be conducted with sufficient frequency to allow for an assessment of the continued effectiveness of the programs.

(b) The program evaluation will be designed to determine if the existing program supports the intent of the law. A program evaluation must identify goals and objectives that support this intent, contain a method to measure accomplishment of the objectives, ascertain the degree to which goals and objectives are met, and report the findings and conclusions to Congress, as well as make them available to the public.

(c) The goals must be clear, specific, and measurable. To be clear they must be readily understood, free from doubt or confusion, and specific goals must be explicitly set forth. They must be measurable by objective means. These means can include use of existing record systems, observations, and information from other sources.

(d) All program evaluations require a detailed evaluation plan. The evaluation plan must clearly state the objectives of the program evaluation, the methodology to be used, resources to be committed, and a timetable of major phases.

(e) Each program evaluation must be objective. It must report the accomplishments as well as the shortcomings of the program in an unbiased way. The program evaluation must have findings that give decision-makers information which is of a level of detail and importance to enable decisions to be made affecting either direction or operation. The information in the program evaluation must be timely, and must contain information of sufficient currency that decisions based on the data in the evaluation can be made with a high degree of confidence in the data.

(f) Each program evaluation requires a systematic research design to collect the data necessary to measure the objectives. This research design should conform to the following:

(1) Rationale. The research design for each evaluation should contain a specific rationale and should be structured to determine possible cause and effect relationships.

(2) Relevancy. It must deal with issues currently existing within the program, within the Department, and within the environment in which the program operates.

(3) Validity. The degree of statistical validity should be assessed within the research design. Alternatives include an assessment of cost of data collection vs. results necessary to support decisions.

(4) Reliability. Use of the same research design by others should yield the same findings.

(g) The final program evaluation report will be reviewed for comments and concurrence by relevant organizations within the Department of Veterans Affairs, but in no case should this review unreasonably delay the results of the evaluation. Where disagreement exists, the dissenting organization's position should be summarized for a decision by the Secretary.

(h) The final program evaluation report will be forwarded, with approved recommendations, to the concerned organization. An action plan to accomplish the approved recommendations will be forwarded for evaluation by the evaluating entity.

(i) Program evaluation results should be integrated to the maximum extent possible into Department of Veterans Affairs plans and budget submissions to ensure continuity with other Department of Veterans Affairs management processes.

(Authority: 38 U.S.C. 527)

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the “Notices” section of the Federal Register.

(b) Factors to be considered in evaluating scientific studies include:

1. Whether the study's findings are statistically significant and replicable.
2. Whether the study and its findings have withstood peer review.
3. Whether the study methodology has been sufficiently described to permit replication of the study.
4. Whether the study’s findings are applicable to the veteran population of interest.
5. The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veterans’ Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d)(1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, § 3.311a or § 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a significant statistical association shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

2. For purposes of this paragraph a valid study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a significant statistical association may be deemed to exist between a particular exposure and a specific disease if, in the Secretary’s judgment, scientific and medical evidence on the whole supports such a decision.


§ 1.218 Security and law enforcement at VA facilities.

(a) Authority and rules of conduct. Pursuant to 38 U.S.C. 901, the following rules and regulations apply at all property under the charge and control of VA (and not under the charge and control of the General Services Administration) and to all persons entering in
or on such property. The head of the facility is charged with the responsibility for the enforcement of these rules and regulations and shall cause these rules and regulations to be posted in a conspicuous place on the property.

(1) Closing property to public. The head of the facility, or designee, shall establish visiting hours for the convenience of the public and shall establish specific hours for the transaction of business with the public. The property shall be closed to the public during other than the hours so established. In emergency situations, the property shall be closed to the public when reasonably necessary to ensure the orderly conduct of Government business. The decision to close a property during an emergency shall be made by the head of the facility or designee. The head of the facility or designee shall have authority to designate areas within a facility as closed to the public.

(2) Recording presence. Admission to property during periods when such property is closed to the public will be limited to persons authorized by the head of the facility or designee. Such persons may be required to sign a register and/or display identification documents when requested to do so by VA police, or other authorized individual. No person, without authorization, shall enter upon or remain on such property while the property is closed. Failure to leave such premises by unauthorized persons shall constitute an offense under this paragraph.

(3) Preservation of property. The improper disposal of rubbish on property; the spitting on the property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from a building; the climbing upon the roof or any part of the building, without permission; or the willful destruction, damage, or removal of Government property or any part thereof, without authorization, is prohibited. The destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited.

(4) Conformity with signs and emergency conditions. The head of the facility or designee shall have authority to post signs of a prohibitory and directory nature. Persons, in and on property, shall comply with such signs of a prohibitory or directory nature, and during emergencies, with the direction of police authorities and other authorized officials. Tampering with, destruction, marring, or removal of such posted signs is prohibited.

(5) Disturbances. Conduct on property which creates loud or unusual noise; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; which prevents one from obtaining medical or other services provided on the property in a timely manner; or the use of loud, abusive, or otherwise improper language; or unwarranted loitering, sleeping, or assembly is prohibited. In addition to measures designed to secure voluntary terminations of violations of this paragraph the head of the facility or designee may cause the issuance of orders for persons who are creating a disturbance to depart the property. Failure to leave the premises when so ordered constitutes a further disturbance within the meaning of this rule, and the offender is subject to arrest and removal from the premises.

(6) Gambling. Participating in games for money or for tangible or intangible things, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited.

(7) Alcoholic beverages and narcotics. Operating a motor vehicle on property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering property under the influence of any narcotic drug, hallucinogen, marijuana, barbiturate, amphetamine, or alcoholic beverage (unless prescribed by a physician) is prohibited. The use on property of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The introduction or possession of alcoholic beverages or any narcotic drug, hallucinogen, marijuana, barbiturate,
and amphetamine on property is prohibited, except for liquor or drugs prescribed for use by medical authority for medical purposes. Provided such possession is consistent with the laws of the State in which the facility is located, liquor may be used and maintained in quarters assigned to employees as their normal abode, and away from the abode with the written consent of the head of the facility which specifies a special occasion for use and limits the area and period for the authorized use.

(8) Soliciting, vending, and debt collection. Soliciting alms and contributions, commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on property is prohibited. This rule does not apply to (i) national or local drives for funds for welfare, health, or other purposes as authorized under Executive Order 12353, Charitable Fund Raising (March 23, 1982), as amended by Executive Order 12404 (February 10, 1983), and regulations issued by the Office of Personnel Management implementing these Executive Orders; (ii) concessions or personal notices posted by employees on authorized bulletin boards; and (iii) solicitation of labor organization membership or dues under 5 U.S.C. chapter 71.

(9) Distribution of handbills. The distributing of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere on property is prohibited, except as authorized by the head of the facility or designee or when such distributions or displays are conducted as part of authorized Government activities.

(10) Photographs for news, advertising, or commercial purposes. Photographs for advertising or commercial purposes may be taken only with the written consent of the head of the facility or designee. Photographs for news purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or designee.

(11) Dogs and other animals. Dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or designee.

(12) Vehicular and pedestrian traffic. Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of police and all posted traffic signs. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited; parking in unauthorized locations or in locations reserved for other persons or contrary to the direction of posted signs is prohibited. Creating excessive noise on hospital or cemetery premises by muffler cut out, the excessive use of a horn, or other means is prohibited. Operation of a vehicle in a reckless or unsafe manner, drag racing, bumping, overriding curbs, or leaving the roadway is prohibited.

(13) Weapons and explosives. No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(14) Demonstrations. (i) All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited. Jogging, bicycling, sledding and other forms of physical recreation on cemetery grounds is prohibited.

(ii) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to, picketing, or similar conduct on VA property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on VA property unless approved by the head of the facility or designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities, i.e., those involving commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United
States, or any private group, association, or enterprise.

(15) Key security. The head of the facility or designee, shall determine which employees, by virtue of their duties, shall have access to keys or barrier-card keys which operate locks to rooms or areas on the property. The unauthorized possession, manufacture, and/or use of such keys or barrier cards is prohibited. The surreptitious opening of locks is prohibited. The surreptitious opening or attempted opening of locks or card-operated barrier mechanisms is prohibited.

(16) Sexual misconduct. Any act of sexual gratification involving two or more persons, who do not reside in quarters on the property, is prohibited. Acts of prostitution or solicitation for acts of prostitution on VA property is prohibited. For the purposes of this paragraph, an act of prostitution is defined as the performance or the offer or agreement to perform any sexual act for money or payment.

(b) Schedule of offenses and penalties. Conduct in violation of the rules and regulations set forth in paragraph (a) of this section subjects an offender to arrest and removal from the premises. Whomever shall be found guilty of violating these rules and regulations while on any property under the charge and control of VA is subject to a fine as stated in the schedule set forth herein or, if appropriate, the payment of fixed sum in lieu of appearance (forfeiture of collateral) as may be provided for in rules of the United States District Court. Violations included in the schedule of offenses and penalties may also subject an offender to a term of imprisonment of not more than six months, as may be determined appropriate by a magistrate or judge of the United States District Court:

(1) Improper disposal of rubbish on property, $200.
(2) Spitting on property, $25.
(3) Throwing of articles from a building or the unauthorized climbing upon any part of a building, $50.
(4) Willful destruction, damage, or removal of Government property without authorization, $500.
(5) Defacement, destruction, mutilation or injury to, or removal, or disturbance of, gravemarker or headstone, $500.
(6) Failure to comply with signs of a directive and restrictive nature posted for safety purposes, $50.
(7) Tampering with, removal, marring, or destruction of posted signs, $150.
(8) Entry into areas posted as closed to the public or others (trespass), $50.
(9) Unauthorized demonstration or service in a national cemetery or on other VA property, $250.
(10) Creating a disturbance during a burial ceremony, $250.
(11) Disorderly conduct which creates loud, boisterous, and unusual noise, or which obstructs the normal use of entrances, exits, foyers, offices, corridors, elevators, and stairways or which tends to impede or prevent the normal operation of a service or operation of the facility, $250.
(12) Failure to depart premises by unauthorized persons, $50.
(13) Unauthorized loitering, sleeping or assembly on property, $50.
(14) Gambling-participating in games of chance for monetary gain or personal property; the operation of gambling devices, a pool or lottery; or the taking or giving of bets, $200.
(15) Operation of a vehicle under the influence of alcoholic beverages or non-prescribed narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, $500.
(16) Entering premises under the influence of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines, $200.
(17) Unauthorized use on property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, $300.
(18) Unauthorized introduction on VA controlled property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or the unauthorized giving of same to a patient or beneficiary, $500.
(19) Unauthorized solicitation of alms and contributions on premises, $50.
(20) Commercial soliciting or vending, or the collection of private debts on property, $50.
(21) Distribution of pamphlets, handbills, and flyers, $25.
(22) Display of placards or posting of material on property, $25.
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(23) Unauthorized photography on premises, $50.

(24) Failure to comply with traffic directions of VA police, $25.

(25) Parking in spaces posted as reserved for physically disabled persons, $50.

(26) Parking in no-parking areas, lanes, or crosswalks so posted or marked by yellow borders or yellow stripes, $25.

(27) Parking in emergency vehicle spaces, areas and lanes bordered in red or posted as EMERGENCY VEHICLES ONLY or FIRE LANE, or parking within 15 feet of a fire hydrant, $50.

(28) Parking within an intersection or blocking a posted vehicle entrance or posted exit lane, $25.

(29) Parking in spaces posted as reserved or in excess of a posted time limit, $15.

(30) Failing to come to a complete stop at a STOP sign, $25.

(31) Failing to yield to a pedestrian in a marked and posted crosswalk, $25.

(32) Driving in the wrong direction on a posted one-way street, $25.

(33) Operation of a vehicle in a reckless or unsafe manner, too fast for conditions, drag racing, overriding curbs, or leaving the roadway, $100.

(34) Exceeding posted speed limits:
   (i) By up to 10 mph, $25.
   (ii) By up to 20 mph, $50.
   (iii) By over 20 mph, $100.

(35) Creating excessive noise in a hospital or cemetery zone by muffler cut out, excessive use of a horn, or other means, $50.

(36) Failure to yield right of way to other vehicles, $50.

(37) Possession of firearms, carried either openly or concealed, whether loaded or unloaded (except by Federal or State law enforcement officers on official business, $500.

(38) Introduction or possession of explosives, or explosive devices which fire a projectile, ammunition, or combustibles, $500.

(39) Possession of knives which exceed a blade length of 3 inches; switch-blade knives; any of the variety of hatchets, clubs and hand-held weapons; or brass knuckles, $300.

(40) The unauthorized possession of any of the variety of incapacitating liquid or gas-emitting weapons, $200.

(41) Unauthorized possession, manufacture, or use of keys or barrier card-type keys to rooms or areas on the property, $200.

(42) The surreptitious opening, or attempted opening, of locks or card-operated barrier mechanisms on property, $500.

(43) Soliciting for, or the act of, prostitution, $250.

(44) Any unlawful sexual activity, $250.

(45) Jogging, bicycling, sledding or any recreational physical activity conducted on cemetery grounds, $50.

(c) Enforcement procedures. (1) VA administration directors will issue policies and operating procedures governing the proper exercise of arrest and other law enforcement actions, and limiting the carrying and use of weapons by VA police officers. VA police officers found qualified under respective VA administration directives and duly appointed heads of facilities for the purposes of 38 U.S.C. 902(b)(1), will enforce these rules and regulations and other Federal laws on VA property in accordance with the policies and operating procedures issued by respective VA administration directors and under the direction of the head of the facility.

(2) VA administration directors will prescribe training for VA police officers of the scope and duration necessary to assure the proper exercise of the law enforcement and arrest authority vested in them and to assure their abilities in the safe handling of situations involving patients and the public in general. VA police officers will successfully complete prescribed training in law enforcement procedures and the safe handling of patients as a condition of their retention of statutory law enforcement and arrest authority.

(3) Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.

(Authority: 38 U.S.C. 903)

[50 FR 29226, July 18, 1985]
§ 1.300 Purpose.
Sections 1.300 through 1.303 prescribe policies and procedures for establishing parking fees for the use of Department of Veterans Affairs controlled parking spaces at VA medical facilities.

(Authority: 38 U.S.C. 501, 8109)
[53 FR 25490, July 7, 1988]

§ 1.301 Definitions.
As used in §§ 1.300 through 1.303 of this title:
(a) Secretary means the Secretary of Veterans Affairs.
(b) Eligible person means any individual to whom the Secretary is authorized to furnish medical examination or treatment.
(c) Garage means a structure or part of a structure in which vehicles may be parked.
(d) Medical facility means any facility or part thereof which is under the jurisdiction of the Secretary for the provision of health-care services, including any necessary buildings and structures, garage or parking facility.
(e) Parking facilities includes all surface and garage parking spaces at a VA medical facility.
(f) Volunteer worker means an individual who performs services, without compensation, under the auspices of VA Voluntary Service (VAVS) at a VA medical facility, for the benefit of veterans receiving care at that medical facility.

(Authority: 38 U.S.C. 8109)
[53 FR 25490, July 7, 1988]

§ 1.302 Applicability and scope.
(a) The provisions of §§ 1.300 through 1.303 apply to VA medical facility parking facilities in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, and to such parking facilities for the use of VA medical facilities jointly shared by VA and another Federal agency when the facility is operated by the VA. Sections 1.300 through 1.303 apply to all users of those parking facilities. Fees shall be assessed and collected at medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year). The Secretary, in the exercise of official discretion, may also determine that parking fees shall be charged at any other VA medical facility.

(b) All fees established shall be reasonable under the circumstances and shall cover all parking facilities used in connection with such VA medical facility.

(Authority: 38 U.S.C. 8109)
[53 FR 25490, July 7, 1988]

§ 1.303 Policy.
(a) General. Parking spaces at VA medical facilities shall only be provided under the following conditions:
(1) VA and its employees shall not be liable for any damages to vehicles (or their contents) parked in VA parking facilities, unless such damages are directly caused by such employees acting in the course of their VA employment.
(2) Parking facilities at VA medical facilities shall only be made available at each medical facility for such periods and under such terms as prescribed by the facility director, consistent with §§ 1.300 through 1.303.
(3) VA will limit parking facilities at VA medical facilities to the minimum necessary, and administer those parking facilities in full compliance with ridesharing regulations and Federal laws.

(b) Fees. (1) As provided in § 1.302, VA will assess VA employees, contractor employees, tenant employees, visitors, and other individuals having business at a VA medical facility where VA parking facilities are available, a parking fee for the use of that parking facility. All parking fees shall be set at a rate which shall be equivalent to one-half of the appropriate fair rental value (i.e., monthly, weekly, daily, hourly) for the use of equivalent commercial space in the vicinity of the medical facility, subject to the terms and conditions stated in paragraph (a) of this section. Fair rental value shall include an allowance for the costs of management of the parking facilities. The Secretary will determine the fair market rental value through use of generally accepted appraisal techniques. If the
§ 1.460

appraisal establishes that there is no comparable commercial rate because of the absence of commercial parking facilities within a two-mile radius of the medical facility, then the rate established shall be not less than the lowest rate charged for parking at the VA medical facility with the lowest established parking fees. Rates established shall be reviewed biannually by the Secretary to reflect any increase or decrease in value as determined by appraisal updating.

(2) No parking fees shall be established or collected for parking facilities used by or for vehicles of the following:
   (i) Volunteer workers in connection with such workers performing services for the benefit of veterans receiving care at the medical facility;
   (ii) A veteran or an eligible person in connection with such veteran or eligible person receiving examination or treatment;
   (iii) An individual transporting a veteran or eligible person seeking examination or treatment; and
   (iv) Federal Government employees using Government owned or leased or private vehicles for official business.

(Authority: 38 U.S.C. 8109)

[53 FR 25490, July 7, 1988]

RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS Affairs (VA) RECORDS RELATING TO DRUG ABUSE, ALCOHOLISM OR ALCOHOL ABUSE, INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV), OR SICKLE CELL ANEMIA

NOTE: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. §7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§1751-1754).


SOURCE: Sections 1.460 through 1.499 issued at 60 FR 63929, Dec. 13, 1995, unless otherwise noted.

§ 1.460 Definitions.

For purposes of §§1.460 through 1.499 of this part, the following definitions apply:

Alcohol abuse. The term “alcohol abuse” means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Contractor. The term “contractor” means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

Diagnosis. The term “diagnosis” means any reference to an individual’s alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion
of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

Disclose or disclosure. The term “disclose” or “disclosure” means a communication of patient identifying information, the affirmative verification of another person’s communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Drug abuse. The term “drug abuse” means the use of a psychoactive substance other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Infection with the human immunodeficiency virus (HIV). The term “infection with the human immunodeficiency virus (HIV)” means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

Informant. The term “informant” means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient. The term “patient” means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual’s eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed, treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term “patient” for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

Patient identifying information. The term “patient identifying information” means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a treatment program, if that number does not consist of, or contain numbers (such as social security, or driver’s license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the treatment program.

Person. The term “person” means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Records. The term “records” means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA, for the purpose of seeking or performing VA program or activity functions relating to drug abuse, alcoholism, tests for or infection with the human immunodeficiency virus, or sickle cell anemia regarding an identifiable patient. A program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia includes evaluation, treatment, education, training, rehabilitation, research, or referral for one of these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other diagnosis, or other information which identifies, or could reasonably be expected to identify, a patient as having a drug or alcohol abuse condition, infection with the human immunodeficiency virus, or sickle cell anemia
(e.g., alcoholic psychosis, drug dependence), but only if such diagnosis or information is received, obtained or maintained for the purpose of seeking or performing one of the above program or activity functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or other information is not received, obtained or maintained for the purpose of seeking or performing a function or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia for the patient in question. Whenever such diagnosis or other information, not originally received or obtained for the purpose of obtaining or providing one of the above program or activity functions, is subsequently used in connection with such program or activity functions, those original entries become a “record” and §§1.460 through 1.499 of this part otherwise apply to those entries. Segregability: these regulations do not apply to records or information contained therein, the disclosure of which (the circumstances surrounding the disclosure having been considered) could not reasonably be expected to disclose the fact that a patient has been connected with a VA program or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(i) The following are examples of instances whereby records or information related to alcoholism or drug abuse are covered by the provisions of §§1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses with the physician his use and abuse of alcohol. The physician offers VA alcohol rehabilitation treatment which is declined by the patient.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient’s medical record is documented to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient’s enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Third party payer. The term “third party payer” means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient’s eligibility for Federal, State, or local governmental benefits.

Treatment. The term “treatment” means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been
caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term "undercover agent" means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

(Authority: 38 U.S.C. 7334)

§ 1.461 Applicability.

(a) General—(1) Restrictions on disclosure. The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research purposes or activity purposes.

(2) Restriction on use. The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research purposes or activity purposes.

(b) Period covered as affecting applicability. The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) Exceptions—(1) Department of Veterans Affairs and Armed Forces. The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits, evaluations, healthcare inspections, or non-patient investigations, or between such components and the Armed Forces, of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. Information obtained by VA components under these circumstances may be disclosed outside of VA to prosecute or investigate a non-patient only in accordance with § 1.495 of this part. Similarly, the restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information to the Department of Justice or U.S. Attorneys who are providing support in civil litigation or possible litigation involving VA.

(2) Contractor. The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) Crimes on VA premises or against VA personnel. The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which:
§ 1.462 Confidentiality restrictions.

(a) General. The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) Unconditional compliance required. The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by §§ 1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) Acknowledging the presence of patients: responding to requests. (1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient’s written consent is obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) Restrictions on disclosures—third-party payers and others. The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

Authority: 38 U.S.C. 7332(e) and 7334
this part. Acknowledgment of the presence of an identified patient in a facility is permitted if the acknowledgment does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§ 1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

(Authority: 38 U.S.C. 7334)

§ 1.463 Criminal penalty for violations.

Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§ 1.460 through 1.499 of this part shall be fined not more than $5,000 in the case of a first offense, and not more than $20,000 for a subsequent offense.

(Authority: 38 U.S.C. 7332(g))

§ 1.464 Minor patients.

(a) Definition of minor. As used in §§ 1.460 through 1.499 of this part the term “minor” means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide non-emergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) State law requiring parental consent to treatment. (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor’s behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor’s application for treatment may be communicated to the minor’s parent, guardian, or other person authorized under State law to act in the minor’s behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) Minor applicant for service lacks capacity for rational choice. Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor’s behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor’s behalf, and

(2) The applicant’s situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor’s parent, guardian, or other
§ 1.465
person authorized under State law to act in the minor’s behalf.
(Authority: 38 U.S.C. 7334)

§ 1.465 Incompetent and deceased patients.

(a) Incompetent patients other than minors. In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) Deceased patients—(1) Vital statistics. Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) Consent by personal representative. Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient’s survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker’s Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) Information related to sickle cell anemia. Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.
(Authority: 38 U.S.C. 7332(b)(3))

§ 1.466 Security for records.

(a) Written records which are subject to §§1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§1.460 through 1.499 of this part.
(Authority: 38 U.S.C. 7334)

§ 1.467 Restrictions on the use of identification cards and public signs.

(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.
(Authority: 38 U.S.C. 7334)

§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) Research privilege description. There may be concurrent coverage of patient identifying information by the provisions of §§1.460 through 1.499 of this part and by administrative action taken under Sec. 303(a) of the Public
§ 1.475

Form of written consent.

(a) Required elements. A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

1. The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

2. The name or title of the individual or the name of the organization to which disclosure is to be made.

3. The purpose of the disclosure.

4. How much and what kind of information is to be disclosed.

5. The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

6. The date on which the consent is signed.

(b) Restrictions on use of information. Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

§§ 1.470–1.474 [Reserved]

Disclosures With Patient’s Consent

§ 1.475

Form of written consent.

(a) Required elements. A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

1. The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

2. The name or title of the individual or the name of the organization to which disclosure is to be made.

3. The purpose of the disclosure.

4. How much and what kind of information is to be disclosed.

5. The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

6. The date on which the consent is signed.

(b) Restrictions on use of information. Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

(Authority: 38 U.S.C. 7334)
§ 1.476 Prohibition on redisclosure.

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient’s written consent must be accompanied by a written statement similar to the following:

This information has been disclosed to you from records protected by Federal confidentiality rules (38 CFR Part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR Part 1. A general authoriza-

§ 1.477 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

(Authority: 38 U.S.C. 7332(b)(1))

§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the human immunodeficiency virus.

(a) Definitions. For purposes of this section:

(1) Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual’s concurrent enrollment in more than one program.

(2) Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

(3) Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(4) Member program means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(Authority: 38 U.S.C. 7332(a)(2) and (b)(1))
(b) Restrictions on disclosure. VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:
   (i) The patient is accepted for treatment;
   (ii) The type or dosage of the drug is changed; or
   (iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:
   (i) Patient identifying information;
   (ii) Type and dosage of the drug; and
   (iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:
   (i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and
   (ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.

(c) Use of information limited to prevention of multiple enrollments. A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system who have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) Duration of consent. The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) Revocation of consent. The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) Restrictions on redisclosure and use. A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient’s conditional release or other
§§ 1.480–1.484

action in connection with which the consent was given, including parole.
(Authority: 38 U.S.C. 7334)

§§ 1.480–1.484 [Reserved]

DISCLOSURES WITHOUT PATIENT CONSENT

§ 1.485 Medical emergencies.

(a) General rule. Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) Special rule. Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) Procedures. Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:

1. The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
2. The name of the individual making the disclosure;
3. The date and time of the disclosure;
4. The nature of the emergency (or error, if the report was to FDA);
5. The information disclosed; and
6. The authority for making the disclosure (§1.485 of this part).
(Authority: 38 U.S.C. 7332(b)(2)(A))

§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.

(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.

(b) A person to whom a record is disclosed under this section may not disclose or use such record for a purpose other than that for which the disclosure was made.
(Authority: 38 U.S.C. 7332(b)(2)(C))

§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.

(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counseling or of testing to determine whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably
believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

(Authority: 38 U.S.C. 7332(b))

§ 1.489 Audit and evaluation activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500-1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575-1.584 and the following paragraphs, patient medical record information covered by §§1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.

(a) Records not copies. If patient records covered by §§1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on disclosure and use in paragraph (d) of this section and:

(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or

(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.

(b) Copying of records. Records containing patient identifying information may be copied by any person who:

(1) Agrees in writing to:

(1) Maintain the patient identifying information in accordance with the security requirements provided in §1.466 of this part (or more stringent requirements);
(2) Destroy all the patient identifying information upon completion of the audit or evaluation; and
(3) Comply with the limitations on disclosure and use in paragraph (d) of this section.

(2) The VA medical facility director determines to be qualified to conduct the audit or evaluation activities.

(c) Congressional oversight. Records subject to §§1.460 through 1.499 of this part upon written request may be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) Limitation on disclosure and use. Records containing patient identifying information...
§ 1.490 Legal effect of order.

The records to which §§ 1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction to produce records subject to §§ 1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.

(Authority: 38 U.S.C. 7334)

§ 1.491 Confidential communications.

(a) A court order under §§ 1.490 through 1.499 of this part may authorize disclosure of confidential communications made by a patient to a treatment program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties; (2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

(Authority: 38 U.S.C. 7334)
Department of Veterans Affairs § 1.494

disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) Notice. The patient and VA facility from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.

(c) Review of evidence: Conduct of hearing. Any oral argument, review of evidence, or hearing on the application must be held in the judge’s chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria for entry of order. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) Content of order. An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient’s record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient’s record has been ordered.

(Authority: 38 U.S.C. 7334)

§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) Application. An order authorizing the disclosure or use of patient records covered by §§1.460 through 1.499 of this part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigatory or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) Notice and hearing. Unless an order under § 1.495 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) Review of evidence: Conduct of hearings. Any oral argument, review of evidence, or hearing on the application shall be held in the judge’s chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria. A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution...
of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including, but not limited to, homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) Content of order. Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

(Authority: 38 U.S.C. 7332(c))

§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.

(a) Application. (1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) Notice not required. An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) Requirements for order. An order under this section must be entered in accordance with, and comply with the requirements of, § 1.493(d) and (e) of this part.

(d) Limitations on disclosure and use of patient identifying information. (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) Application. A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle
cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) Notice. The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) Criteria. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) Content of order. An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient’s record has been ordered.

(e) Limitation on use of information. No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under §1.494 of this part.

Authority: 38 U.S.C. 7334

§ 1.497–1.499 [Reserved]

RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS CLAIMANT RECORDS

NOTE: Sections 1.500 through 1.527 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs records other than claimant records, see §§1.550 through 1.558. Sections 1.500 through 1.526 implement the provisions of 38 U.S.C. 5701, 5702.

[32 FR 10848, July 25, 1967]


§ 1.500 General.

(a) Files, records, reports, and other papers and documents pertaining to any claim filed with the Department of Veterans Affairs, whether pending or adjudicated, and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Department of Veterans Affairs, will be deemed confidential and privileged, and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in §§1.501 through 1.526.
§ 1.501 Release of information by the Secretary.

(a) The Secretary of Veterans Affairs or the Deputy Secretary may release information, statistics, or reports to individuals or organizations when in the Secretary’s or Deputy Secretary’s judgment such release would serve a useful purpose.

(b) A claimant may not have access to or custody of official Department of Veterans Affairs records concerning himself or herself nor may a claimant inspect records concerning himself or herself. Disclosure of information from Department of Veterans Affairs records to a claimant or his or her duly authorized agent or representative may be made, however, under the provisions of §§ 1.501 through 1.526.

(c) Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §§ 1.501 through 1.526 unless the regulations in this part currently contain such designations. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Assistance Officer in the nearest VA regional office, or to the VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m., Monday through Friday, for VA Central Office and most field facilities. Any legal question arising in a field facility concerning the release of information will be referred to the appropriate Regional Counsel for disposition as contemplated by § 13.401 of this chapter. In central office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate administration or staff office head.

(d) Upon denial of a request under paragraph (c) of this section, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial and advise him or her that he or she may appeal the denial. The requester will also be furnished the title and address of the Department of Veterans Affairs official to whom the appeal should be addressed. (See § 1.527.) In each instance of denial of a request, the denial will be made a matter of record and the record will contain a citation to the specific provision of Department of Veterans Affairs regulations upon which the denial is based.


§ 1.502 Disclosure of the amount of monetary benefits.

The monthly rate of pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance of any beneficiary shall be made known to any person who applies for such information.


§ 1.503 Disclosure of information to a veteran or his or her duly authorized representative as to matters concerning the veteran alone.

Information may be disclosed to a veteran or his or her duly authorized representative as to matters concerning himself or herself alone when such disclosure would not be injurious to the physical or mental health of the veteran. If the veteran be deceased, matters concerning him or her may be disclosed to his widow, children, or next of kin if such disclosure will not be injurious to the physical or mental health of the person in whose behalf information is sought or cause repugnance or resentment toward the deceased.

(13 FR 6999, Nov. 27, 1948)

§ 1.504 Disclosure of information to a widow, child, or other claimant.

Information may be disclosed to a widow, widower, child, or other dependent parent or other claimant, or to the duly authorized representative of any
of these persons as to matters concerning such person alone when such disclosure will not be injurious to the physical or mental health of the person to whom the inquiry relates. If the person concerning whom the information is sought is deceased, matters concerning such person may be disclosed to the next of kin if the disclosures will not be injurious to the physical or mental health of the person in whose behalf the information is sought or cause repugnance or resentment toward the decedent.

§ 1.505 Genealogy.

Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Department of Veterans Affairs or in the case of inactive records may be released by the Archivist of the United States if in the Archivist’s custody.


(a) All records or documents required for official purposes by any department or other agency of the U.S. Government or any state unemployment compensation agency acting in an official capacity for the Department of Veterans Affairs shall be furnished in response to an official request, written, or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

(b) The Chief Benefits Director, Director of Insurance Service, or designee of either in Central Office, is authorized to release information to OSGLI (Office of Servicemembers’ Group Life Insurance) for the purpose of aiding in the settlement of a particular insurance case.

§ 1.507 Disclosures to members of Congress.

Members of Congress shall be furnished in their official capacity in any case such information contained in the Department of Veterans Affairs files as may be requested for official use. However, in any unusual case, the request will be presented to the Secretary, Deputy Secretary, or staff or administration head for personal action. When the requested information is of a type which may not be furnished a claimant, the member of Congress shall be advised that the information is furnished to him or her confidentially in his official capacity and should be so treated by him or her. (See 38 U.S.C. 5701.) Information concerning the beneficiary designation of a United States Government Life Insurance or National Service Life Insurance policy is deemed confidential and privileged and during the insured’s lifetime shall not be disclosed to anyone other than the insured or his or her duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.

(a) Where incompetent claimants are charged with, or convicted of, offenses other than those growing out of their relationship with the Department of Veterans Affairs and in which it is desired to disclose information from the files and records of the Department of Veterans Affairs, the Regional Counsel, Chief Benefits Director, Veterans Benefits Administration, or the General Counsel if the General Counsel deems it necessary and proper, may disclose to the court having jurisdiction so much of the information from the files and records of the Department of Veterans Affairs relating to the mental condition of such beneficiaries, the same to be available as evidence, as may be necessary to show the mental
§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.

The Chief Benefits Director, Veterans Benefits Administration, Regional Counsels, and facility heads are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

[32 FR 10848, July 25, 1967]

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in defense of insurance suits against the United States.

Copies of records from the files of the Department of Veterans Affairs will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his or her duly authorized representative has authorized the release of the information contained in such records.

If the release of information is not authorized in writing by the claimant or his or her duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Regional Counsel whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant’s file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen’s compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Secretary of Veterans Affairs, or the head of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Department of Veterans Affairs may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Department of Veterans Affairs.

[32 FR 10848, July 25, 1967]

§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.

(a)(1) Where a suit (or legal proceeding) has been threatened or instituted
against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his or her duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in Central Office, or the Regional Counsel for the field facility, who shall determine the action to be taken with respect thereto. Where the records have been sent to the Department of Justice in connection with any such suit (or legal proceeding), the request will be referred to the Department of Justice, Washington, DC, through the office of the General Counsel, for attention. Where the records have been sent to an Assistant U.S. Attorney, the request will be referred by the appropriate Regional Counsel to the Assistant U.S. Attorney. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit (or legal proceeding), whether in a Federal court or any other, such copies shall be disclosed as provided in paragraphs (b) and (c) of this section where the request is accompanied by court process, or paragraph (e) of this section where the request is not accompanied by court process. A court process, such as a court order or subpoena duces tecum should be addressed to either the Secretary of Veterans Affairs or to the head of the field facility at which the records desired are located. The determination as to the action to be taken upon any request for the disclosure of claimant records received in this class of cases shall be made by the component having jurisdiction over the subject matter in Central Office, or the division having jurisdiction over the subject matter in the field facility, except in those cases in which representatives of the component or division have determined that the records desired are to be used adversely to the claimant, in which event the process will be referred to the General Counsel in Central Office or to the Regional Counsel for the field facility for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed, or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be disclosed except through the Regional Counsel having jurisdiction, who will limit the disclosure of information to that which would be available under discovery proceedings, if the matter were in litigation. Any other information may be disclosed only after concurrence in such disclosure is procured by the General Counsel.

(b) Disclosures in response to Federal court process—(1) Court order. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a Federal court order is the process necessary for the disclosure of such records. Upon receipt of a Federal court order directing disclosure of claimant records, such records will be disclosed. Disclosure of records protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph (g) of this section.

(2) Subpoena. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant, a subpoena is not sufficient authority for the disclosure of such records and such records will not be disclosed, unless the claimant is deceased, or either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a Federal court subpoena, such records will be disclosed. Additionally, where the subpoena is accompanied by authorization from the claimant, disclosure will be made. Regarding the disclosure of medical records pertaining to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.
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(3) A disclosure of records in response to the receipt of a Federal court process will be made to those individuals designated in the process to receive such records, or to the court from which the process issued. Where original records are produced, they must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if offered and received in evidence, permission should be obtained to substitute a copy so that the original may remain intact in the record. Where a court process is issued by or on behalf of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by §1.526(i) and any other costs incident to producing the records.

(c) Disclosures in response to state or local court process—(1) State or local court order. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a patient who is a citizen of the United States or an alien lawfully admitted for permanent residence, a State or local court order is the process necessary for disclosure of such records. Upon receipt of a State or local court order directing disclosure of patient records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3) of this section. Disclosure of records protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph (g) of this section.

(2) State or local court subpoena. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a patient, a subpoena is not sufficient authority for disclosure of such records and such records will not be disclosed unless the patient is deceased, or, either is not a citizen of the United States, or an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a State or local court subpoena directing disclosure of patient records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3) of this section. Regarding the disclosure of 7332 records, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) Where the disclosure provisions of paragraph (c) (1) or (2) of this section apply, disclosure will be made as follows:

(i) When the process presented is accompanied by authority from the patient; or,

(ii) In the absence of claimant disclosure authority, the Regional Counsel having jurisdiction must determine whether the disclosure of the records is necessary to prevent the perpetration of fraud or other injustice in the matter in question. To make such a determination, the Regional Counsel may require such additional documentation, e.g., affidavit, letter of explanation, or such other documentation which would detail the need for such disclosure, set forth the character of the pending suit, and the purpose for which the documents or records sought are to be used as evidence. The claimant’s record may be considered in the making of such determination. Where a court process is received, and the Regional Counsel finds that additional documentation will be needed to make the foregoing determination, the Regional Counsel, or other employee having reasonable knowledge of the requirements of this regulation, shall contact the person causing the issuance of such court process, and advise that person of the need for additional documentation. Where a court appearance is appropriate, and the Regional Counsel has found that there is an insufficient basis upon which to warrant a disclosure of the requested information, the Regional Counsel, or other employee having reasonable knowledge of the requirement of this regulation and having consulted with the Regional Counsel, shall appear in court and advise
the court that VA records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and to further advise the court of such regulatory requirements and how they have not been satisfied. Where indicated, the Regional Counsel will take appropriate action to have the matter of disclosure of the affected records removed to Federal court.

(4) Any disclosure of records in response to the receipt of State or local court process will be made to those individuals designated in the process to receive such records, or to the court from which such process issued. Payment of the fees as prescribed by §1.526(i), as well as any other cost incident to producing the records, must first be deposited with the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs by the party who caused the process to be issued.

(d) Notice requirements where disclosures are made pursuant to court process. Whenever a disclosure of Privacy Act protected records is made in response to the process of a Federal, State, or local court, the custodian of the records disclosed will make reasonable efforts to notify the subject of such records that such subject’s records were disclosed to another person under compulsory legal process. Such notice should be accomplished when the process compelling disclosure becomes a matter of public record. Generally, a notice sent to the last known address of the subject would be sufficient to comply with this requirement.

(e) Disclosures in response to requests when not accompanied by court process. Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a court process, will be handled by the component or division having jurisdiction over the subject matter. If the request can be complied with under §1.503 or §1.504, and under the Privacy Act (to the extent that such records are protected by the Privacy Act), the records requested will be disclosed upon receipt of the required fee. If, however, the records cannot be furnished under such authority, the applicant will be advised of the procedure to obtain copies of records as set forth in paragraphs (b) and (c) of this section.

(f) Suits by or against the Secretary under 38 U.S.C. 3720. Records pertaining to the loan guaranteed, insured, or made by the Department of Veterans Affairs may be made available by the General Counsel or the Regional Counsel subject to the usual rules of evidence, and where authorized under the Privacy Act, after clearance with the Department of Justice or U.S. Attorney if appropriate.

(g) Disclosure of drug abuse, alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment or related records under court process. Disclosure of these types of records, which are protected from unauthorized disclosure under 38 U.S.C. 7332, may be made only in response to an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. The court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. As to a Federal court order satisfying the requirements of this paragraph, the records will be disclosed as provided in such order. As to a State or local court order satisfying the requirements of this subsection, the disclosure of the records involved is conditioned upon satisfying the provisions set forth in paragraph (c)(3) of this section. If the aforementioned section is satisfied, and a disclosure of records is to be forthcoming, the records will be
§ 1.512 Disclosure of loan guaranty information.

(a) The disclosure of records or information contained in loan guaranty files is governed by the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the confidentiality provisions of 38 U.S.C. 5701, and the provisions of 38 CFR 1.500-1.584. In addition, the release of names and addresses and the release of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section. However, individual identifiers may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier.

(b)(2) Individual identifiers of veteran purchasers or dependents may be disclosed when disclosure is made to the following:
(i) The individual purchasing the property;
(ii) The current owner of the property;
(iii) The individual that requested the appraisal or report;
(iv) A person or entity which is considering making a loan to an individual with respect to the property concerned; or
(v) An attorney, real estate broker, or any other agent representing any of these persons.

(c)(1) The Secretary may release the name, address, or both, and may release other information relating to the identity of an applicant for or recipient of a Department of Veterans Affairs-guaranteed, insured, or direct loan, specially adapted housing grant, loan to finance acquisition of Department of Veterans Affairs-owned property, release of liability, or substitution of entitlement to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies for any of the purposes specified in paragraph (c)(2) of this section.

(c)(2) A release may be made under paragraph (c)(1) of this section:
(i) To enable such parties to provide the Department of Veterans Affairs with data which assists in determining the creditworthiness, credit capacity, income or financial resources of the applicant for or recipient of loan guaranty administered benefits, or verifying whether any such data previously received is accurate; or
(ii) To enable the Secretary to offer for sale or other disposition any loan or installment sale contract.

(d) Upon request, the Secretary may release information relating to the individual's loan transaction to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies where necessary in connection with a transfer of information on the status of a Department of Veterans Affairs loan account to persons or organizations proposing to extend credit or render services or other benefits to the borrower in order that the person or organization may determine whether to extend credit or render services or other benefits to the borrower. Such releases shall be made only if the person or organization seeking the information furnishes the individual's name, address or other information necessary to identify the individual.
(e) The Secretary shall maintain information in the loan guaranty file consisting of the date, notice and purpose of each disclosure, and the name and address of the person to whom the disclosure is made from the loan guaranty files.

(Authority: 38 U.S.C. 5701(h)(2)(D), 5 U.S.C. 552a(c))

[47 FR 11279, Mar. 16, 1982]

§ 1.514 Disclosure to private physicians and hospitals other than Department of Veterans Affairs.

(a) When a beneficiary elects to obtain medical attention as a private patient from a private practitioner or in a medical center other than a Department of Veterans Affairs hospital, there may be disclosed to such private practitioner or head of such medical center (Federal, State, municipal, or private), such information as to the medical history, diagnosis, findings, or treated as confidential, as is customary in civilian professional medical practice.

(xi) The veteran on request, except information contained in the medical record which would prove injurious to his or her physical or mental health.

(x) The next of kin on request of the individual, or legal representative, when the information may not be disclosed to the veteran because it will prove injurious to his or her physical or mental health, and it will not be injurious to the physical or mental health of the next of kin or cause repugnance or resentment toward the veteran; and directly to the next of kin, or legal representative, when the veteran has been declared to be insane or is dead.

(xi) Health and social agencies, on the authority of the veteran or his or her duly authorized representative.

(2) In addition to the authorizations in paragraph (b)(1) of this section, the Department of Justice, the Department of the Treasury, and the U.S. Postal Service may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

(3) Compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions will be effected in accordance with §1.511.


§ 1.514 Disclosure to private physicians and hospitals other than Department of Veterans Affairs.

(a) When a beneficiary elects to obtain medical attention as a private patient from a private practitioner or in a medical center other than a Department of Veterans Affairs hospital, there may be disclosed to such private practitioner or head of such medical center (Federal, State, municipal, or private), such information as to the medical history, diagnosis, findings, or
§ 1.514a Disclosure to private psychologists.

When a beneficiary elects to obtain therapy or analysis as a private patient from a private psychologist, such information in the medical record as may be pertinent may be released. Generally, only information developed and documented by Department of Veterans Affairs psychologists will be considered pertinent, although other information from the medical record may be released if it is determined to be pertinent and will serve a useful purpose to the private psychologist in rendering his or her services. Information will be released under this section upon receipt of the written authorization of the beneficiary or his or her duly authorized representative. Information will be forwarded to private psychologists directly, not through the beneficiary or representative, without charge and with the stipulation that it is released with consent of or on behalf of the patient and must be treated as confidential as is customary in regular professional practice.

[34 FR 13368, Aug. 19, 1969]

§ 1.515 To commanding officers of State soldiers' homes.

When a request is received in a Department of Veterans Affairs regional office, center, or medical center from the commanding officer of a State soldiers' home for information other than information relative to the character of the discharge from a Department of Veterans Affairs center or medical center concerning a veteran formerly domiciled or hospitalized therein, the provisions of § 1.500 are applicable, and no disclosure will be made unless the request is accompanied by the authorization outlined in § 1.503. However, station heads, upon receipt of a request from the commanding officer of a State soldiers' home for the character of the discharge of a veteran from a period of hospital treatment or domiciliary care as a beneficiary of the Department of Veterans Affairs, will comply with the request, restricting the information disclosed solely to the character of the veteran's discharge from such treatment or care. Such information will be disclosed only upon receipt of a specific request therefor from the commanding officer of a State soldiers' home.

[30 FR 6435, May 8, 1965]

§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.

When an undertaker requests information believed to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's Government insurance policy, name and address of the next of kin, rank or grade of veteran and organization in which he or she served, character of the veteran's discharge, or date and place of birth of the veteran, and it appears that the undertaker is holding
the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of a Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the policy or furnished information not specifically mentioned in this paragraph.


§ 1.517 Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Department of Veterans Affairs.

Requests from educational institutions and agencies cooperating with the Department of Veterans Affairs in the vocational rehabilitation and education of veterans for the use of vocational rehabilitation and education records for research studies will be forwarded to central office with the facility head’s recommendation for review by the Chief Benefits Director. Where the request to conduct a research study is approved by the Chief Benefits Director, the facility head is authorized by this section to release information for such studies from vocational rehabilitation and education records as required: Provided, however, That any data or information obtained shall not be published without prior approval of the Chief Benefits Director and that data contained in published material shall not identify any individual veteran.

[30 FR 6435, May 8, 1965]

§ 1.518 Addresses of claimants.

(a) It is the general policy of the Department of Veterans Affairs to refuse to furnish addresses from its records to persons who desire such information for debt collection, canvassing, harassing or for propaganda purposes. (b) The address of a Department of Veterans Affairs claimant as shown by Department of Veterans Affairs files may be furnished to:

(1) Duly constituted police or court officials upon official request and the submission of a certified copy either of the indictment returned against the claimant or of the warrant issued for his or her arrest.

(2) Police, other law enforcement agencies, or Federal, State, county, or city welfare agencies upon official written request showing that the purpose of the request is to locate a parent who has deserted his or her child or children and that other reasonable efforts to obtain an address have failed. The address will not be released when such disclosure would be prejudicial to the mental or physical health of the claimant. When an address is furnished it will be accompanied by the stipulation that it is furnished on a confidential basis and may not be disclosed to any other individual or agency.

(c) When an address is requested that may not be furnished under §§ 1.500 through 1.526, the person making the request will be informed that a letter, or in those cases involving judicial actions, the process or notice in judicial proceedings, enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the Department of Veterans Affairs. If a request indicates that judicial action is involved in which a process or notice in judicial proceedings is required to be forwarded, the Department of Veterans Affairs will inform the person who requests the forwarding of such a document that the envelope must bear sufficient postage to cover costs of mailing and certified or registered mailing fees, including cost of obtaining receipt for the certified or registered mail when transmission by this special mail is desired. At the time the letter, process, or notice in judicial proceedings is forwarded, the facility’s return address will be placed on the envelope. When the receipt for certified or registered mail or the undelivered envelope is returned to the Department of Veterans Affairs, the original sender will be notified thereof.
§ 1.519  Lists of names and addresses.

(a) Any organization wanting a list of names and addresses of present or former personnel of the armed services and their dependents from the Department of Veterans Affairs must make written application to the Department of Veterans Affairs Controller, except lists of educationally disadvantaged veterans should be requested from the Director of the nearest regional office. The application must:

(1) Clearly identify the type or category of names and addresses sought;

(2) Furnish proof satisfactory to the Department of Veterans Affairs that the organization seeking the list is a “nonprofit organization.” Normally, evidence establishing that the organization is exempt from taxation in accordance with the provisions of 26 U.S.C. 501 or is a governmental body or institution will be accepted as satisfying this criteria;

(3) Contain a statement clearly setting forth the purpose for which the list is sought, the programs and the resources the organization proposes to devote to this purpose, and establish how such purpose is “directly connected with the conduct of programs and the utilization of benefits” under title 38, U.S.C.; and

(4) Contain a certification that the organization, and all members thereof who will have access to the list, are aware of the penalty provisions of 38 U.S.C. 5701(f) and will not use the list for any purpose other than that stated in the application.

(b) If the Director of the regional office concerned finds that the organization requesting the list of names and addresses of educationally disadvantaged veterans is a nonprofit organization and operates an approved program of special secondary, remedial, preparatory or other educational or supplementary assistance to veterans as provided under subchapter V, title 38 U.S.C., then he or she may authorize the release of such names and addresses to the organization requesting them.

(c) The Associate Deputy Assistant Secretary for Information Resources Management, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations which have applied for such lists in accordance with paragraph (a) of this section if he or she finds that the purpose for which the organization desires the names and addresses is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Lists of names and addresses authorized to be released pursuant to this paragraph shall not duplicate lists released to other elements, segments, or chapters of the same organization.

(d) If the list requested is one that the Department of Veterans Affairs has previously compiled or created, in the same format, to carry out one or more of its basic program responsibilities and it is determined that it can be released, the list may be furnished without charge. For other types of lists, a charge will be made in accordance with the provisions of §1.526.

(e) Upon denial of a request, the Department of Veterans Affairs Controller or Regional Office Director will inform the requester in writing of the denial and the reasons therefor and advise the organization that it may appeal the denial to the General Counsel.
In each instance of a denial of a request, the denial and the reasons therefore will be made a matter of record.

(f) Section 5701(f), title 38 U.S.C., provides that any organization, or member thereof, which uses the names and addresses furnished it for any purpose other than one directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C., shall be fined not more than $500 in the case of the first offense and not more than $5,000 in the case of the subsequent offenses. Any instance in which there is evidence of a violation of these penal provisions will be reported in accordance with §14.560.

(Affirmed by the Office of Management and Budget under control number 2900-0438)


§1.520 Confidentiality of social data.

Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient’s self-revelations without reproaching the patient for his or her behavior or arousing natural curiosity or suspicion regarding any informant’s statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.


§1.521 Special restrictions concerning social security records.

Information received from the Social Security Administration may be filed in the veteran’s claims folder without special provisions. Such information will be deemed privileged and may not be released by the Department of Veterans Affairs except that information concerning the amount of social security benefits paid to a claimant or the amount of social security tax contributions made by the claimant may be disclosed to the claimant or his or her duly authorized representative. Any request from outside the Department of Veterans Affairs for other social security information will be referred to the Social Security Administration for such action as they deem proper.

[27 FR 9599, Sept. 28, 1962]

§1.522 Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.

Determination of the question when disclosure of information from the files, records, and reports will be prejudicial to the mental or physical health of the claimant, beneficiary, or other person in whose behalf information is sought, will be made by the Chief Medical Director; Chief of Staff of a hospital; or the Director of an outpatient clinic.

[33 FR 19009, Dec. 20, 1968]

§1.523 [Reserved]

§1.524 Persons authorized to represent claimants.

A duly authorized representative will be:

(a) Any person authorized in writing by the claimant to act for him or her;

(b) An attorney who has filed the declaration required by §14.629(b)(1) of this chapter, or

(c) His or her legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his or her children, or, if the claimant is unmarried, either of his or her parents
§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.

(a)(1) The accredited representatives of recognized organizations (§14.627 of this chapter) holding appropriate power of attorney and recognized attorneys (§14.629(b) of this chapter) with the written authorization of the claimant may, subject to the restrictions imposed by paragraph (a)(2) of this section, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him or her to the claimant or, if the claimant is incompetent, to his or her legally constituted fiduciary. Under the same restrictions, it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his or her spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Department of Veterans Affairs of the claim of the claimant. The heads of field facilities and the directors of the services concerned in Central Office will each designate a responsible officer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term claimant as used in this paragraph includes insureds.

(2) In the case of a living veteran a representative acting under a power of attorney from any person not acting on behalf of the veteran will not be permitted to review the records of the veteran or be furnished any information therefrom to which the person is not entitled, i.e., information not relating to such person alone. Powers of attorney submitted by the other person will be considered “Limited” and will be so noted when associated with the veteran’s records. The provisions of this subparagraph are also applicable to recognized attorneys and the requisite declarations filed by them.

(3) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Department of Veterans Affairs the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative.

(4) In any case where there is an unrevoked power of attorney or declaration of representation, no persons or organizations other than the one named in such document shall be afforded information from the file except under the conditions set forth in §14.629(b)(2) of this chapter. When any claimant has filed notice with the Department of Veterans Affairs that he or she does not want his or her file inspected, such file will not be made available for inspection.

(b)(1) Inspection of folders by accredited representatives or recognized attorneys holding a written authorization where such cases are being processed shall be in space assigned for such inspection. Otherwise station heads may permit inspection of folders at the desks of the accredited representatives, in the office(s) which they regularly occupy.

(2) An insured or after maturity of the insurance by death of the insured, the beneficiary, may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Department of Veterans Affairs, a specific authorization in writing for this purpose.

(3) Unless otherwise authorized by the insured or the beneficiary, as the
case may be, such authorized representative, recognized attorney or accredited representative shall not release information as to the designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§1.500 through 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives or recognized attorneys holding a written authorization only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Department of Veterans Affairs personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Department of Veterans Affairs personnel for adjudication purposes will not be inspected by anyone other than those employees of the Department of Veterans Affairs whose duties require same for the purpose of clinical diagnosis or medical treatment.

(5) Under no circumstances shall any paper be removed from a file, except by a Department of Veterans Affairs employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Regional Counsel, except that in insurance suits under 38 U.S.C. 1975, 1984, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Facility heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information therefrom will be brought to the immediate attention of the Secretary.

(d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization holding power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he or she may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.


§ 1.526 Copies of records and papers.

(a) Any person desiring a copy of any record or document in the custody of the Department of Veterans Affairs, which is subject to be furnished under §§1.501 through 1.526, must make written application for such copy to the Department of Veterans Affairs installation having custody of the subject matter desired, stating specifically: (1) The particular record or document the copy of which is desired and whether certified and validated, or uncertified, (2) the purpose for which such copy is desired to be used.

(b) The types of services provided by the Department of Veterans Affairs for which fees will be charged are identified in paragraph (i) of this section.
§ 1.526

(c) This section applies to the services furnished in paragraph (b) of this section when rendered to members of the public by the Department of Veterans Affairs. It does not apply to such services when rendered to or for other agencies or branches of the Federal Government, or State and local governments when furnishing the service will help to accomplish an objective of the Department of Veterans Affairs, or when performed in connection with a special research study or compilation when the party requesting such services is charged an amount for the whole job.

(d) When copies of a record or document are furnished under §§ 1.506, 1.507, 1.510, and 1.514, such copies shall be supplied without charge. Moreover, free service may be provided, to the extent of one copy, to persons who have been required to furnish original documents for retention by the Department of Veterans Affairs.

(e) The following are circumstances under which services may be provided free at the discretion of facility heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

(f) When information, statistics, or reports are released or furnished under § 1.501 or § 1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(g) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposit of $1 or more over the lawful charge will be returned to the applicant. Excess deposits of less than $1 will be returned upon request. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

(h) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in § 1.513.

(i) Fees to be charged.

(1) Schedule of fees:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fees</th>
</tr>
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<tbody>
<tr>
<td>(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8 1/2″ × 11″; 8 1/2″ × 14″; 11″ × 14″).</td>
<td>$0.15 per page after first 100 one-sided pages.</td>
</tr>
<tr>
<td>(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiocassettes etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
<tr>
<td>(iii) Duplication of documents by any type of reproduction process not covered by paragraphs (i)(1) and (ii) of this section to produce a copy in a form reasonably usable by a requester.</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
<tr>
<td>(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output.</td>
<td>Actual cost to the Agency including computer and manual search costs, copying costs, labor, and material and overhead expenses.</td>
</tr>
<tr>
<td>(v) Attestation under the seal of the Agency.</td>
<td>$3.00 per document so certified.</td>
</tr>
<tr>
<td>(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes.</td>
<td>$10.00 per request.</td>
</tr>
</tbody>
</table>
(2) Benefit records. When VA benefit records are requested by a VA beneficiary or applicant for VA benefits, the duplication fee for one complete set of such records will be waived.

(Authority: 38 U.S.C. 5702(b))

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided in paragraph (i) of this section (or the order must include postage stamps or stamped return envelopes for the purpose).

(k) Those Department of Veterans Affairs installations not having copying equipment are authorized to arrange with the nearest Department of Veterans Affairs installation having such equipment to make the necessary authorized copies of records or documents.

(l) Administration, staff office, and field facility heads are authorized to designate employees to certify copies of records and papers furnished under the provisions of paragraph (a) of this section.


RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS OTHER THAN CLAIMANT RECORDS

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

[40 FR 12656, Mar. 20, 1975]

Authority:

§ 1.550 General.

The Department of Veterans Affairs policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Department of Veterans Affairs is authorized to withhold under 5 U.S.C. 552(b) (see §1.554) if it is determined: (a) By the Secretary of Veterans Affairs or the Deputy Secretary that disclosure of such information will serve a useful purpose or (b) by an administration, staff office, or field facility head or designee under §1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.

[40 FR 12656, Mar. 20, 1975]
§ 1.551 [Reserved]

§ 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.

(a) All final orders in such actions as entertained by the Contract Appeals Board, those statements of policy and interpretations adopted by the Department of Veterans Affairs but not published in the Federal Register, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined by the Secretary or designate. Such index or indexes or supplements thereto will be promptly published, quarterly or more frequently, and distributed (by sale or otherwise) unless the Department of Veterans Affairs determines by order published in the Federal Register that publication would be unnecessary and impracticable, in which case the Department of Veterans Affairs will nonetheless provide copies of such index or indexes or supplements thereto on request at a cost not to exceed the direct cost of duplication. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying.

Public reading facilities for this purpose will be maintained in Department of Veterans Affairs Central Office and Department of Veterans Affairs field facilities, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Department of Veterans Affairs are confidential and privileged by statute (38 U.S.C. 5701) and so are exempt from this requirement.

(b) The voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.


§ 1.553 Public access to other reasonably described records.

(a) Except for requests for records which are processed under §§1.551 and 1.552 of this part, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, VA will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§1.551 and 1.552 of this part, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in §1.554 of this part, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be...
§ 1.553a Time limits for Department of Veterans Affairs response to requests for records.

(a) When a request for records made under §1.551, §1.552 or §1.553 is received it will be promptly referred for action to the proper employee designated in accordance with §1.556 to take initial action on granting or denying requests to inspect or obtain information from or copies of the records described.

(b) Any such request will then be promptly evaluated and a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request. Upon determination to comply or deny the request the person making the request will be notified immediately of the determination and the reasons therefor, and of the right of the person to appeal the determination. Records to be furnished will be supplied promptly.

(c) Upon receipt of such an appeal from an adverse determination it will be evaluated and a further determination made within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the appeal. If on appeal the denial is in whole or in part upheld the Department of Veterans Affairs will notify the requester of the provisions for judicial review of this determination. (See §§1.557 and 1.558.)

(d) In unusual circumstances, specifically as follows, the time limits in paragraphs (b) and (c) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. The date specified will not result in an extension for more than 10 working days. Unusual circumstances will be interpreted to mean, but only to the extent reasonably necessary to the proper processing of the particular request, as follows:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department of Veterans Affairs having substantial subject-matter interest therein.

(e) Pursuant to section 552(a)(6), title 5 U.S.C., any person making a request to the Department of Veterans Affairs for records under section 552(a) (1), (2) or (3) (see §§1.551, 1.552 and 1.553) will be deemed to have exhausted his or her administrative remedies with respect to such request if the Department of Veterans Affairs fails to comply with the applicable time limit provisions of this section. If, however, the Government can show exceptional circumstances exist and that the Department of Veterans Affairs is exercising due diligence in responding to the request, the statute also permits the court to retain jurisdiction and allow the Department of Veterans Affairs additional time to complete its review of the records.

(f) Requests for the release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws...
§ 1.554 Exemptions from public access to agency records.

(a) The exemptions in this paragraph constitute authority to withhold from disclosure certain categories of information in Department of Veterans Affairs records except that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy, and are in fact properly classified pursuant to such Executive order.

(2) Related solely to internal Department of Veterans Affairs personnel rules and practices.

(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552b, provided that such statute:

   (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

   (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Department of Veterans Affairs.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

   (i) Could reasonably be expected to interfere with enforcement proceedings;

   (ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

   (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

   (iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

   (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

   (vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(Authority: 5 U.S.C. 552(b)(7))

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) Information in the categories exempted under paragraph (a) of this section, other than in paragraph (a)(3) which is applicable to Department of Veterans Affairs claimant records, will be released only as authorized in §1.550.
The release of information from Department of Veterans Affairs claimant records will be made only in accordance with §§1.501 through 1.526.

(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and

(i) The investigation or proceeding involves a possible violation of criminal law, and
(ii) There is reason to believe that
(A) The subject of the investigation or proceeding is not aware of its pendency, and
(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant’s name or personal identifier are requested by a third party according to the informant’s name or personal identifier, the Department may treat the records as not subject to the requirements of this section unless the informant’s status as an informant has been officially confirmed.

(Authority: 5 U.S.C. 552(c)(1) and (c)(2))

§ 1.554a Predisclosure notification procedures for confidential commercial information.

(a) General. During the conduct of its business the Department of Veterans Affairs (VA) may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act (FOIA) request, except under the provisions of this section. This section establishes uniform VA procedures for giving submitters predisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under 38 CFR 1.554(a)(4). These procedures are required by Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) Definitions. (1) Confidential commercial information means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), as implemented by §1.554 of this part, because disclosure could reasonably be expected to cause substantial competitive harm.

(2) Submitter means any person or entity who provides confidential commercial information to the government. The term “submitter” includes, but is not limited to corporations, State governments, and foreign governments.

(c) Notification to submitters of confidential commercial information. When a request is received, for a submitter’s record(s), or information which contains confidential commercial information, and the request is being processed under the FOIA, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by paragraph (d) of this section. The notice will advise the submitter that a request for its record(s) has been received and is being processed under the FOIA. The notice will describe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) When notification is required. (1) For confidential commercial information submitted to VA prior to January 1, 1988, notification to submitters is required whenever:

(i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe
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that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to VA on or after January 1, 1988, notification is required whenever:

(i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) Designation by submitters of information as confidential commercial information.

(1) When business records are provided to VA, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to VA or within a reasonable period of time thereafter, but not later than 60 days after receipt of the information by VA. Information so designated will be clearly identified by marking it with the words “confidential commercial information” or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked “This entire (document, record, etc.) consists of confidential commercial information.” If only portions of documents are designated, only those specific designated portions will be conspicuously annotated as “confidential commercial information.”

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to VA, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter’s designation should include the earlier expiration date. Whenever possible, the submitter’s designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) Opportunity to object to disclosure.

(1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm.

Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10 working day period, careful consideration will be given to all specified grounds for nondisclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the VA decision, the reason(s) that the submitter’s objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) Notices to requester. (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(b)(4), the requester
§ 1.555 Fees.

(a) Definitions of terms. For the purpose of this section, the following definitions apply:

(1) Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.

(2) Direct costs means those expenditures which VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the

will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an opportunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in VA’s FOIA decision.

(h) Notices of lawsuit. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, the submitter of the information will be promptly notified.

(i) Exceptions to the notification requirements. The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

(3) Disclosure of the record(s) or information is required by law (other than the FOIA, 5 U.S.C. 552);

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to VA that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, VA must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.
§ 1.555 cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.

(3) Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) Non-commercial scientific institution means an institution that is not operated on a commercial basis (as that term is referenced under Commercial use request of this paragraph) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester’s past publication history can be considered also. In any case, freelancers who do not qualify for inclusion in the representative of the news media category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) Review means the process of examining documents located in response to a commercial use request (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a commercial use request, e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term search does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in §1.554 of this part.

(b) Fees to be charged. (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Department of Veterans Affairs will charge fees that recoup the full allowable direct costs
for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in §1.555(e) of this part are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each administration and staff office upon approval of the Secretary is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the administration, staff office, or field facility performed the task, itself. In no case may a administration, staff office, or field facility contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from VA.

(c) Restrictions on assessing fees. With the exception of commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of documents, fees can be charged for only 10 minutes of search time and for only five pages of reproduction. If this cost were equal to or less than the cost to VA of billing the requester and processing the fee collected, no charges would be assessed. (NOTE: The cost of collecting fees are VA’s administrative costs of receiving and recording a requester’s remittance, and processing the fee for deposit in the Treasury Department’s special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Department’s determination.)

(1) For purposes of the restriction on assessing fees, the word pages refers to one-sided paper copies of the standard sizes 8½ × 11" or 8½ × 14" or 11" × 14". Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term search time in this context is based on manual searches. To calculate the computer search time for the purpose of applying the two-hour search restriction, the hourly cost of operating the computer’s central processing unit will be combined with the operator’s hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) Categories of requesters and fees to be charged each category. There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional
requesters; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

1. Commercial use requesters. When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

2. Educational and non-commercial scientific institution requesters. These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. To be included in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

3. Representatives of news media. These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(vi) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

4. All other requesters. Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field facility heads, their designee, or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 5701 and 5 U.S.C. 552a and will be assessed fees in accordance with the applicable fee provisions of §1.526(i) or §1.577(f) of this part. To the extent that records are not disclosable under these provisions, the disclosure of such records will be evaluated under §§1.550 through 1.559 of this part, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) Schedule of fees:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8 1/2&quot; × 11&quot;; 8 1/2&quot; × 14&quot;; 11&quot; × 14&quot;).</td>
<td>$0.15 per page.</td>
</tr>
<tr>
<td>(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output. (See paragraph (a)(2) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.)</td>
<td>Actual direct cost to the Agency.</td>
</tr>
<tr>
<td>(3) Duplication of documents by any type of reproduction process not covered by paragraphs (e)(1) and (2) of this section to produce a copy in a form reasonably usable by the requester.</td>
<td>Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.)</td>
</tr>
</tbody>
</table>
(f) Waiving or reducing fees. (1) Fees for records and services provided in response to a FOIA request will be waived or reduced when it is determined by responsible Central Office officials or field station heads or their designee that furnishing the document(s) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The following factors will be considered in sequence in determining whether disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) The following factors will be considered in sequence in determining whether disclosure of information is primarily in the commercial interest of the requester:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.
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(4) An appeal from an adverse fee waiver or reduction determination will be processed in the same manner as described in §1.557 of this part.

(g) Other administrative considerations to improve assessment and collection of fees—(1) Charging interest—notice and rate. The Department of Veterans Affairs may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field facility head or designee. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the original building was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that the fee has been received by VA, even if not processed, will suffice to stay the accrual of interest.

(2) Charges for unsuccessful search. When it is determined by the responsible Central Office official or field facility head or designee, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. If it is determined that search charges are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of re-formulating the request to meet his or her needs at a lower cost.

(3) Aggregating requests. When the responsible Central Office official or field facility head or designee reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official, or field facility head or designee, may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day time period that seek portion(s) of the same document(s) is an attempt to avoid payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will multiple requests on unrelated subjects from one requester be aggregated.

(4) Advance payments. The Department of Veterans Affairs may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Department of Veterans Affairs should either notify the requester of the likely cost and obtain satisfactory assurance of full payment, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, the Department of Veterans Affairs may require the requester to pay the full amount owed, plus any applicable interest as provided in paragraph (g)(1) of this section, or to demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the estimated fee before the Department begins to process a new request or a pending request from that requester.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in §1.553a of this part, for responding to initial requests and appeals from initial denials, will begin
only after the Department has received the advance fee payments.

(5) Debt collection. In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies.

(Authority: 5 U.S.C. 552(a)(4)(A))

[53 FR 10377, Mar. 31, 1988]

§ 1.556 Requests for other reasonably described records.

Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of § 1.553. This responsibility includes maintaining a uniform listing of such requests. Data logged will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. In the field a denial of any such request may be made only by the Director or the designated employee and in Central Office only by the administration or staff office head or designee. The letter notifying the requester of the denial will be signed by the official making the denial decision. Any legal question arising in a field station concerning the release of information will be referred through administrative channels to the appropriate Regional Counsel for disposition as contemplated by §13.401* of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred to the appropriate administration or staff office head. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

[40 FR 12658, Mar. 20, 1975]

*Editorial Note: At 42 FR 41410, Aug. 17, 1977, § 13.401 was removed.

§ 1.557 Administrative review.

(a) Upon denial of a request, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the specific exemption in §1.554 upon which the denial is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise that the denial may be appealed to the General Counsel.

(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

[40 FR 12658, Mar. 20, 1975, as amended at 55 FR 21546, May 25, 1990]

§§ 1.558-1.559 [Reserved]

SAFEGUARDING PERSONAL INFORMATION IN DEPARTMENT OF VETERANS AFFAIRS RECORDS

Note: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see §1.550 series. As to the release of information from Department of Veterans Affairs records other than claimant records see §1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

Source: Sections 1.575 through 1.584 issued at 40 FR 33944, Aug. 12, 1975, unless otherwise noted.

§ 1.575 Social security numbers in veterans' benefits matters.

(a) Except as provided in paragraph (b) of this section, no one will be denied any right, benefit, or privilege provided by law because of refusal to disclose to the Department of Veterans Affairs a social security number.

(b) VA shall require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent
§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

(a) The Department of Veterans Affairs will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will:

1. Permit an individual to determine what records pertaining to him or her will be collected, maintained, used, or disseminated by the Department of Veterans Affairs.

2. Permit an individual to prevent records pertaining to him or her, obtained by the Department of Veterans Affairs for a particular purpose, from being used or made available for another purpose without his or her consent.

3. Permit an individual to gain access to information pertaining to him or her in Department of Veterans Affairs records, to have a copy made of all or any portion thereof, and to correct or amend such records.

4. Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is correct and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

5. Permit exemptions from records requirements provided in 5 U.S.C. 552a only where an important public policy need for such exemption has been determined pursuant to specific statutory authority.

(b) The Department of Veterans Affairs will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

1. To those officers and employees of the agency which maintains the record of a claimant or beneficiary) on necessary forms as prescribed by the Secretary as a condition precedent to receipt or continuation of receipt of compensation or pension payable under the provisions of chapters 11, 13 and 15 of title 38, United States Code, provided, however, that a claimant shall not be required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA may also require mandatory disclosure of an applicant’s social security number as a condition for receiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97–365, sec. 4)

(c) A person requested by VA to disclose a social security number shall be told, as prescribed by § 1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that VA is requesting the social security number under the authority of title 38 U.S.C., or in the case of existing direct or vendee loan borrowers, under the authority of 26 U.S.C. 6109(a) in conjunction with sections 145 and 148 of Pub. L. 98–365, or in the case of loan applicants, under the authority of section 4 of Pub. L. 97–365. The person shall also be told that it will be used in the administration of veterans’ benefits in the identification of veterans or persons claiming or receiving VA benefits and their records, that it may be used in making reports to the Internal Revenue Service where required by law, and to determine whether a loan guaranty applicant has been identified as a delinquent taxpayer by the Internal Revenue Service, and that such taxpayers may have their loan applications rejected, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both title 38 U.S.C., and the Privacy Act of 1974, (Pub. L. 93–579), or, where required by another statute. (Pub. L. 97–365, sec. 4)

(Authority: 38 U.S.C. 5101)

Department of Veterans Affairs

§ 1.576

and who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552;

(3) For a routine use of the record compatible with the purpose for which it was collected;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(5) To a recipient who has provided the Department of Veterans Affairs with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department of Veterans Affairs specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) With respect to each system of records (i.e., a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) under Department of Veterans Affairs control, the Department of Veterans Affairs will (except for disclosures made under paragraph (b)(1) or (2) of this section) keep an accurate accounting as follows:

(1) For each disclosure of a record to any person or to another agency made under paragraph (b) of this section, maintain information consisting of the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting under paragraph (c)(1) of this section available to the individual named in the record at his or her request; and

(4) Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with §1.579 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) For the purposes of §§1.575 through 1.584, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(e) Section 552a(i), title 5 U.S.C., provides that:

(1) Any officer or employee of the Department of Veterans Affairs, who by virtue of his or her employment or official position, has possession of, or access to, Department of Veterans Affairs records which contain individually identifiable information the disclosure of which is prohibited by 5 U.S.C. 552a or by §1.575 series established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be
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guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of the Department of Veterans Affairs who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) (see §1.578(d)) shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Veterans Affairs under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(f) For purposes of §1.575 series the following definitions apply:

(1) The term agency includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(2) The term individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

(3) The term maintain includes maintain, collect, use, or disseminate.

(4) The term record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(5) The term system of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(6) The term statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of title 13 U.S.C.

(7) The term routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) When the Department of Veterans Affairs provides by a contract for the operation by or on behalf of the Department of Veterans Affairs of a system of records to accomplish a Department of Veterans Affairs function, the Department of Veterans Affairs will, consistent with its authority, cause the requirements of 5 U.S.C. 552a (as required by subsection (m)) and those of the §1.575 series to be applied to such system. For the purposes of 5 U.S.C. 552a(i) and §1.578(e) any such contractor and any employee of such contractor, if such contract is agreed to on or after September 27, 1975, will be considered to be an employee of the Department of Veterans Affairs.

(h) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 U.S.C. Any such record will be considered subject to the provisions of §1.575 series implementing 5 U.S.C. 552a and any other applicable Department of Veterans Affairs regulations. The Administrator of General Services is not authorized to disclose such a record except to the Department of Veterans Affairs, or under regulations established by the Department of Veterans Affairs which are not inconsistent with 5 U.S.C. 552a.

(i) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such
§ 1.577 Access to records.

(a) Except as otherwise provided by law or regulation any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system of records maintained by the Department of Veterans Affairs. The individual will be permitted, and upon his or her request, a person of his or her own choosing permitted to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. The Department of Veterans Affairs will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) Any individual will be notified, upon request, if any Department of Veterans Affairs system of records named contains a record pertaining to him or her. Such request must be in writing, over the signature of the requester. The request must contain a reasonable description of the Department of Veterans Affairs system or systems of records pursuant to §1.578(d). The request should be made to the office concerned (having jurisdiction over the system or systems of records involved) or, if not known, to the Director or Department of Veterans Affairs Officer in the nearest Department of Veterans Affairs regional office, or to the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Personal contact should normally be made during the regular duty hours of the office concerned, which are 8:00 a.m. to 4:30 p.m., Monday through Friday for Department of Veterans Affairs Central Office and most field facilities. Identification of the individual requesting the information will be required and will consist of the requester's name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum. Additional identifying data or documents may be required in specified categories as determined by operating requirements and established and publicized by the promulgation of Department of Veterans Affairs regulations. (5 U.S.C. 552a(f)(1))

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Department of Veterans Affairs will comply to the extent permitted by law and Department of Veterans Affairs regulations. (5 U.S.C. 552a(f)(2))

(d) Access to sensitive material in records, including medical and psychological records, is subject to the following special procedures. When an individual requests access to his or her records, the Department of Veterans Affairs official responsible for administering those records will review them and identify the presence of any sensitive records. Sensitive records are those that contain information which may have a serious adverse effect on the individual's mental or physical health if they are disclosed to him or her. If, on review of the records, the Department of Veterans Affairs official concludes that there are sensitive
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records involved, the official will refer the records to a Department of Veterans Affairs physician, other than a rating board physician, for further review. If the physician who reviews the records believes that disclosure of the information directly to the individual could have an adverse effect on the physical or mental health of the individual, the responsible Department of Veterans Affairs official will then advise the requesting individual: (1) That the Department of Veterans Affairs will disclose the sensitive records to a physician or other professional person selected by the requesting individual for such redisclosure as the professional person may believe is indicated, and (2) in indicated cases, that the Department of Veterans Affairs will arrange for the individual to report to a Department of Veterans Affairs facility for a discussion of his or her records with a designated Department of Veterans Affairs physician and for an explanation of what is included in the records. Following such discussion, the records should be disclosed to the individual; however, in those extraordinary cases where a careful and conscientious explanation of the information considered harmful in the record has been made by a Department of Veterans Affairs physician and where it is still the physician’s professional medical opinion that physical access to the information could be physically or mentally harmful to the patient, physical access may be denied. Such a denial situation should be an unusual, very infrequent occurrence. When denial of a request for direct physical access is made, the responsible Department of Veterans Affairs official will: (1) Promptly advise the individual making the request of the denial; (2) state the reasons for the denial of the request (e.g., 5 U.S.C. 552a(f)(3), 38 U.S.C. 5701(b)(1)); and (3) advise the requester that the denial may be appealed to the General Counsel and of the procedure for such an appeal.

(Authority: 5 U.S.C. 552a(f)(3))

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of civil action or proceeding. (5 U.S.C. 552a(d)(5))

(f) Fees to be charged, if any, to any individual for making copies of his or her record shall not include the cost of any search for and review of the record, and will be as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8 1/2&quot;x11&quot;, 8 1/2&quot;x14&quot;, 11&quot;x14&quot;).</td>
<td>$0.15 per page after first 100 one-sided pages.</td>
</tr>
<tr>
<td>(2) Duplication of non-paper records, such as microforms, audiodisual materials (motion pictures, slides, laser optical disks, video tapes, audio tapes, etc.), computer tapes and disks, diskettes for personal computers, and any other automated media output. Actual direct cost to the Agency as defined in §1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
<td></td>
</tr>
<tr>
<td>(3) Duplication of document by any type of reproduction process not covered by paragraphs (f)(1) or (2) of this section to produce a copy in a form reasonably usable by the requester.</td>
<td>Actual direct cost to the Agency as defined in §1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
</tbody>
</table>

NOTE.—Fees for any activities other than duplication by any type of reproducing process will be assessed under the provisions of §1.526(i) or (j) of this part of any other applicable law.)

(g) When VA benefit records, which are retrievable by name or individual identifier of a VA beneficiary or applicant for VA benefits, are requested by the individual to whom the record pertains, the duplication fee for one complete set of such records will be waived.

§ 1.579 Amendment of records.

(a) Any individual may request amendment of any Department of Veterans Affairs record pertaining to him or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date or receipt of such request, the Department of Veterans Affairs will acknowledge in writing such receipt. The Department of Veterans Affairs will complete the review to amend or correct a record as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. The Department of Veterans Affairs will promptly either:

(1) Correct any part thereof which the individual believes is not accurate, relevant, timely or complete; or

(2) Inform the individual of the Department of Veterans Affairs refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Secretary or designee, and the name and address of such official.

(b) The administration or staff office having jurisdiction over the records involved will establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Department of Veterans Affairs of an initial adverse Department of Veterans Affairs determination, and for whatever additional means may be necessary for each individual to be able to exercise fully, his or her right under 5 U.S.C. 552a.

(1) Headquarters officials designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Medical Center, Outpatient Clinic, Regional Office, Supply Depot, and Regional Counsel. These officials will function in the same manner at field facilities as that specified in the preceding subparagraph for headquarters officials in Central Office.

(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Medical Center, Outpatient Clinic, Regional Office, Supply Depot, and Regional Counsel. These officials will function in the same manner at field facilities as that specified in the preceding subparagraph for headquarters officials in Central Office.

(c) Any individual who disagrees with the Department of Veterans Affairs refusal to amend his or her record may request a review of such refusal. The Department of Veterans Affairs will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual request such review and make a final determination unless, for good cause shown, the Secretary extends such 30-day period. If, after review, the Secretary or designee also refuses to amend the record in accordance with the request the individual will be advised of the right to file with the Department of Veterans Affairs a concise statement setting forth the reasons for his or her disagreement with the Department of Veterans Affairs refusal and also advise of the provisions for judicial review of the reviewing official’s determination.

(5 U.S.C. 552a(g)(1)(A))

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Department of Veterans Affairs will clearly note any part of the...
§ 1.580 Administrative review.

(a) Upon denial or a request under 38 CFR 1.577 or 1.579, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the Department of Veterans Affairs regulations upon which the denial is based, and advise that the denial may be appealed to the General Counsel.

(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

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

[40 FR 33944, Aug. 12, 1975, as amended at 47 FR 16324, Apr. 16, 1982; 55 FR 21546, May 25, 1990]

§ 1.581 [Reserved]

§ 1.582 Exemptions.

(a) Certain systems of records maintained by the Department of Veterans Affairs are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k) of 5 U.S.C. 552a.

(b) Exemption of Inspector General Systems of Records. The Department of Veterans Affairs provides limited access to Inspector General Systems of Records as indicated:

(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G), (H) and (I), (e)(5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:

(i) Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA and Federal Laws, Regulations, Programs, etc.—VA (11 VA51); and

(ii) Inspector General Complaint Center Records—VA (66VA53).

(2) These exemptions apply to the extent that information in the systems is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(3) For the reasons set forth, the systems of records listed under paragraph (b)(1) of this section are exempted under sections 552a(j)(2) and (k)(2) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects to the existence of the investigation and identify that such persons are subject of that investigation. Since release of such information to subjects would provide them with significant information concerning the nature of the investigation, it could result in the altering or destruction of derivative evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) 5 U.S.C. 552a(c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual’s right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the amendment of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual’s request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings, threaten the
safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in paragraph (b)(3)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. These systems of records are exempt from the foregoing provisions because:

(A) It is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his/her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual’s rights, benefits, and privileges under Federal programs. The application of this provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject’s rights against self-incrimination and because of the inherent unreliability of the suspect’s statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

(A) The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary;

(B) The purposes for which the information is intended to be used;

(C) The routine uses which may be made of the information; and

(D) The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(1) The disclosure to the subject of the purposes of the investigation as
stated in paragraph (b)(3)(vi)(B) of this paragraph would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(2) If the complainant or the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of the authority under which the information is being requested. This could conceivably jeopardize undercover agents’ identities and impair their safety, as well as impair the successful conclusion of the investigation.

(3) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines maintain to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not always possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(c) Exemption of Loan Guaranty Service, Veterans Benefits Administration, Systems of Records. The Department of Veterans Affairs provides limited access to Loan Guaranty Service, Veterans Benefits Administration, systems of records as indicated:

(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1) and (e)(4) (G), (H) and (I) and (f):

(i) Loan Guaranty Fee Personnel and Program Participant Records—VA (17VA26);

(ii) Loan Guaranty Home Condominium and Mobile Home Loan Applicant Records and Paraplegic Grant Application Records—VA (55VA26).

(2) These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(3) For the reasons set forth, the systems of records listed under paragraph (c)(1) of this section are exempted under 5 U.S.C. 552a(k)(2) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses and other activities that could impede or compromise the investigation.

(ii) 5 U.S.C. 552a(d), (e)(4) (G) and (H) and (f) relate to an individual’s right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual

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who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated above, this exemption is still being cited in the event an individual wanted to know a specific source of information.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated.

(4) The following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f): Loan Guaranty Fee Personnel and Program Participant Records—VA (17 VA 26).

(5) This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(6) For the reasons set forth, the system of records listed in paragraph (c)(4) of this section is exempt under 5 U.S.C. 552a(k)(5) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of background suitability investigations to the existence of the investigation and reveal that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in revealing the identity of a confidential source.

(ii) 5 U.S.C. 552a(d), (e)(4) (G) and (H) and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's
request of the existence of records in an investigative file pertaining to such an individual or to grant access to an investigative file would disclose the identity of confidential sources and reveal confidential information supplied by these sources.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose sufficient information to disclose the identity of a confidential source and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct background suitability investigations.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:

(A) It is not possible to detect relevance and necessity of specific information from a confidential source in the early stages of an investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established regarding suitability for VA approval as a fee appraiser or compliance inspector.

(C) In interviewing persons or obtaining other forms of evidence during an investigation for suitability for VA approval, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated and disclosure might jeopardize the identity of a confidential source.

(Authority: 5 U.S.C. 552a (j) and (k); 38 U.S.C. 501)

[48 FR 29847, June 29, 1983]
or after historically notable persons, places or events.

§ 1.603 Gifts and donations.

(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.

(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.

(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.

(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(b) Officials and employees of the Department of Veterans Affairs will not solicit contributions from the public nor will they authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Department of Veterans Affairs. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

§ 1.620 Eligibility for burial.

Section 2402 of title 38, United States Code, bestows eligibility for burial in any open cemetery in the National Cemetery System. The following rules in paragraphs (a) through (c) of this section state conditions in addition to those imposed by statute. To be eligible for burial in a national cemetery:

(a) A United States citizen who served in an allied armed force, as provided in 38 U.S.C. 2402(4), must have been a citizen of the United States at the time of entry on such service and at the time of his or her death.

(b) A minor child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been at the time of his or her death under 21 years old or under 23 years old if pursuing a course of instruction at an approved educational institution.

(c) An unmarried adult child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been physically or mentally disabled and incapable of self support.

(Authority: 38 U.S.C. 2402)

§ 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, “immediate family members” are
§§ 1.622—1.629

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defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent’s parents will be considered “immediate family members.”

(b) All requests for authority to disinter remains will be submitted on VA Form 40–4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

(Authority: 38 U.S.C. 2404)

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered.

(d) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900–0365)


§ 1.631 [Reserved]

§ 1.632 Headstone and marker application required.

(a) Headstones and markers for gravestones in national cemeteries shall be ordered from the Record of Interment (VA Form 40–4956) prepared by the national cemetery superintendent at the time of interment. No further application is required.

(b) Submission of VA Form 40–1330, Application for Headstone or Marker, is required for the purpose of:

(1) Ordering a Government headstone or marker for any unmarked grave of any eligible veteran buried in a private or local cemetery.

(2) Ordering a Government headstone or marker for any unmarked grave in a post cemetery of the Armed Forces.

(3) Ordering a Government memorial headstone or marker for placement in a national cemetery, in a private or local cemetery and any post cemetery of the Armed Forces.

§ 1.633 Group memorial monuments.

(a) Definitions of terms. For the purpose of this section, the following definitions apply:

(1) Group—all the known and unknown dead who perished in a common military event.

(2) Memorial Monument—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 1.630.

§§ 1.622—1.629 [Reserved]
(3) Next of kin—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or step-brothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) Documentary evidence—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Memorials Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

§ 1.652


§ 1.650 Purpose.

The purpose of these regulations is to prescribe the procedure to be followed in determining and protecting the respective rights of the United States Government and of Department of Veterans Affairs employees who make inventions.


§ 1.651 Definitions.

The terms as used in the regulations concerning inventions by employees of the Department of Veterans Affairs are defined as follows:

(a) The term invention includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(b) The term employee or Government employee means any officer or employee, civilian or military, of the Department of Veterans Affairs. Part-time, without compensation (WOC) employees and part-time consultants are included.

(c) The term Secretary of Commerce means the Under Secretary of Commerce for Technology.


§ 1.652 Criteria for determining rights to employee inventions.

(a) The criteria to be applied in determining the respective rights of the Government and of the employee-inventor in and to any invention subject to these provisions shall be in accordance with the Uniform Patent Policy regulations found at 37 CFR 501.6 and 501.7.

(b) Ownership in and to inventions arising under Cooperative Research and Development Agreements (CRADAs) pursuant to 15 USC 3710a shall be governed by the provisions of
the pertinent CRADA, as authorized by the Federal Technology Transfer Act.
(Authority: 15 U.S.C. 3701a; 37 CFR part 503)
[61 FR 29658, June 12, 1996]

§ 1.653 Delegation of authority.

The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, Deputy General Counsel or the Assistant General Counsel for Professional Staff Group IV, in accordance with 37 CFR part 500.

§ 1.654 Patenting of inventions.

Any invention owned by the Government under the criteria as set forth in 37 CFR 501.6 should be protected by an application for a domestic patent and other necessary documents executed by the employee inventor prepared by or through the General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV, unless some other agency has primary interest or it is decided to dedicate the invention to the public. Such dedication requires approval of the Secretary of Commerce. Applications on behalf of the Government for foreign patents may be made if determined to be in the public interest. The payment of necessary expenses in connection with any application filed or patent obtained under this section by the Department of Veterans Affairs is authorized.

§ 1.655 Government license in invention of employee.

If an invention is made by an employee and it is determined that the employee inventor is entitled to full ownership under 37 CFR 501.6, subject to a nonexclusive, irrevocable, royalty-free license in the Government with power to grant sublicenses for all governmental purposes, it shall be the duty of the employee inventor to notify the Office of General Counsel of the status of the patent application, including the patent application number, so that the Department may protect the interests reserved to the Government under 37 CFR 501.6.
[61 FR 29658, June 12, 1996]

§ 1.656 Information to be submitted by inventor.

(a) In the case of an invention or believed invention, the inventor will prepare a statement for submission to his or her immediate superior. It will be submitted regardless of where the ownership is believed to exist. The statement will consist of two parts:

(1) One part of the statement will be a disclosure of the invention sufficient to permit the preparation of a patent applicant. It shall consist of a description, including where applicable, of the parts or components of the invention as shown on the drawings or blueprints, accompanied further by a description of the construction and operation of the invention. Photographs of the invention may be included. The inventor should state pertinent prior art known to him or her, and set forth in detail as clearly as possible the respects which his or her invention differs.

(2) The other part of the statement will set forth the circumstances attending the making of the invention. It will include the full name and address of the inventor; the grade and title of his or her position; whether full time or part time; his or her duties at the time the invention was made; the facts pertinent to a determination whether the invention bore a direct relation to or was made in consequence of such official duties; whether there was, and if so, the terms of any special agreement or understanding with respect to use or manufacture of his or her invention; date of the invention; when and where it was conceived, constructed and tested; whether it was made entirely during working hours; whether, and to what extent there was a contribution by the Government of any of the following: Facilities; equipment; materials or supplies; funds; information;
time or services of other Government employees on duty. When the invention is disclosed through publication, or in consultation with a manufacturer or attorney, simultaneous notification of the publication shall be given to the Office of General Counsel. A copy of the article will accompany the notification.

(b) The inventor’s immediate superior shall promptly review the statement of the employee inventor for completeness and accuracy, and shall certify that the employee’s statement of circumstances attending the invention is or is not correct, giving reasons if pertinent. The file should then be submitted through the facility head (or administration heads or top staff officials in the case of Central Office employees) to the General Counsel together with any comments or recommendations.

[61 FR 29658, June 12, 1996]  
§ 1.657 Determination of rights.  
The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV will make a determination of rights subject to review where required by the Secretary of Commerce. The determination will be in accordance with 37 CFR 501.7.

§ 1.658 Right of appeal.  
In accordance with 37 CFR 501.8, the employee has a right of appeal to the Secretary of Commerce within 30 days of receipt of the Department’s determination of ownership rights. The decision reached by the Secretary of Commerce will be communicated to the employee.

[61 FR 29658, June 12, 1996]  
§ 1.659 Relationship to incentive awards program.  
Procedures set out in the regulations concerning inventions by employees of the Department of Veterans Affairs are not affected by the submission or proposed submission of an employee suggestion or idea on an item which may be patentable. Consideration of an item for a determination of ownership rights and also for an incentive award will proceed simultaneously, usually on separate correspondence. An employee suggestion or copies and extracts of the file may be forwarded to the General Counsel by the reviewing or awarding authority, or by the facility head, for an ownership determination where the employee idea or suggestion involves an invention. The employee shall be directed to submit a disclosure of invention in accordance with these regulations if such has not been previously submitted.

§ 1.660 Expeditious handling.  
No patent may be granted where the invention has been in public use or publicly disclosed for more than one year before filing of a patent application. Hence, submissions involving inventions should be made as promptly as possible in order to avoid delay which might jeopardize title to the invention or impair the rights of the inventor or the Government.

[61 FR 29659, June 12, 1996]  
§ 1.661 Information to be kept confidential.  
All information pertaining to inventions and pending patent applications is confidential, and employees having access to such information are forbidden to disclose or reveal the same except as required in the performance of their official duties.

§ 1.662 Provisions of regulations made a condition of employment.  
The provisions of the regulations concerning inventions by employees of the Department of Veterans Affairs shall be a condition of employment of all employees.

§ 1.663 Licensing of Government-owned inventions.  
(a) The licensing of Government-owned inventions under VA control and custody will be conducted pursuant to
the regulations on the licensing of Government-owned inventions contained in 37 CFR part 404, and 15 U.S.C. 3710a, as appropriate.

(b) Any person whose application for a license in an invention under VA control and custody has been denied; whose license in such an invention has been modified or terminated, in whole or in part; or who timely filed a written objection in response to a proposal to grant an exclusive or partially exclusive license in an invention under VA control or custody, may, if damaged, appeal any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license to the Secretary of Veterans Affairs. Such appeal shall be in writing; shall set forth with specificity the basis of the appeal; and shall be postmarked not later than 60 days after the action being appealed. Upon request of the appellant, such appeal may be considered by one to three persons appointed on a case-by-case basis by the Secretary of Veterans Affairs. Such a request will be granted only if it accompanies the written appeal. Appellant may appear and be represented by counsel before such a panel, which will sit in Washington, DC. If the appeal challenges a decision to grant an exclusive or partially exclusive license in an invention under VA control or custody, the licensee shall be furnished a copy of the appeal, shall be given the opportunity to respond in writing, may appear and be represented by counsel at any hearing requested by appellant, and may request a hearing if appellant has not, under the same terms and conditions, at which the appellant may also appear and be represented by counsel.

[61 FR 29659, June 12, 1996]

§§ 1.664-1.666 [Reserved]

Administrative Control of Funds

Source: Sections 1.670 to 1.673 issued at 48 FR 30622, July 5, 1983, unless otherwise noted.

§ 1.670 Purpose.

The following regulations establish a system of administrative controls for all appropriations and funds available to the Department of Veterans Affairs to accomplish the following purposes:

(a) Establish an administrative subdivision of controls to restrict obligations and expenditures against each appropriation or fund to the amount of the apportionment or the reapportionment; and

(b) Fix responsibility for the control of appropriations or funds to high level officials who bear the responsibility for apportionment or reapportionment control.

(Authority: 31 U.S.C. 1514)

§ 1.671 Definitions.

For the purpose of §§ 1.670 through 1.673, the following definitions apply:

(a) Administrative subdivision of funds. An administrative subdivision of funds is any administrative subdivision of an appropriation or fund which makes funds available in a specified amount for the purpose of controlling apportionments or reapportionments.

(b) Allotment. An allotment is an authorization by the Director, Office of Budget and Finance, to department and staff office heads (allottees) to incur obligations within specified amounts, during a specified period, pursuant to an Office of Management and Budget apportionment or reapportionment action. The creation of an obligation in excess of an allotment is a violation of the administrative subdivision of funds.

(c) Allowance. An allowance is a subdivision below the allotment level, and is a guideline which may be issued by department or staff office heads (allottees) to facility directors and other officials, showing the expenditure pattern or operating budget they will be expected to follow in light of the program activities contemplated by the overall VA budget or plan of expenditure. The creation of an obligation in excess of an allowance is not a violation of the administrative subdivision of funds.

(Authority: 31 U.S.C. 1514)

§ 1.672 Responsibilities.

(a) The issuance of an allotment to the administration and staff office heads (allottees) is required and is the responsibility of the Director, Office of
§ 1.702

(a) The Department of Veterans Affairs will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children information in domestic official mail and publications directed to members of the public and Department of Veterans Affairs employees.

(b) The Department of Veterans Affairs will insert pictures and biographical information related to missing children in a variety of official mail originating at the Department of Veterans Affairs automation centers. In addition, pictures and biographical information are printed in self-mailers and other Department of Veterans Affairs

§ 1.703

(a) The Executive Director of Veterans Integrated Services Network (VISN) is responsible for requesting and receiving apportionments from the Office of Management and Budget. Administration and staff heads shall promptly request that an appropriation or fund be apportioned if feasible whenever it appears that obligations may exceed the level of the apportionment.

(b) The issuance of a grant is discretionary with department or staff office heads (allottees), as an allowance is merely a management device which allottees may utilize in carrying out their responsibilities. Allottees are responsible for keeping obligations within the amounts of their allotments, whether allowances are issued or not.

(c) The Director, Office of Budget and Finance, is responsible for requesting apportionments and reapportionments from the Office of Management and Budget. Administration and staff heads shall promptly request that an appropriation or fund be reapportioned if feasible whenever it appears that obligations may exceed the level of the apportionment.

(Authority: 31 U.S.C. 1514)
§ 1.703  Percentage estimate.

It is the Department of Veterans Affairs objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information.


[60 FR 48388, Sept. 19, 1995]

§ 1.704  [Reserved]

§ 1.705  Restrictions on use of missing children information.

Missing children pictures and biographical data shall not be:

(a) Printed on official envelopes and other materials ordered and stocked in quantities that represent more than a 90-day supply.

(b) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents Sales Program or be distributed to depository libraries.

(c) Inserted in any envelope or publication the contents of which may be construed to be inappropriate for association with the missing children program.

(d) Inserted in any envelope where the insertion would increase the postage cost for the item being mailed.

(e) Placed on letter-size envelopes on the official indicia, the area designated for optical character readers (OCR's), bar code read area, and return address area in accordance with the Office of Juvenile Justice and Delinquency Prevention guidelines and U.S. Postal Service standards.


[52 FR 10889, Apr. 6, 1987, as amended at 60 FR 48388, Sept. 19, 1995]
§ 1.781 Organization and address of the Board.

(a) The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least 3 members who decide the case by a majority vote.

§ 1.780 Board of Contract Appeals—Jurisdiction.

The Department of Veterans Affairs Board of Contract Appeals (referred to in §§1.780 through 1.783 as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613) relating to contracts made by (a) the Department of Veterans Affairs or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

§ 1.782 Policy and procedure.

(a) Rules of procedure. Appeals to the Board are processed in accordance with Rules of Procedure adopted by the Board in compliance with the guidelines issued by the Office of Federal Procurement Policy under the provisions of the Contract Disputes Act of 1978 (41 U.S.C. 601, 607(h)). There is no further administrative appeal within the Department of Veterans Affairs from final decisions rendered by the Board.

(b) Application and interpretation of rules. It is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules, therefore, are applied and interpreted to provide, to the fullest extent practicable, informal expeditious, and inexpensive resolution of disputes. For that purpose, the Board is authorized to require contracting officers and other Department of Veterans Affairs officials to furnish the Board with such information, technical data, and other assistance as the Board may require in the performance of its duties.

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(a) Rule 1; appeals from final decisions and requests for final decisions—(1) Notice of appeal. Notice of an appeal shall be in writing and mailed to or otherwise furnished the Board within 90 days from the date of receipt of a contracting officer's final decision. A copy thereof shall be furnished the contracting officer from whose decision the appeal is taken.

(2) Failure to issue a final decision. (i) Where the contractor has submitted a claim of $50,000 or less to the contracting officer, or pursuant to the Disputes Clause, has requested a decision by the contracting officer which presently involves no monetary amount, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in paragraph (a)(1) of this section, citing the failure of the contracting officer to issue a decision.

(3) Stay of proceedings. Upon the docketing of an appeal filed pursuant to the provisions of paragraph (a)(2) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as determined by the Board.

(4) Request for final decision. In lieu of filing a notice of appeal under paragraph(a)(2) of this section, the contractor, in the event of undue delay or refusal on the part of the contracting officer, may request that the Board direct the contracting officer to issue a decision in a specified period of time, as determined by the Board.

(b) Rule 2; notice of appeal, contents of. A notice of appeal should indicate that an appeal is being taken and should identify the contract by number, the department, agency, or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor taking the appeal) or by the appellant's duly authorized representative or attorney. The complaint referred to in paragraph (f) of this section (Rule 6) may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) Rule 3; docketing of appeals. When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of §§1.780 through 1.783 and to the contracting officer.

(d) Rule 4; preparation, content, organization, forwarding, and status of appeal file—(1) Duties of contracting officer. Within 30 days of receipt of notice that
an appeal has been filed, the contracting officer shall assemble and transmit to the Board through the Office of General Counsel an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;
(ii) The contract, including specifications and pertinent amendments, plans, and drawings;
(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
(v) Any additional information considered relevant to the appeal.

Within the same time above specified, the Office of General Counsel shall furnish the appellant a copy of each document transmitted to the Board, except those in paragraph (d)(1)(ii) of this section. As to the latter, a list furnished appellant indicating specific contractural documents transmitted will suffice.

(2) Duties of the appellant. Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which are considered to be relevant to the appeal, and shall furnish two copies of such documents to the government trial attorney.

(3) Organization of appeal file. Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(4) Lengthy documents. Upon request by either party the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when it would be burdensome to do so. At the time a party files with the Board a document as to which such a waiver has been granted the party shall notify the other party that the document or a copy thereof is available for inspection at the office of the Board or of the party filing same.

(5) Status of documents in appeal file. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with paragraphs (m) and (t) of this section (Rules 13 and 20).

(6) Dispensing with appeal file requirements. Notwithstanding the provisions of paragraph (d)(1) through (5) of this section, the filing of the documents in paragraph (d)(1) and (2) of this section may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

(e) Rule 5; dismissal for lack of jurisdiction. Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(1) Rule 6; pleadings and motions. (1) Appellant. Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the
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complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant’s claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(2) Government. Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government’s defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(3) Motions. The Board may entertain and rule upon appropriate motions. (g) Rule 7; amendments of pleadings or record—(1) More definite statement and reply. The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(2) Amendments. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable that party to meet such evidence.

(h) Rule 8; hearing election. After filing of the Government’s answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it elects a hearing, as prescribed in paragraphs (q) through (y) of this section (Rules 17 through 25), or whether it elects to submit its case on the record without a hearing, as prescribed in paragraph (k) of this section (Rule 11).

(i) Rule 9; prehearing briefs. Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to paragraph (h) of this section (Rule 8). If the Board does not require prehearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be filed with the Board at least 15 days prior to the date set for hearing, and a copy simultaneously furnished to the other party.

(j) Rule 10; prehearing or presubmission conference. (1) Whether the case is to be submitted pursuant to paragraph (k) of this section (Rule 11), or heard pursuant to paragraphs (q) through (y) of this section (Rules 17 through 25), the Board may, upon its own initiative, or upon the application of either party, arrange a telephone conference or require the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(i) Simplification, clarification, or severance of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(iii) Agreements and rulings to facilitate discovery;

(iv) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(v) The possibility of agreement disposing of any or all of the issues in dispute; and

(vi) Such other matters as may aid in the disposition of the appeal.
(2) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

(k) Rule 11; submission without a hearing.

Either party may elect to waive a hearing and submit its case upon the record as settled pursuant to paragraph (m) of this section (Rule 13). Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. In accordance with paragraph (m) of this section (Rule 13), affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record. The Board may permit such submissions to be supplemented by oral argument (transcribed, if requested), and by briefs filed in accordance with paragraph (w) of this section (Rule 23).

(l) Rule 12; optional small claims (expedited) and accelerated procedures. These procedures are available solely at the election of the appellant.

(1) 12.1 Elections to utilize small claims (expedited) and accelerated procedures. These procedures are available solely at the election of the appellant.

(2) 12.2 The small claims (expedited) procedure. (i) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(A) Within 10 days from the Government’s first receipt from either the appellant or the Board of a copy of the appellant’s notice of election of the small claims (expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer’s final decision, and the appellant’s claim letter or letters, if any; remaining documents required under paragraph (d) of this section (Rule 4) shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(B) Within 15 days after the Board has acknowledged receipt of the appellant’s notice of election of the small claims (expedited) procedure, the Board is required to take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (1) Identify and simplify the issues; (2) establish a simplified procedure appropriate to the particular appeal involved; (3) determine whether either party wants a hearing and, if so, fix a time and place therefor; (4) require the Government to furnish all the additional documents relevant to the appeal; and (5) establish an expedited schedule for resolution of the appeal.

(ii) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant’s election. The details of this procedure appear in paragraph (l)(3) of this section (Rule 12).

(iii) The appellant’s election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(iv) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.
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120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under this section 1.783, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(iii) Written decisions by the Board in cases processed under the small claims (expedited) procedure will be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(iv) Decisions under this procedure shall have no value as precedent and, in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

§ 12.4 The accelerated procedure. (i) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may shorten time periods prescribed or allowed under this §1.783, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(ii) Written decisions by the Board in cases processed under the accelerated procedure will normally be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair, Vice Chair, or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(m) Rule 13: settling the record. (1) The record upon which the Board's decision will be rendered consists of the documents furnished under paragraphs (d) and (l) of this section (Rules 4 and 12), to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically
designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its discretion, no evidence shall be received after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(o) Rule 14; discovery—depositions—(1) General policy and protective orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provision for protecting the secrecy of confidential information or documents.

(2) When depositions permitted. After an appeal has been docketed and complaint filed, the parties may agree to, or the Board may order, upon application of either party, the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) Orders on depositions. The time, place, and manner of taking depositions shall be as agreed upon by the parties or, failing such agreement, governed by order of the Board.

(4) Use as evidence. No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(5) Expenses. Each party shall bear its own expenses associated with the taking of any deposition.

(6) Subpoenas. Where appropriate, a party may request the issuance of a subpoena under the provisions of paragraph (u) of this section (Rule 21).

(o) Rule 15; interrogatories to parties, admissions of fact, and production and inspection of documents. After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (2) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service, the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (3) a request for the production, inspection, and copying of any documents or objects, not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after service. Any discovery engaged in under this rule shall be subject to the provisions of paragraph (n)(1) of this section (Rule 14(A)) with respect to general policy and protective orders, and paragraph (ii) of this section (Rule 35) with respect to sanctions.

(p) Rule 16; service of papers other than subpoenas. Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers, replies, and briefs shall be filed directly with the Board and the Board that a copy has been so furnished. Subpoenas shall be served as
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provided in paragraph (u) of this section (Rule 21).

(q) Rule 17; hearings, where and when held. Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, requirements of paragraph (l) of this section (Rule 12), and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

(r) Rule 18; notice of hearings. The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

(s) Rule 19; unexcused absence of a party. The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in paragraph (k) of this section (Rule 11).

(t) Rule 20; hearings, nature of and examination of witnesses—(1) Nature of hearings. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will depend on relevancy and materiality. Evidence which may not be admissible under the Federal Rules of Evidence may be admitted in the discretion of the presiding Administrative Judge or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

(2) Examination of witnesses. Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his or her statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(u) Rule 21; subpoenas—(1) General. Upon written request of either party filed with the Board, or on the Board’s own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chair may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to paragraph (u)(1)(i) or (ii) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(2) Voluntary cooperation. Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(3) Requests for subpoenas—(i) A request for a subpoena shall normally be filed at least:
(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;
(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.
In its discretion, the Board may honor requests for subpoenas not made within these time limitations.
(ii) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.
(4) Requests to quash or modify. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.
(5) Form; issuance—
(i) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.
(ii) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.
(6) Service. (i) The party requesting issuance of a subpoena shall arrange for service.
(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.
(iii) The party at whose request a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.
(7) Contumacy or refusal to obey a subpoena. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.
(v) Rule 22; copies of papers. When books, records, papers, or documents have been received in evidence, true copies thereof, or of such part thereof as may be material or relevant, may be substituted therefor, during the hearing or at the conclusion thereof.
(w) Rule 23; posthearing briefs. Posthearing briefs may be submitted upon such terms as may be agreed to by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.
(x) Rule 24; transcript of proceedings. Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under paragraph (l)(2) of this section (Rule 12.2). Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost of duplication.
(y) Rule 25: withdrawal of exhibits. After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(2) Rule 26: representation—the appellant. An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(aa) Rule 27: representation—the government. Government counsel may, in accordance with their authority, represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant’s attorney in the form specified by the Board from time to time.

(bb) Rule 28: decisions. Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the office of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in paragraph (m) of this section (Rule 13).

(cc) Rule 29: motions for reconsideration. A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to support the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(dd) Rule 30: suspension and dismissal without prejudice. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend or terminate further processing of the appeal. If, thereafter, the Board is advised by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board’s calendar without loss of position. In other cases where the Board is unable to proceed with disposition for reasons not within the control of the Board, an appeal may be placed in a suspense status. Where the suspension has continued, or may continue, for an inordinate length of time, the Board, in its discretion, may dismiss such appeal from its docket without prejudice to restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to be with prejudice.

(ee) Rule 31: dismissal or default for failure to prosecute or defend. Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to paragraph (ii) of this section (Rule 35). If good cause is not shown, the Board may take appropriate action.

(ff) Rule 32: remand from court. Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court’s order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court’s directive and time limitations permit, such orders shall conform to these rules.

(gg) Rule 33: time, computation, and extensions. (1) Where possible, procedural
actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(hh) Rule 34; ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(ii) Rule 35; sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order as it considers necessary to the just and expeditious conduct of the appeal.

(jj) Rule 36; effective date and applicability. These rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter.

§ 1.892 Review of positions.

Positions becoming vacant, unless excepted as provided by §1.897, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.
(b) Workload.
(c) Employment ceilings and budgetary considerations.
(d) Availability of qualified applicants willing to work part time.
(e) Other criteria based on local needs and circumstances.

§ 1.893 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in §1.892 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

§ 1.894 Annual goals and timetables.

An departmentwide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set

PART-TIME CAREER EMPLOYMENT PROGRAM

SOURCE: Sections 1.891 through 1.897 appear at 44 FR 55172, Sept. 25, 1979, unless otherwise noted.

§ 1.891 Purpose of program.

Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard work-week. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who requires a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, and assisting students who must finance their own education or vocational training. In view of this, the Department of Veterans Affairs will operate a part-time career employment program, consistent with the needs of its beneficiaries and its responsibilities.

(Authority: 5 U.S.C. 3401 note)
interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, but may be supplemented by field facilities.

(Authority: 5 U.S.C. 3402)

§ 1.895 Review and evaluation.

The part-time career employment program will be reviewed through regular employment reports to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

(Authority: 5 U.S.C. 3402)

§ 1.896 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.
(b) State Employment offices.
(c) VA Recruiting Bulletins.

(Authority: 5 U.S.C. 3402)

§ 1.897 Exceptions.

The Secretary of Veterans Affairs, or designees, may except positions from inclusion in this program as necessary to carry out the mission of the Department.

(Authority: 5 U.S.C. 3402)

STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION OR TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL CLAIMS FOR MONEY OR PROPERTY


SOURCE: Sections 1.900 to 1.906 appear at 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

§ 1.900 Prescription of standards.

The instructions contained in §§ 1.900 through 1.954 are issued pursuant to the Federal Claims Collection Act (Pub. L. 89-508 and 97-363) and the joint regulations thereunder of the Comptroller General of the United States and the Attorney General of the United States, title 4, chapter II, Code of Federal Regulations. Except as provided in §1.903, they constitute standards governing the Department of Veterans Affairs collection, compromise, suspension or termination of collection effort, and the referral to the General Accounting Office and the Department of Justice for litigation of civil claims by the Department of Veterans Affairs for money or property.


§ 1.901 Omissions not a defense.

The standards set forth in §§1.900 through 1.954 shall apply to VA handling of civil claims for money and property but the failure of the agency to comply with any provision of the standards shall not be available as a defense for any debtor.

[52 FR 42105, Nov. 3, 1987]

§ 1.902 Fraud, antitrust and tax claims excluded.

(a) The standards set forth in §§1.900 through 1.954 do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on violation of the antitrust laws. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims.

(b) Upon identification of a claim of any of the types described in paragraph (a) of this section (an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim), VA shall refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may determine that no action is warranted and return the claim to VA for further handling in accordance with §§1.900 through 1.954.

(c) VA has no authority to consider or compromise Federal tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply.
(d) Sections 1.900 through 1.954 do not apply to claims between Federal agencies. VA shall attempt to resolve inter-agency claims by negotiation. Any unresolved claims shall be referred to the General Accounting Office (GAO) for final resolution.

(Authority: 37 U.S.C. 3711)
[52 FR 42105, Nov. 3, 1987]

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.954 is intended to preclude VA settlement, waiver, or compromise of claims under statutes other than the Federal Claims Collection Act. See, e.g. 38 U.S.C. 3720(a)(4) and (5) and 5302(a) and 42 U.S.C. 2651-2653. Nor are §§ 1.900 through 1.954 intended to preclude Department of Veterans Affairs settlement, waiver, or compromise of claims under § 17.48(f) of this chapter for the cost of medical or hospital care furnished pursuant to § 17.47(c)(1) or (d) of this chapter to persons who are entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof by reason of “workmen's compensation” or “employer's liability” statutes, State or Federal; right to maintenance and cure in admiralty; or statutory or other relationships with third parties, giving rise to liability for damages because of negligence or other legal wrong.


§ 1.904 Conversion claims.

The instructions contained in §§ 1.900 through 1.954 are directed primarily to the recovery of money on behalf of the Government and the circumstances in which the Department of Veterans Affairs may dispose of claims for less than the full amount. In addition, the Department of Veterans Affairs will assert demands for the return of specific property or the payment of its value in cases of conversion.

§ 1.905 Subdivision of claims not authorized.

Claims shall not be subdivided in order to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest and administrative costs, either for purposes of suspension or termination of collection action (§§ 1.940 through 1.943) or for determining the applicability of the $20,000 limit with respect to compromise (§§ 1.930 through 1.938).

(Authority: 31 U.S.C. 3711)
[52 FR 42105, Nov. 3, 1987]

§ 1.906 Required administrative proceedings.

Nothing contained in §§ 1.900 through 1.954 is intended to foreclose the right of any debtor to appeal or administrative hearing provided by statute, contract, or applicable Department of Veterans Affairs Regulation.

§ 1.907 Definitions.

(a) For the purpose of §§ 1.900 through 1.954, the terms claims and debt are synonymous and interchangeable. They refer to any amount of money or property which has been determined by an appropriate official of VA to be owed to the United States by any person, organization or entity, except another Federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the initial written notice of indebtedness or applicable contractual agreement, unless other satisfactory payment arrangements have been previously made. A debt is also considered delinquent if the debtor fails to satisfy obligations under a repayment agreement with VA.

(c) As used in §§ 1.900 through 1.954, referral for litigation means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to VA Regional Counsel for legal action.

(Authority: 31 U.S.C. 3701, 3711)
[52 FR 42105, Nov. 3, 1987]

STANDARDS FOR COLLECTION OF CLAIMS

§ 1.910 Aggressive collection action.

The Department of Veterans Affairs will take aggressive action, on a timely basis with effective followup, to collect all claims for money or property arising from its activities.

§ 1.911 Collection of debts owed by reason of participation in a benefits program.

(a) Scope. This section applies to the collection of debts resulting from an individual’s participation in a benefits program administered by the Department of Veterans Affairs. It does not apply to the Department’s other claims collection activities. (Note: School liability debts are governed by §21.4009; financial institution debts are subject to chapter II, parts 209, 210, and 240 of title 31, Code of Federal Regulations; and other debts are governed by part 102 of title 4 of the Code of Federal Regulations.)

(b) Written demands. When the Department of Veterans Affairs has determined that a debt exists by reason of an administrative decision or by operation of law, the Department of Veterans Affairs shall promptly demand, in writing, payment of the debt. The Department of Veterans Affairs shall notify the debtor of his or her rights and remedies in connection with the debt and the consequences of failure to cooperate with collection efforts. Ordinarily, no more than three demand letters, at intervals of not more than thirty days, will be sent, but letters subsequent to the initial letter will not be necessary if:

(1) The Secretary determines that further demand would be futile;

(2) The debtor has indicated in writing that he or she does not intend to pay the debt;

(3) Judicial action to protect the Government’s interest is indicated under the circumstances; or

(4) Collection by offset pursuant to §1.912a can be made.

(c) Rights and remedies. Subject to limitations referred to in this paragraph, the debtor has the right to informally dispute the existence or amount of the debt, to request waiver of collection of the debt, to a hearing on the waiver request, and to appeal the Department of Veterans Affairs decision underlying the debt. These rights can be exercised separately or simultaneously. Except as provided in §1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding.

(1) Informal dispute. This means that the debtor writes to the Department of Veterans Affairs and questions whether he or she owes the debt or whether the amount is accurate. The Department of Veterans Affairs will, as expeditiously as possible, review the accuracy of the debt determination. If the resolution is adverse to the debtor, he or she may also request waiver of collection as indicated in paragraphs (c)(2) and (3) of this section.

(2) Request for waiver; hearing on request. The debtor has the right to request waiver of collection, in accordance with §1.963 or §1.964, and the right to a hearing on the request. Requests for waivers must be filed in writing. A waiver request must be filed within the time limit set forth in 38 U.S.C. §1. If waiver is granted, in whole or in part, the debtor has a right to refund of amounts already collected up to the amount waived.

(3) Appeal. The debtor may appeal, in accordance with part 19 of this title, the decision underlying the debt.

(d) Notification. The Department of Veterans Affairs shall notify the debtor in writing of the following:

(1) The exact amount of the debt;

(2) The specific reasons for the debt, in simple and concise language;

(3) The rights and remedies described in paragraph (c) of this section, including a brief explanation of the concept of, and requirements for, waiver;

(4) That collection may be made by offset from current or future Department of Veterans Affairs benefits, subject to §1.912a;

(5) That interest and administrative costs may be assessed, in accordance with §1.919, as appropriate.

(e) Sufficiency of notification. Notification is sufficient when sent by ordinary mail directed to the debtor’s last known address and not returned as undeliverable by postal authorities.
§ 1.912 Collection by offset.

(a) Authority and scope. In accordance with part 102 of title 4 of the Code of Federal Regulations, VA shall collect debts by administrative offset from any payments made by VA to an individual indebted to VA. This section does not pertain to offset from either current salary or from benefit payments, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments and current salary are found in § 1.912a and §§ 1.980 through 1.994. NOTE: VA cannot offset or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§1.900 through 1.994, any debt described in 38 U.S.C. 3726 unless the requirements set forth in that section have been met.

(b) Notification. Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, VA is required to provide the debtor with written notice of:

(1) The nature and amount of the debt;
(2) VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;
(3) The opportunity to inspect and copy VA records pertaining to the debt;
(4) The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of the debt, or to request a hearing on any of these matters;
(5) That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this notice within 30 days of the date of this notice; and
(6) The opportunity to enter into a written agreement with VA to repay the debt in lieu of offset.

(c) Deferral of offset. (1) If the debtor, within 30 days of the date of the required notification by VA, requests in writing the waiver of collection of the debt in accordance with § 1.963 or § 1.964, offset shall not commence until VA has made an initial decision to deny the waiver request.

(2) If the debtor, within 30 days of the date of the required notification by VA, requests in writing a hearing on the issues found in paragraphs (c)(1) and (2) of this section, offset shall not commence until a decision is rendered by VA on the issue which is the basis of the hearing.

(d) Exceptions. (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset. In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963 or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of
§ 1.912a Collection by offset—from VA benefit payments.

(a) Authority and scope. VA shall collect debts governed by §1.911 of this part by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. Certain military service debts shall be collected by offset against current or future compensation or pension benefit payments to the debtor under authority of 38 U.S.C. 5301(c), as provided in paragraph (e) of this section.

(b) Notification. Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been notified in writing of the matters described in §1.911(a)(1) and (d) and paragraph (c) of this section.

(c) Deferral of offset. (1) If the debtor, within thirty days of the date of the notification required by paragraph (b) of this section, disputes, in writing, the existence or amount of the debt in accordance with §1.911(a)(1), offset shall not commence until the dispute is reviewed as provided in §1.911(a)(1) and unless the resolution is adverse to the debtor.

(2) If the debtor, within thirty days of the date of notification required by paragraph (b) of this section, requests, in writing, waiver of collection in accordance with §1.963 or §1.964, as applicable, offset shall not commence until the Department of Veterans Affairs has made an initial decision on waiver.

(3) If the debtor, within thirty days of the notification required by paragraph (b) of this section, requests, in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 4 CFR 102.3(b)(3), VA may not initiate offset to collect a debt more than 10 years after VA’s right to collect the debt first accrued (with certain exceptions as explained in §102.3(b)(3)).
writing, a hearing on the waiver request, no decision shall be made on the waiver request until after the hearing has been held.

(d) Exceptions. Offset may commence prior to the resolution of a dispute or a decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911a(d) shall be made at the time offset begins or as soon thereafter as possible.

(Authority: 38 U.S.C. 5314, Ch. 37)

§ 1.914 Contact with debtor’s employing agency.

When a debtor of the Department of Veterans Affairs is employed by another agency of the Federal Government or is a member of the Military establishment or the Coast Guard and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Department of Veterans Affairs will contact the employing agency in an effort to arrange with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469; 3 CFR 1965 Supp., pp. 130, 131).

§ 1.915 Suspension or revocation of eligibility.

Demands on debtors who are lenders, contractors, brokers, or other participants in Department of Veterans Affairs programs will include notification that failure to pay their debts within a reasonable time may be cause for suspension or disqualification to the extent authorized by law. Nothing in this section is intended to be in derogation of the provisions of 38 U.S.C. 3704(b) and 3704(d) as implemented by §§ 36.4331 and 36.4361 of this chapter. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 will be reported to the Treasury Department at once. Prompt and appropriate Department of Veterans Affairs action will be taken upon receipt of Treasury Department notification that a surety’s certificate of authority to do business with the Federal Government has been revoked or forfeited.

§ 1.916 Liquidation of collateral.

VA will exercise its rights to liquidate security or collateral and apply the proceeds to debts due it through use of a power of sale in the security instrument or a non-judicial foreclosure if the debtor fails to pay his or her debt, within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or the particular

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§ 1.917 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to VA together with any interest and administrative costs assessed under §1.919, shall be collected in full in one lump sum. Collection in one lump sum is applicable whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, payments may be accepted in regular installments when the debtor is financially unable to pay the debt in one lump sum.

(b) In agreeing to accept regular installment payments to liquidate an outstanding indebtedness, VA shall obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event that the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor’s ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in not more than three years. Installment payments of less than $50 per month shall be accepted only if justified on the grounds of financial hardship or for some other reasonable cause.

(c) If VA is holding an unsecured claim for administrative collection, it shall attempt to obtain from a debtor an executed confess-judgment note in States and jurisdictions where permitted, using Department of Justice Form 1, or another appropriate Department of Justice form, whenever the total amount of the deferred installments will exceed $750. Such notes may also be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, VA shall provide debtors with a written explanation of the consequences of signing the note, and shall maintain sufficient documentation to demonstrate that the debtor signed the note knowingly and voluntarily. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. VA may accept installment payments even if the debtor refuses to execute a confess-judgment note or to give other security.

(d) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among these debts, that designation must be followed by VA. If the debtor does not designate the application of the payment, VA shall apply payments to the various debts in accordance with the best interests of the Government as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(Authority: 31 U.S.C. 3711)
[52 FR 42106, Nov. 3, 1987]

§ 1.918 Exploration of compromise.

VA will attempt to effect compromises, preferably during the course of personal interviews, in accordance with the standards set forth in §§1.930 through 1.938 in all cases in which it is ascertained that the debtor is financially unable to pay the full amount or in which the litigative risks or the costs of litigation dictate such action.

(Authority: 31 U.S.C. 3711)
[52 FR 42107, Nov. 3, 1987]

§ 1.919 Interest.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, VA shall assess:

(1) Interest on all indebtedness to the United States arising as a result of participation in VA benefit programs which are being paid in installments,

(2) Interest and administrative costs of collection on debts where repayment has become delinquent, and
(3) Interest, penalties, and administrative costs on all nonbenefit debts in accordance with 4 CFR 102.13.

(b) Every party entering into an agreement with the Department of Veterans Affairs for repayment of indebtedness in installments shall be advised of the interest charges to be added to the debt. All debtors being provided notice of indebtedness, including those entering into repayment agreements, shall be advised that upon the debt becoming delinquent, or in the case of repayment of already delinquent debts, interest and the administrative costs of collection will be added to the principal amount of the debt.

(c) The rate of interest charged by VA shall be based on the rate paid by the United States for its borrowing as published in the Treasury’s Cash Management Regulations (ITFM 6-8000). The rate of interest shall be adjusted annually on the first day of the calendar year to reflect the average rate being charged in accordance with the Treasury’s Cash Management Regulations. Once the rate of interest has been determined for a particular debt, the rate shall remain unchanged throughout the duration of repayment of that debt.

(d) Interest on amounts covered by §1.919 shall accrue from the date the initial notice of the debt is mailed to the debtor. Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to accrue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 5302 of title 38 U.S.C., and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government’s best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) When a debtor requests a waiver of collection of the indebtedness, interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(i) A Committee on Waivers and Compromises has considered the request and rendered an initial decision, or

(ii) The applicable time limit for requesting waiver, as stated in 38 U.S.C. 5302, has expired and the debtor, after notice in accordance with §1.911, has not made such a request. This subsection does not apply to debts resulting from participation in the loan program administered under chapter 37 of title 38 of the United States Code.

(g) Administrative costs assessed under §1.919 shall be the average costs of collection of similar debts, or actual collection costs as may be accurately determined in the particular case. No administrative costs of collection will
§ 1.920 Documentation of collection action.

An appropriate file will be maintained for each claim completely documenting all Department of Veterans Affairs collection action and the basis for any compromise or for suspension or termination of collection action.

[46 FR 62057, Dec. 22, 1981]

§ 1.921 Additional collection action.

Nothing in §§ 1.900 through 1.954 is intended to preclude the utilization of any other remedy available to the Department of Veterans Affairs.

§ 1.922 Disclosure of debt information to consumer reporting agencies (CRA).

(a) The Department of Veterans Affairs may disclose all information determined to be necessary, including the name, address, Department of Veterans Affairs file number, Social Security number, and date of birth, to consumer reporting agencies for the purpose of—

(1) Obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by VA or indebted in any other manner to VA;

(2) Obtaining a consumer report in order to assess an individual's ability to repay a debt when such individual has failed to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number.

(d)(1) Prior to releasing information under paragraph (c) of this section, the Department of Veterans Affairs will send a notice to the individual. This notice will inform the individual that—

(i) The Department of Veterans Affairs has determined that he or she is indebted to the United States;

(ii) The debt is presently delinquent; and

(iii) The fact of delinquency may be reported to consumer reporting agencies after 30 days have elapsed from the date of the notice.

(2)(i) VA will notify each individual of the right to dispute the existence or amount of any debt in accordance with §§ 3.101(e) and 19.109, and to request a waiver of the debt in accordance with §§ 1.955 through 1.970 if applicable.
(ii) If the Department of Veterans Affairs has not previously notified the individual of the rights described in paragraph (d)(2)(i) of this section, the Department of Veterans Affairs will include this information in the notice described in paragraph (d)(1) of this section. The individual shall be afforded a minimum of 30 days from the date of the notice to respond to it before information is reported to consumer reporting agencies.

(3) The Department of Veterans Affairs will defer reporting information to a consumer reporting agency if the individual disputes the existence or amount of any debt or requests waiver of the debt within the time limits set forth in paragraph (d)(2)(ii) of this section. The Department of Veterans Affairs will review any dispute and notify the individual of its findings. If the original decision is determined to be correct, or if the individual's request for waiver is denied, the Department of Veterans Affairs may report the fact of delinquency to a consumer reporting agency. However, the individual shall be afforded 30 days from date of the notice of the agency's determination to repay the debt.

(4) Nothing in this section affects an individual's right to appeal an agency decision to the Board of Veterans Appeals. However, information concerning the debt may be disclosed while an appeal is pending before the Board of Veterans Appeals.

(5) Upon request, the Department of Veterans Affairs will notify an individual—

(i) Whether information concerning a debt has been reported to consumer reporting agencies;

(ii) Of the name and address of each consumer reporting agency to which information has been released; and

(iii) Of the specific information released.

A notice of the right to request this information will be sent with the notice described in paragraph (d)(1) of this section.

(e) Subsequent to disclosure of information to consumer reporting agencies as described in paragraph (c) of this section, the Department of Veterans Affairs shall:

(1) Notify on a monthly basis each consumer reporting agency concerned of any substantial change in the status or amount of indebtedness.

(2) Promptly verify any and all information disclosed if so requested by the consumer reporting agency concerned.

(f) In the absence of a different rule prescribed by statute, contract, or other regulation, an indebtedness is considered delinquent if not paid by the individual by the date due specified in the notice of indebtedness, unless satisfactory arrangements are made by such date.

(g) Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(h) The Privacy Act (5 U.S.C. 552a) does not apply to any contract between the Department of Veterans Affairs and a consumer reporting agency, nor does it apply to a consumer reporting agency and its employees. See 38 U.S.C. 5701(i). This paragraph does not relieve the Department of Veterans Affairs of its obligation to comply with the Privacy Act.

(i) The term "consumer reporting agency" means any person or agency which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties or to other consumer reporting agencies. The term "consumer reporting agency" shall also mean any person or agency which serves as a marketing agent under arrangements enabling third parties to obtain such information from consumer reporting agencies, or which obtain such information for the purpose of furnishing it to consumer reporting agencies.

(Authority: 38 U.S.C. 5701 (g), (i); 31 U.S.C. 952)

§ 1.923 Contracting for collection services.

(a) VA has authority to contract for collection services to recover delinquent debts, provided that:
§ 1.924 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt, or to collect or compromise a debt in accordance with §§ 1.900 through 1.954, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor’s most current mailing address from the records of the Internal Revenue Service.

(b) VA may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors hired by VA, in order to facilitate the collection or compromise of debts. A mailing address obtained under paragraph (a) of this section may be disclosed to a consumer reporting agency under authority of § 1.922 only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) VA will ensure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

(Authority: 31 U.S.C. 3711)

§ 1.925 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System (FERS) be administratively offset in reasonable amounts in order to collect,
in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management in accordance with such regulations prescribed by the Director of that Office. See 5 CFR part 831, subpart R (§§ 831.1801 through 831.1808) and part 845, subpart O (§§ 845.401 through 845.408). In addition, VA may also offset against a Federal employee’s final salary check and lump sum leave payments, unless they represent continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.994. See § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, VA shall include a written certification that:

(1) The debtor owes VA a debt, including the amount of the debt;
(2) VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and
(3) VA has complied with §§ 1.911, 1.912, 1.912a, or 4 CFR 102.3 including any required hearing or review.

(c) Once VA decides to request administrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may identify the debtor’s account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.

(d) If VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of VA’s determination with respect to the amount and validity of the debt waiver under 5 U.S.C. 5584 or 38 U.S.C. 5302, or providing or not providing an oral hearing.

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716)

§ 1.926 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of offsetting the debt from any payment, except salary, (see paragraph (e) of this section), made by such agency to the person indebted to VA.

(b) VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date VA’s right to collect the debt first accrued.

(c) This certification will also state that VA provided the debtor with written notice of:

(1) The nature and amount of the debt;
(2) VA’s intention to pursue collection by offset procedures;
(3) The opportunity to inspect and copy VA records pertaining to the debt;
(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;
(5) The opportunity to enter into a written agreement with VA for the repayment of the debt; and
(6) Other applicable notices required by §§ 1.911, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both VA and the debtor subsequent to the notice, as well as the dates of such actions.
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(e) The referral by VA of a VA debt to another agency for the purposes of salary offset shall be done in accordance with 5 CFR 550.1106.

(Authority: 31 U.S.C. 3711)
[52 FR 42108, Nov. 3, 1987]

§ 1.927 Analysis of costs and prevention of debts.

(a) VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and various dollar ranges should be used to compare the cost effectiveness of alternative collection procedures, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken. Costs and recovery data should also be useful in justifying adequate resources for an effective collection program, evaluating the feasibility and cost effectiveness of contracting for consumer reporting agencies' services (§1.922), collection services (§1.923), and for determining appropriate charges for administrative costs (§1.919).

(b) VA shall insure that adequate procedures are established which both identify the causes of overpayments, delinquencies, and defaults and also describe the actions necessary to correct such problems.

(Authority: 31 U.S.C. 3711 through 3719)
[52 FR 42109, Nov. 3, 1987]

§ 1.928 Exemptions.

(a) Sections 1.900 through 1.954 do not apply to debts arising under, or to payments made under, the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or tariff laws of the United States. However, the remedies and procedures described in §§1.900 through 1.954 are still authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or common law.

(b) This section shall not be construed as prohibiting the use of §§1.900 through 1.954 when VA attempts to collect debts owed to this agency by persons employed by the agencies administering the laws cited in paragraph (a) of this section.

(Authority: 31 U.S.C. 3711)
[52 FR 42109, Nov. 3, 1987]

§ 1.929 Reduction of debt through performance of work-study services.

(a) Scope. (1) Subject to the provisions of this section VA may allow an individual to reduce an indebtedness to the United States through offset of benefits to which the individual becomes entitled by performance of work-study services under 38 U.S.C. 3485 and 3537 when the debt arose by virtue of the individual's participation in a benefits program provided under any of the following:

(i) 38 U.S.C. chapter 30;
(ii) 38 U.S.C. chapter 31;
(iii) 38 U.S.C. chapter 32;
(iv) 38 U.S.C. chapter 34;
(v) 38 U.S.C. chapter 35;
(vi) 38 U.S.C. chapter 36 (other than an education loan provided under subpart F, part 21 of this title); or
(vii) 10 U.S.C. chapter 1606 (other than an indebtedness arising from a refund penalty imposed under 10 U.S.C. 16135).

(2) This section shall not apply in any case in which the individual has a pending request for waiver of the debt under §§1.950 through 1.970.

(Authority: 38 U.S.C. 3485(e)(1); Pub. L. 102-16)

(b) Selection criteria. (1) If there are more candidates for a work-study allowance than there are work-study positions available in the area in which the services are to be performed, VA will give priority to the candidates who are pursuing a program of education or rehabilitation.

(2) Only after all candidates in the area described in paragraph (b)(1) of this section either have been given work-study contracts or have withdrawn their request for contracts will VA offer contracts to those who are not pursuing a program of education or rehabilitation and who wish to reduce
their indebtedness through performance of work-study services.

(3) VA shall not offer a contract to an individual who is receiving compensation from another source for the work-study services the individual wishes to perform.

(4) VA shall not offer a contract to an individual if VA determines that the debt can be collected through other means such as collection in a lump sum, collection in installments as provided in §1.917 or compromise as provided in §1.918.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(c) Utilization. The work-study services to be performed under a debt-liquidation contract will be limited as follows:

(1) If the individual is concurrently receiving educational assistance in a program administered by VA, work-study services are limited to those allowed in the educational program under which the individual is receiving benefits.

(2) If the individual is not concurrently receiving educational assistance in a program administered by VA, the individual may perform only those work-study services and activities which are or were open to those students receiving a work-study allowance while pursuing a program of education pursuant to the chapter under which the debt was incurred.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(d) Contract to perform services. (1) The work-study services performed to reduce indebtedness shall be performed pursuant to a contract between the individual and VA.

(2) The individual shall perform the work-study services required by the contract at the place or places designated by VA.

(3) The number of hours of services to be performed under the contract must be sufficient to enable the individual to become entitled to a sum large enough to liquidate the debt by offset.

(4) The number of weeks in the contract will not exceed the lesser of—

(i) The number of weeks under paragraphs (d)(3) and (d)(4) of this section necessary to liquidate the debt, VA will use the amount of the account receivable, including all accrued interest, administrative costs and marshall fees outstanding on the date the contract is offered to the individual and all accrued interest, administrative costs and marshall fees VA estimates will have become outstanding on the debt on the date the debt is to be liquidated.

(5) In determining the number of hours per week and the number of weeks under paragraphs (d)(3) and (d)(4) of this section necessary to liquidate the debt, VA will use the amount of the account receivable, including all accrued interest, administrative costs and marshall fees outstanding on the date the contract is offered to the individual and all accrued interest, administrative costs and marshall fees VA estimates will have become outstanding on the debt on the date the debt is to be liquidated.

(6) The contract will automatically terminate after the total amount of the individual's indebtedness described in paragraph (d)(5) of this section has been recouped, waived, or otherwise liquidated. An individual performing work-study services under a contract to liquidate a debt is released from the contract if the debt is liquidated by other means.

(7) The contract to perform work-study services for the purpose of liquidating indebtedness will be terminated if:

(i) The individual is liquidating his or her debt under this section while receiving either an educational assistance allowance for further pursuit of a program of education or a subsistence allowance for further pursuit of a program of rehabilitation;

(ii) The individual terminates or reduces the rate of pursuit of his or her program of education or rehabilitation; and

(iii) The termination or reduction causes an account receivable as a debt owed by the individual.

(B) VA may terminate the contract at any time the individual fails to perform the services required by the contract in a satisfactory manner.

(Authority: 38 U.S.C. 3485(e), 7104(a); Pub. L. 102-16)

(e) Reduction of indebtedness. (1) In return for the individual's agreement to perform hours of services totaling not more than 40 times the number of weeks in the contract, VA will reduce the eligible person's outstanding indebtedness by an amount equal to the higher of—

(i) The hourly minimum wage in effect under section 6(a) of the Fair
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Labor Standards Act of 1938 times the number of hours the individual works; or

(ii) The hourly minimum wage under comparable law of the State in which the services are performed times the number of hours the individual works.

(2) VA will reduce the individual’s debt by the amount of the money earned for the performance of work-study services after the completion of each 50 hours of services (or in the case of any remaining hours required by the contract, the amount for those hours).

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(f) Suspension of collections by offset. Notwithstanding the provisions of §1.912a, during the period covered by the work-study debt-liquidation contract with the individual, VA will ordinarily suspend the collection by offset of a debt described in paragraph (a)(1) of this section. However, the individual may voluntarily permit VA to collect part of the debt through offset against other benefits payable while the individual is performing work-study services. If the contract is terminated before its scheduled completion date, and the debt has not been liquidated, collection through offset against other benefits payable will resume on the date the contract terminates.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(g) Payment for additional hours. (1) If an individual, without fault on his or her part, performs work-study services for which payment may not be authorized, including services performed after termination of the contract, VA will pay the individual at the applicable hourly minimum wage for such services as the Director of the VA field station of jurisdiction determines were satisfactorily performed.

(2) The Director of the VA field station of jurisdiction shall determine whether the individual was without fault. In making this decision he or she shall consider all evidence of record and any additional evidence which the individual wishes to submit.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)
§ 1.933 Cost of collecting claim.

The Department of Veterans Affairs will attempt to compromise claims when the cost of collection does not justify enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an
§ 1.934 Enforcement policy.

Statutory penalties, interest, and administrative costs which are established as an aid to enforcement and to compel compliance may be compromised pursuant to §§1.930 through 1.938. However, such additional costs on debts will be considered for compromise only in connection with compromise of the total amount of the debt (original amount of debt plus interest and costs). Interest, administrative costs, and other additional costs will never be considered for compromise separately or exclusively from the original amount of the debt.

(Authority: 31 U.S.C. 3711)
[52 FR 42110, Nov. 3, 1987]

§ 1.935 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. VA shall not attempt to allocate the burden of paying such claims as between the debtors, but shall proceed to liquidate the indebtedness as quickly as possible. Proper measures shall be taken to insure that a compromise with one such debtor does not release VA’s claim against the remaining debtor. The amount of a compromise accepted from one debtor shall not be considered as a precedent or as morally binding in determining the amount which will be required from the other debtor held to be jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711)
[52 FR 42110, Nov. 3, 1987]

§ 1.936 Settlement for a combination of reasons.

VA may compromise specific claims for any combination of reasons authorized by sections 1.930-1.938.

(Authority: 31 U.S.C. 3711)
[57 FR 47264, Oct. 15, 1992]

§ 1.937 Further review of compromise offers.

VA may refer to the GAO or Department of Justice firm written offers, plus supporting data, from debtors when there is doubt whether the offers should be accepted.

[52 FR 42110, Nov. 3, 1987]

§ 1.938 Restrictions.

VA will not accept either a percentage of a debtor’s profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration shall be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(Authority: 31 U.S.C. 3711)
[52 FR 42110, Nov. 3, 1987]
Department of Veterans Affairs

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their further referral to the Department of Justice for litigation.

(b) If after deducting the amount of any partial payments or collections, a claim exceeds $100,000, exclusive of interest and other late payment charges, then the authority to suspend or terminate collection action rests solely with the Department of Justice. If VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standards set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (see § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection regardless of the amount involved, without the concurrence of the Department of Justice. If VA decides not to suspend or terminate collection action on the claim, Justice Department approval is not required.

(Authority: 31 U.S.C. 3711)

[57 FR 47264, Oct. 15, 1992]

§ 1.941 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. The following sources shall be used to locate missing debtors: Telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service (§1.924), other Federal agencies, employers, relatives, credit agency locate reports, and credit bureaus. Suspension as to a particular debtor should not prohibit the early liquidation of any security held for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations, in order to permit the timely filing of a suit, if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his/her missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payments on the debt owed to VA or effect a compromise at the time, but his/her future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running again, or

(2) Future collection can be affected by offset, notwithstanding the statute of limitations, with due regard to the 10 year limitation prescribed by 31 U.S.C. 3716(c)(3), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been suspended temporarily, and such temporary suspension is likely to enhance the debtor’s ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.912, and 1.912a, pending agency action on requests for administrative review or waiver.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

§ 1.942 Termination of collection activity.

Termination of collection activity involves a final determination. Collection activity may be terminated on cases previously suspended. The Department of Veterans Affairs may terminate collection activity and consider closing the agency file on a claim which meets any one of the following standards:

(a) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor’s future financial
§ 1.943 Transfer of claims.

When VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which VA holds a judgment by assignment or otherwise shall be referred to the Department of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justified, except where VA has authority for handling its own litigation.

(Authority: 31 U.S.C. 3711)

[52 FR 42111, Nov. 3, 1987]

§ 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive collection action and the observance of §§1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by VA must be referred to the GAO for review and approval, prior to referral to the Department of Justice, unless VA has been granted an exception by the GAO.

(c) When the merits of VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the Department of Veterans Affairs shall refer the matter to
the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to the GAO or the Department of Justice pursuant to this section, VA shall refrain from having any contact with the debtor and shall direct the debtor to the GAO or the Department of Justice, as appropriate, when questions concerning the claim or a request for waiver of the claim are raised by the debtor. The GAO or the Department of Justice, as appropriate, shall be immediately notified by VA of any payments or requests for administrative remedies, such as waiver, which are received by this department from the debtor subsequent to referral of a claim under this section.

(e) In accordance with procedures set forth in 26 CFR part 301, information pertaining to past-due, legally enforceable debts owed to VA may be referred to the Internal Revenue Service by VA for the purpose of collection of such debts by means of tax refund offset.

(Authority: 31 U.S.C. 3711)

§ 1.951 Claims Collection Litigation Report.

(a) Unless an exception is granted by the Department of Justice, the Claims Collection Litigation Report (CCLR) shall be used with all referrals of administratively uncollectible claims made pursuant to § 1.950. As required by the CCLR, the following information shall be included:

(1) Report of prior collection actions. A checklist or brief summary of the actions taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions described in §§ 1.900 through 1.954 have been omitted, the reasons for their omission must be provided. The Department of Justice or GAO may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions.

(2) Current address of the debtor. The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made, shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice, in which the current address of any party is unknown, shall be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) Credit data. Current credit data, when applicable, indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and judicial remedies available to the government, shall be included:

(i) Such credit data may take the form of:
   (A) A commercial credit report;
   (B) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;
   (C) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or
   (D) An audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if:
   (A) A surety bond is available in an amount sufficient to satisfy the claim in full;
   (B) The forced sale value of the security available for application to the VA claim is sufficient to satisfy the claim in full;
   (C) VA wishes to liquidate the loan collateral through judicial foreclosure but does not desire a deficiency judgment;
   (D) The debtor is in bankruptcy or receivership;
   (E) The debtor's liability to VA is fully covered by insurance, in which case VA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage;
   (F) The nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained; or
   (G) Where it is clearly irrelevant to the Government's case.
§ 1.952 Preservation of evidence.
Care shall be taken to preserve all files, records, and exhibits on claims referred to or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the U.S. Attorney without their specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.
(Authority: 31 U.S.C. 3711)

§ 1.953 Minimum amount of referrals to the Department of Justice.
VA shall not refer claims of less than $600, exclusive of interest, penalties (if applicable), and administrative costs, for litigation unless:
(a) Referral is important to a significant enforcement policy, or
(b) The debtor not only has the clear ability to pay the claim but the government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the government.
(Authority: 31 U.S.C. 3711)

§ 1.954 Preliminary referrals to GAO.
As required by §1.950, preliminary referrals to the Government Accounting Office (GAO) will be in accordance with instructions, including monetary limitations, contained in the “General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies”.

§ 1.955 Regional office Committees on Waivers and Compromises.
(a) Delegation of authority and establishment. (1) Sections 1.955 et seq., are issued to implement the authority for waiver consideration found in 38 U.S.C. 5302 and 5 U.S.C. 5584 and the compromise authority found 38 U.S.C. 3720(a) and 31 U.S.C. 3711. The duties, delegations of authority, and all actions required of the Committees on Waivers and Compromises are to be accomplished under the direction of, and authority vested in, the Director of the regional office. Delegations of authority and limitations for waiver actions under 5 U.S.C. 5584 are set forth in §1.956 of this part.
(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§1.956 and 1.957. The term regional office, as used in §1.955 et seq., includes VA Medical and Regional Office Centers and VA Centers where such are established.
(b) Selection. The Director shall designate the employees to serve as Chairperson, members, and alternates. Except upon specific authorization of the Chief Benefits Director, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.
(c) Control and staff. The Division Chief of the Fiscal activity is accountable for the administrative control of the Committee functions. The quality control of the Committee and its professional and clerical staff is the responsibility of the Chairperson.
(d) Overall control. The Assistant Secretary for Finance and Information Resources Management (IRM) is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.
(e) Committee composition. (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt
claim areas (i.e., compensation, pension, education, insurance, loan guarantee, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is $20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member’s decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than $20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagreement with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of collection of a debt of $20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than $20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.


§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under §2.6(e)(i) of this chapter where applicable, to consider and determine as limited in §§1.955 et seq., settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Veterans Benefits Administration:
   (i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.
   (ii) Debts resulting from services furnished in error (§17.62(a) of this chapter).
   (iii) Settlement of breached career residency contracts.
(2) Arising out of operations of the Veterans Health Services and Research Administration:
   (i) Debts resulting from services furnished in error (§17.62(a) of this chapter).
   (ii) Debts resulting from services furnished in a medical emergency (§17.62(b) of this chapter).
   (iii) Settlement of breached career residency contracts.
(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584, 4 CFR Parts 91 and 92).
§ 1.957  Committee authority.

(a) Regional office committee. On matters covered in §1.956, the regional office Committee is authorized to determine the following issues:

(1) Waivers. A decision may be rendered to grant or deny waiver of collection of a debt in the following overpayment categories:

(i) Loan guaranty program (38 U.S.C. 5302(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from: (A) The payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under §36.4318, and (D) the liquidation of vendee accounts. The phrase veteran or spouse includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program (38 U.S.C. 5302(a)).

(iii) Services erroneously furnished. (31 U.S.C. 3720(a)).

(ii) Compromises—(i) Loan program debts (38 U.S.C. 3720(a)). Accept or reject a compromise offer irrespective of the amount of the debt (loan program matters under 38 U.S.C. chapter 37 are unlimited as to amount).

(ii) Other than loan program debts (31 U.S.C. 3711).

(A) Accept or reject a compromise offer on a debt which exceeds $1,000 but which is not over $100,000 (both amounts exclusive of interest and other late payment charges).

(B) Accept or reject a compromise offer on a debt of a $1,000 or less, exclusive of interest and other late payment charges, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.

(C) Reject a compromise offer on a debt which exceeds $100,000, exclusive of interest and other late payment charges.

(D) Recommend approval of a compromise offer on a debt which exceeds $100,000, exclusive of interest and other late payment charges. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of $100,000, using the factors set forth in §§1.930 through 1.938. If the Committee believes that the compromise offer is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with §1.951, will be referred to VA Central Office, Office of Financial Management (047G7), for submission to the Department of Justice for final approval.

(2) Breached career residency contracts. Final settlement of any breached career residency contract in which terms are different than those provided in the contract, which will result in the payment of less than liquidated value or in an extension of time in which to pay damages.

(b) Chief of Fiscal activity. The Chief of the Fiscal activity at both VBA and VHA offices has the authority, as to debts within his/her jurisdiction, to:

(1) On other than loan program debts under 38 U.S.C. chapter 37, accept compromise offers of 50% or more of a total debt not in excess of $1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(2) On other than loan program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $1,000, exclusive of interest, regardless of whether...
§ 1.958 Finality of decisions.

A decision by the regional office Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer.

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

[44 FR 59906, Oct. 17, 1979]

§ 1.959 Records and certificates.

The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required.

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

[44 FR 59906, Oct. 17, 1979]

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under §2.6(e)(4) of this chapter will be referred to the Regional Counsel for action in accordance with delegations of the General Counsel, unless there is an existence a General Counsel’s opinion or an approved Regional Counsel’s opinion dispositive of the controlling legal principle. As to matters not controlled by §2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the Regional Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff.

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

[44 FR 59906, Oct. 17, 1979]

§ 1.961 Releases.

On matters within its jurisdiction, the Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Department of Veterans Affairs under the provisions of 38 U.S.C. ch. 37, or on an acquired loan, or on a vendee account.

[39 FR 26400, July 19, 1974]

§ 1.962 Waiver of overpayments.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term overpayment refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable in an indebtedness resulting from work study and education loan default, as well as indebtedness of a veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for
§ 1.963 Waiver; other than loan guaranty.

(a) General. Recovery of overpayments of any benefits made under laws administered by the VA shall be waived if there is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver and recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(b) Application. A request for waiver of an indebtedness under this section shall only be considered:

(1) If made within 2 years following the date of a notice of indebtedness issued on or before March 31, 1963, by the Department of Veterans Affairs to the debtor, or

(2) Except as otherwise provided herein, if made within 180 days following the date of a notice of indebtedness issued on or after April 1, 1963, by the Department of Veterans Affairs to the debtor. The 180 day period may be extended if the individual requesting waiver demonstrated to the Chairperson of the Committee on Waivers and Compromises that, as a result of an error by either the Department of Veterans Affairs or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in such individual's receipt of the notification of indebtedness beyond the time customarily required for mailing (including forwarding). If the requester does substantiate that there was such a delay in the receipt of the notice of indebtedness, the Chairperson shall direct that the 180 day period be computed from the date of the requester's actual receipt of the notice of indebtedness.

(Authority: 38 U.S.C. 5302 (a) & (c))


§ 1.963a Waiver; erroneous payments of pay and allowances.

The provisions applicable to VA (including those for appeals and refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances and travel, transportation, and relocation expenses and allowances under 5 U.S.C. 5584 are set forth at 4 CFR Parts 91 and 92. The members of Committees on Waivers and Compromises assigned to waiver actions under §1.955 of this part are hereby delegated all authority granted the Secretary under 5 U.S.C. 5584 and 4 CFR Parts 91 and 92 to grant waiver in whole or in part of a claim aggregating not more than $1,500, to recommend approval of waiver in whole or in part of a claim aggregating more than $1,500, and to deny waiver of a claim for any amount. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances under 5 U.S.C. 5584: §§1.955(a) through (e)(2), 1.956(a) (introductory text) and (a)(3), 1.959, 1.960, 1.963a, and 1.967(c).


[60 FR 53276, Oct. 13, 1995]
following factors are determined to exist:

(1) Following default there was a loss of the property which constituted security for the loan guaranteed, insured or made under chapter 37 of title 38 United States Code;

(2) There is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the loan; and

(3) Collection of such indebtedness would be against equity and good conscience.

(b) Spouse. The waiver of a veteran's indebtedness shall inure to the spouse of such veteran insofar as concerns said indebtedness, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the veteran's spouse shall not inure to the benefit of the veteran unless specifically provided for in the waiver decision.

(c) Surviving spouse or former spouse. A surviving spouse of a veteran or the former spouse of a veteran may be granted a waiver of the indebtedness provided the requirements of paragraph (a) of this section are met.

(d) Preservation of Government rights. In cases in which it is determined that waiver may be granted, the action will take such form (covenant not to sue, or otherwise) as will preserve the rights of the Government against obligors other than the veteran or the spouse.

(e) Application. A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

(f) Exclusion. Except as otherwise provided in this section, the indebtedness of a nonveteran obligor under the loan program is excluded from waiver.

(Authority: 38 U.S.C. 5302 (b) and (c))

§ 1.965 Application of standard.

(a) The standard “Equity and Good Conscience”, will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights. The decision reached should not be unduly favorable or adverse to either side. The phrase equity and good conscience means arriving at a fair decision between the obligor and the Government. In making this determination, consideration will be given to the following elements, which are not intended to be all inclusive:

(1) Fault of debtor. Where actions of the debtor contribute to creation of the debt.

(2) Balancing of faults. Weighing fault of debtor against Department of Veterans Affairs fault.

(3) Undue hardship. Whether collection would deprive debtor or family of basic necessities.

(4) Defeat the purpose. Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.

(5) Unjust enrichment. Failure to make restitution would result in unfair gain to the debtor.

(6) Changing position to one's detriment. Reliance on Department of Veterans Benefits results in relinquishment of a valuable right or incurrence of a legal obligation.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any indication of which, if found, will preclude the granting of waiver:

(1) Fraud or misrepresentation of a material fact (see §1.962(b)).

(2) Bad faith. This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Thus, a debtor's conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken
with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

(3) Lack of good faith. Absence of an honest intention to abstain from taking unfair advantage of the holder and/or the Government.

(Authority: 38 U.S.C. 5302(c))

§ 1.966 Scope of waiver decisions.

(a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his/her representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Department of Veterans Affairs.

(b) A regional office Committee may:

(1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran’s service.

(2) Waive or decline to waive recovery from specific benefits or sources, except that:

(I) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; i.e., an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured.


§ 1.967 Refunds.

(a) Except as provided in paragraph (c) of this section, any portion of an indebtedness resulting from participation in benefits programs administered by the Department of Veterans Affairs which has been recovered by the U.S. Government from the debtor may be considered for waiver, provided the debtor requests waiver in accordance with the time limits of §1.963(b). If collection of an indebtedness is waived as to the debtor, such portions of the indebtedness previously collected by the Department of Veterans Affairs will be refunded. In the event that waiver of collection is granted for either an education, loan guaranty, or direct loan debt, there will be a reduction in the debtor’s entitlement to future benefits in the program in which the debt originated.

(b) The Department of Veterans Affairs may not waive collection of the indebtedness of an educational institution found liable under 38 U.S.C. 3685. Waiver of collection of educational benefit overpayments from all or a portion of the eligible persons attending an educational institution which has been found liable under 38 U.S.C. 3685 shall not relieve the institution of its assessed liability. (See 38 CFR 21.4009(f)).

(c) The regulatory provisions concerning refunds of indebtedness collected by the Department of Veterans Affairs arising from erroneous payments of pay and allowances and travel, transportation, and relocation expenses and allowances are set forth in 4 CFR Parts 91 and 92.

(d) Refund of the entire amount collected may not be made when only a part of the debt is waived or when collection of the balance of a loan guaranty indebtedness by the Department of Veterans Affairs from obligors, other than a husband or wife of the person requesting waiver, will be adversely affected. Only where the amount collected exceeds the balance of the indebtedness still in existence will a refund be made in the amount of the difference between the two. Otherwise, refunds will be made in accordance with paragraph (a) of this section.


§ 1.968 [Reserved]
(b) Finality of decisions. Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;

(2) Section 3.105(a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may postaudit or make an administrative review of any decision of a regional office Committee;

(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) Difference of opinion. Where reversal or amendment of a decision involving waiver is authorized under §3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in §3.400(h) of this chapter.

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

§ 1.970 Standards for compromise.

Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§1.900 through 1.937. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on a compromise may be revised or modified on the basis of any information which would warrant a change in the original decision.

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

§ 1.980 Scope.

(a) The provisions set forth in §§1.980 through 1.994 implement VA’s (Department of Veterans Affairs) authority for the use of salary offset to satisfy certain debts owed to the government.

(b) These regulations apply to offsets by VA from the salaries of current employees of VA or any other agency who owe debts to VA. Offsets by VA from salaries of current employees of VA who owe debts to other agencies shall be processed under 5 CFR 550.1108.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended, the Social Security Act, the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108) or prohibited by another statute.

(d) These regulations do not preclude an employee from requesting waiver of an overpayment under 38 U.S.C. 5302, 5 U.S.C. 5584, or any other similar provision of law, or in any way questioning the amount or validity of a debt not involving benefits under the laws administered by VA by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by that office.

(e) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(f) These regulations do not preclude the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 et seq., 4 CFR parts 101–105, 38 CFR 1.900 et seq.).

(g) The procedures and requirements of these regulations do not apply to salary offset used to recoup a Federal employee's debt where a judgment has been obtained against the employee for the debt.

(Authority: 5 U.S.C. 5514)

§ 1.981 Payment of expenses.

(1) Expenses of an employee shall be paid on the basis of the standards prescribed by the Financial Management and Accounting Service of the General Services Administration.

(Authority: 5 U.S.C. 5514)

Source: 52 FR 1905, Jan. 16, 1987, unless otherwise noted.
§ 1.981 Definitions.
(a) Agency means:
(1) An executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service, and the U.S. Postal Rate Commission, and
(2) A military department as defined in 5 U.S.C. 102.
(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;
(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and
(5) Other independent establishments that are entities of the Federal Government.
(b) Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.
(c) Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Excluded from this definition are deductions described in 5 CFR 581.105 through (f).
(d) Employee means a current employee of VA or other Federal agency including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).
(e) Salary offset means an attempt to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.
(f) Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to VA or another Federal agency as permitted or required by 5 U.S.C. 5304 or 38 U.S.C. 5302, or other similar statutes.

(g) Extreme hardship to an employee means an employee's inability to provide himself or herself and his or her dependents with the necessities of life such as food, housing, clothing, transportation, and medical care.

(Authority: 5 U.S.C. 5514)

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.
(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or designee provides the employee with written notice.
(b) If the employee has not previously appealed the amount or existence of the debt under §§19.1 through 19.200 of this title and time for pursuing such an appeal has not expired (§19.129), the Secretary or designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in §§19.1 through 19.200 of this title and will contain the determinations and information required by §1.983(b)(1) through (f). The notice will also state that the employee may request a hearing on the offset schedule under the procedures set forth in §1.984 and such a request will stay the commencement of salary offset.
(c) If the employee previously appealed the amount or existence of the debt and the Board of Veterans Appeals decided the appeal on the merits or if the employee failed to pursue an appeal within the time provided by regulations, the Secretary or designee shall provide the employee with written notice prior to collecting the debt by salary offset. The notice will state:
(1) The determinations and information required by §1.983(b)(1) through (f). The notice will state:
(2) That the employee's appeal of the existence or amount of the debt was determined on the merits or that the employee failed to pursue an appeal within the time provided, and VA's decision is final except as otherwise provided in agency regulations;
(3) That the employee may request a waiver of the debt pursuant to §1.911a(c)(2) subject to the time limits of 38 U.S.C. 5302;

(4) That the employee may request an oral or paper hearing on the offset schedule and receive a decision within 60 days of such request under the procedures and time limit set forth in §1.984 and that such a request will stay the commencement of salary offset.

(d) If the employee has appealed the existence or amount of the debt and the Board of Veterans Appeals has not decided the appeal on the merits, collection of the debt by salary offset will be suspended until the appeal is decided or the employee ceases to pursue the appeal.

(Authority: 5 U.S.C. 5514)

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under the laws administered by VA.

(a) For a debt not involving benefits under the laws administered by VA, the Secretary or designee will review the records relating to the debt to assure that it is owed prior to providing the employee with a notice of the debt.

(b) Except as provided in §1.980(e), salary offset of debts not involving benefits under the laws administered by VA will not be made unless the Secretary or designee first provides the employee with a minimum of 30 calendar days written notice. This notice will state:

(1) The Secretary or designee's determination that a debt is owed;

(2) The amount of the debt owed and the facts giving rise to the debt;

(3) The Secretary or designee's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest and associated costs are paid in full;

(4) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(5) An explanation of VA's requirements concerning interest, administrative costs, and penalties;

(6) The employee's right to inspect and copy VA records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(7) The employee's right to enter into a written agreement with the Secretary or designee for a repayment schedule differing from that proposed by the Secretary or designee, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary or designee;

(8) The employee's right to request an oral or paper hearing, conducted by an administrative law judge or a hearing official of VA or another agency, on the Secretary or designee's determination of the existence of the debt, the amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a request for a hearing (oral or paper) will stay the commencement of salary offset;

(11) That a final decision after the hearing will be issued at the earliest practical date, but no later than 60 calendar days after the filing of the request for the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

(12) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(14) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United
§ 1.984 Request for a hearing.

(a) Except as provided in paragraph (b) of this section and in §1.982, an employee wishing a hearing on the existence or amount of the debt or on the proposed offset schedule must send such a request to the office which sent the notice of the debt. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence. The request must be received by the office which sent the notice of the debt not later than 20 calendar days from the date of the notice.

(b) If the employee files a request for a hearing after the expiration of the 20 day period provided for in paragraph (a) of this section, VA may accept the request if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive the written notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(Authority: 5 U.S.C. 5514)

§ 1.985 Form, notice of, and conduct of hearing.

(a) After an employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location for the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit his or her position and arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit this information.

(b) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence, for example, when an issue of credibility or veracity is involved. If a determination is made to provide an oral hearing, the hearing official or administrative law judge may offer the employee the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official or administrative law judge declines to offer a telephone conference call hearing, the employee shall be provided an oral hearing permitting the personal appearance of the employee, his or her personal representative, and witnesses. A record or transcript of every oral hearing shall be made. Witnesses shall testify under oath or affirmation. VA shall not be responsible for the payment of any expenses incident to attendance at the hearing which are incurred by either the employee, his or her representative or Counsel, or witnesses.

(c) In all other cases where an employee requests a hearing, a paper hearing shall be provided. A paper hearing shall consist of a review of the written evidence of record by the administrative law judge or hearing official.

(d) In any hearing under this section, the administrative law judge or hearing official may exclude from consideration evidence or testimony which is irrelevant, immaterial, or unduly repetitious.

(Authority: 5 U.S.C. 5514)

§ 1.986 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule, if the employee:

(a) Fails to file a request for a hearing, as prescribed in §1.982, §1.984, or §§19.1 through 19.200, whichever is applicable, unless such failure is excused as provided in §1.984(b); or

(b) Fails to appear at an oral hearing of which he or she had been notified unless the administrative law judge or hearing official determines that failure to appear was due to circumstances beyond the employee’s control.

(Authority: 5 U.S.C. 5514)
§ 1.987 Review by the hearing official or administrative law judge.

(a) The hearing official or administrative law judge shall uphold VA's determination of the existence and amount of the debt unless determined to be erroneous by a preponderance of the evidence.

(b) The hearing official or administrative law judge shall uphold VA's offset schedule unless the schedule would result in extreme hardship to the employee.

(Authority: 5 U.S.C. 5514)

[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987]

§ 1.988 Written decision following a hearing requested under §1.984.

(a) The hearing official or administrative law judge must issue a written decision not later than 60 days after the employee files a request for the hearing.

(b) Written decisions provided after a hearing requested under §1.984 will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The hearing official or administrative law judge's analysis, findings and conclusions concerning as applicable:

(i) The employee's or VA's grounds;

(ii) The amount and validity of the alleged debt; and

(iii) The repayment schedule.

(c) The decision in a case where a paper hearing was provided shall be based upon a review of the written record. The decision in a case where an oral hearing was provided shall be based upon the hearing and the written record.

(Authority: 5 U.S.C. 5514)

§ 1.989 Review of VA records related to the debt.

(a) Notification by employee. An employee who intends to inspect or copy VA records related to the debt as permitted by a notice provided under §1.983 must send a letter to the office which sent the notice of the debt stating his or her intention. The letter must be received by that office within 20 calendar days of the date of the notice.

(b) VA response. In response to timely notice submitted by the debtor as described in paragraph (a) of this section, VA will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(Authority: 5 U.S.C. 5514)

§ 1.990 Written agreement to repay debt as alternative to salary offset.

(a) Notification by employee. The employee may propose, in response to a notice under §1.983, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the office which sent the notice of the debt within 20 calendar days of the date of the notice.

(b) VA response. In response to timely notice by the debtor as described in paragraph (a) of this section, VA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within VA's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, VA will balance its interest in collecting the debt against the hardship to the employee. VA will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in extreme hardship.

(Authority: 5 U.S.C. 5514)

§ 1.991 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the notice to collect from the employee's current pay as modified by a written decision issued under §§1.982, 19.1 through 19.200 or §1.988 or by written agreement between the employee and the VA under §1.990.

(b) If the employee filed a request for a hearing as provided by §1.984 before the expiration of the period provided for in that section, deductions will not begin until after the hearing official or
§ 1.992 Procedures for salary offset.

(a) Types of collection. A debt will be collected in a lump-sum or in installments. Collection will be in a lump-sum unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the employee’s disposable pay. In these cases, deduction will be by installments.

(b) Installment deductions. (1) A debt to be collected in installments will be deducted at officially established pay intervals from an employee’s current pay account unless the employee and the Secretary agree to alternative arrangements for repayment. The alternative arrangement must be in writing and signed by both the employee and Secretary or designee.

(2) Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee’s ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be acceptable only in the most unusual circumstances.

(c) Imposition of interests, penalties, and administrative costs. Interest, penalties, and administrative costs will be charged in accordance with § 1.919 and 4 CFR 102.13.

(Authority: 5 U.S.C. 5514)

§ 1.993 Non-waiver of rights.

So long as there are not statutory or contractual provisions to the contrary, an employee’s involuntary payment (of all or a portion of a debt) under these regulations will not be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

(Authority: 5 U.S.C. 5514)

§ 1.994 Refunds.

VA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed the United States (unless expressly prohibited by statute or regulation); or

(b) VA is directed by an administrative or judicial order to refund amounts deducted from the employee’s current pay.

(Authority: 5 U.S.C. 5514)
§ 2.1 Delegation of authority to employees to issue subpoenas, etc.

(a) Authority to issue subpoenas. Employees occupying or acting in the positions designated in paragraph (b) of this section shall have the power to issue subpoenas for (by countersigning VA Form 2-4003) and compel the attendance of witnesses within a radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Issuing officials shall use discretion when exercising this power.

(b) Designated positions. The positions designated pursuant to paragraph (a) of this section are: General Counsel, Deputy General Counsel, Chairman, Board of Veterans' Appeals, Heads of Regional Offices and Centers having insurance or regional office activities, Under Secretary for Health (for income matching programs), Director, Income Verification Match Center (for income matching programs), and the Associate Director for Operations, Income Verification Match Center (for income matching programs).

(c) Means of service. Subpoenas issued pursuant to this section may be served by registered or certified mail, return receipt requested, addressed to the witness only. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

(d) Fees and mileage; district courts of the United States. Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

(60 F.R. 40757, Aug. 10, 1995)

§ 2.2 Delegation of authority to employees to take affidavits, to administer oaths, etc.

(a) An employee to whom authority is delegated by the Secretary in accordance with 38 U.S.C. 5711, or to whom authority was delegated by the Secretary in accordance with title III, Pub. L. 844, 74th Congress, section 616, Pub. L. 801, 76th Congress, and section 1211, Pub. L. 85-56, is by virtue of such delegated authority, until such authority is revoked or otherwise terminated, empowered to take affidavits, to administer oaths and affirmations, to aid claimants in the preparation and presentation of claims, and to make investigations, examine witnesses, and certify to the correctness of papers and documents upon any matter within the jurisdiction of the Department of Veterans Affairs. Such employee is not authorized to administer oaths in connection with the execution of affidavits relative to fiscal vouchers and is not authorized to take acknowledgments to policy loan agreements and applications for cash surrender value to United States Government life insurance and National Service life insurance.

(b) Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Department of Veterans Affairs, may be offered or used in any court of the United States and, without further proof of the identity or authority of such employee, shall have like force and effect as if administered or taken before a clerk of such court.

(c) The delegated authority from the Secretary to employees to take affidavits, to administer oaths, etc., will be evidenced by VA Form 4505 series.

(24 F.R. 10018, Dec. 11, 1959)
§ 2.3 [Reserved]

§ 2.4 Delegation of authority to order paid advertising for use in recruitment.

Paid advertisements may be used in recruitment for VA competitive and excepted service positions. Authority to order such advertisements is hereby delegated to Administration Heads, Assistant Secretaries, Other Key Officials (the General Counsel; the Inspector General; the Chairman, Board of Veterans’ Appeals; the Chairman, Board of Contract Appeals; and the Director, Office of Small and Disadvantaged Business Utilization), Deputy Assistant Secretaries, to the deputies of such officials, to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Human Resources Management, and to field facility Directors.

(Authority: 5 U.S.C. 302(b)(2); 44 U.S.C. 3702)

[61 FR 20134, May 6, 1996]

§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.

(a) Persons occupying or acting for the following positions in the Office of the General Counsel are authorized to certify copies of public documents, records, or papers belonging to or in the files of the Department of Veterans Affairs for the purposes of 38 U.S.C. 302:

General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel, Deputy Assistant General Counsel, and the Regional Counsel for Puerto Rico.

(b) The person occupying or acting in the position of Chairman of the Department of Veterans Affairs Board of Contract Appeals is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Boards for the purposes of 38 U.S.C. 302.

(c) The person occupying or acting in the position of Chairman, Board of Veterans Appeals, is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Board for the purposes of 38 U.S.C. 302.

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

[38 CFR Ch. I (7-1-98 Edition)]

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

Employees occupying or acting in the positions designated below are delegated authority as indicated:

(a) Veterans Health Services and Research Administration. The Chief Medical Director is delegated authority:

(1) To act on all matters assigned to the Veterans Health Services and Research Administration by statute (38 U.S.C. Ch. 73) and by regulation, except such matters as require the personal attention or action of the Secretary.

(2) To revise, exceed, delete, increase, or decrease fees contained in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M–1, part I, appendix A (following agreement therefor as provided in the contract with the intermediary involved), in an approved State fee schedule, and to add additional fees when found to be necessary, provided such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(3) To designate the Deputy Chief Medical Director, or other physician of the Veterans Health Services and Research Administration, and authority is hereby delegated such designee to perform the functions prescribed in paragraph (a)(2) of this section.

(4) To revise, exceed, delete, increase, or decrease dental fees established in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M–4, chapter 6, and any amendments thereto, and to add additional fees when found to be necessary, provided such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(5) To designate the Assistant Chief Medical Director for Dentistry, and authority is hereby delegated such designee, to perform the functions prescribed in paragraph (a)(4) of this section.
(6) To supervise programs for grants to the Republic of the Philippines and medical care for Commonwealth Army veterans and Philippine Scouts in Veterans Memorial Medical Center, Manila, pursuant to the provisions of 38 U.S.C. ch. 17, subch. IV.

(7) To designate the Deputy Chief Medical Director of the Veterans Health Services and Research Administration and authority is hereby delegated such designee to designate a Department of Veterans Affairs full-time physician or nonmedical Director to serve as an ex officio member on advisory bodies to State Comprehensive Health Planning agencies and to individual Regional Medical Programs in those areas in which there is located one or more Department of Veterans Affairs hospitals or other health facilities, who shall serve on such advisory group as the representative of the Department of Veterans Affairs health facilities located in that area.

(8) To authorize Directors of Department of Veterans Affairs property and facilities under the charge and control of the Department of Veterans Affairs to appoint police officers with the power to enforce Federal laws and Department of Veterans Affairs regulations, to investigate violations of those laws and to arrest for crimes committed on Department of Veterans Affairs property to the full extent provided by Department policies and procedures.

(Authority: 38 U.S.C. 501 and 512)

(9) To develop and establish minimum safety and quality standards for adaptive equipment provided under chapter 39 of title 38, United States Code, or to appoint a designee to perform these functions.

(b) Veterans Benefits Administration—

(1) General. The Chief Benefits Director is delegated authority to act on all matters assigned to the Veterans Benefits Administration except as provided in §1.771 of this chapter and to authorize supervisory or adjudicative personnel within his/her jurisdiction to perform such functions as may be assigned.

(2) Philippines. The Director, Department of Veterans Affairs Regional Office, Manila, Philippines, is delegated authority to exercise such authorities as are delegated to directors of regional offices in the United States, which are appropriate to the administration in the Republic of the Philippines of the laws administered by the Department of Veterans Affairs.

(c) Office of Finance and Information Resources Management. (1) The Assistant Secretary for Finance and Information Resources Management (Chief Financial Officer) is delegated authority to act on all matters assigned to his/her office, and to authorize supervisory personnel within his/her jurisdiction to perform such functions as may be assigned. Appropriate written notification will be furnished other Federal agencies concerning such authorizations.

(2) The Assistant Secretary for Finance and Information Resources Management (Chief Financial Officer) is delegated authority under 31 U.S.C. 1553(c)(1), to approve, in a fixed appropriation account to which the period of availability for obligation has expired, obligational increases related to contract changes when such transaction will cause cumulative obligational increase for contract changes during a fiscal year to exceed $4 million but not more than $25 million; for this responsibility the Assistant Secretary for Finance and Information Resources Management (Chief Financial Officer) shall act as a member of the Office of the Secretary and shall report to and consult with the Secretary on these matters.

(d) Administration heads and staff office directors. Authority is delegated to the head of each administration and the director of each staff office, and to any officer or board designated by them, to take appropriate action (other than provided for in paragraph (e)(4)) in connection with the collection of civil claims by VA for money or property, as authorized in §1.900, et seq.

(e) General Counsel. (1) Under the Federal Tort Claims Act, pursuant to the provisions of 28 U.S.C. 2672; Pub. L. 100-322; 38 U.S.C. 515, and the delegation of authority from the Attorney General in 28 CFR appendix to part 14:

(i) Authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, or those authorized to act for them, to consider,
ascertain, adjust, determine, compromise, and settle any claim accruing on and after January 18, 1967, and asserted under the Federal Tort Claims Act, as amended by Pub. L. 89-506 (80 Stat. 306), and to execute an appropriate voucher and other necessary instruments in connection therewith; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his designee; provided, further, that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(ii) Authority is delegated to the Regional Counsels or those authorized to act for them and the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust, determine, compromise, and settle any claim under the Federal Tort Claims Act and to execute an appropriate voucher and other necessary instruments in connection therewith; provided that any award, compromise, or settlement does not exceed $100,000; provided, further, that whenever a settlement is effected by a Regional Counsel in an amount in excess of $50,000 a memorandum fully explaining the basis for the action taken shall be sent to the Assistant General Counsel (Professional Staff Group I).

(Authority: 38 U.S.C. 515(a); 28 CFR appendix to part 14)

(2) Under the provisions of 38 U.S.C. 515(b), the General Counsel, Deputy General Counsel, Assistant General Counsel and Regional Counsel, or those authorized to act for them, are authorized to consider, ascertain, adjust, determine, and settle tort claims cognizable thereunder and to execute an appropriate voucher and other necessary instruments in connection with the final disposition of such claims.

(3) Under the provisions of “The Federal Medical Care Recovery Act,” 42 U.S.C. 2651, et seq. (as implemented by part 43, title 28, Code of Federal Regulations), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), Deputy Assistant General Counsel of said staff group, and Regional Counsels or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice.

(4) General Counsel. Under the Federal Claims Collection Act of 1966, 31 U.S.C. 3711, et seq., authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel and Regional Counsel, or those authorized to act for them, to:

(i) Make appropriate determinations with respect to the litigative probabilities of a claim (§1.932 of this chapter), the legal merits of a claim (§1.942(e) of this chapter), and any other legal considerations of a claim.

(ii) Collect in full a claim involving damage to or loss of government property under the jurisdiction of the Department of Veterans Affairs resulting from negligence or other legal wrong of a person (other than an employee of the Government while acting within the scope of his or her employment) and to compromise, suspend, or terminate any such claim not exceeding $100,000.

(iii) Collect a claim in full from an individual or legal entity who is liable for the cost of hospital, medical, surgical, or dental care and treatment of a person, and to compromise, suspend, or terminate any such claim not exceeding $100,000.

(Authority: Pub. L. 101-552, section 8(b))

(iv) The delegations of authority set forth in paragraphs (e)(4)(ii) and (iii) of this section do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Such cases will be considered by the General Counsel, who will make the determination in all instances as to whether the case warrants referral to the Department of Justice. The delegations of authority
are applicable to those claims where the Department of Justice determines that action based upon the alleged fraud, false claim, or misrepresentation is not warranted.

(5) Pursuant to the provisions of the Military Personnel and Civilian Employees’ Claim Act of 1964, 31 U.S.C. 3721, as amended, the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), Deputy Assistant General Counsel of said staff group, and Regional Counsel or those authorized to act for them, are authorized to settle and pay a claim for not more than $40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of, personal property incident to his or her service. (Pub. L. 97±226)

(6) This section sets forth delegations of authority concerning decision-making regarding complaints alleging employment discrimination on grounds of race, color, religion, sex, national origin, age, disability or reprisal brought by an employee of the Department of Veterans Affairs or an applicant for employment.

(i) Through August 31, 1998, the General Counsel, Deputy General Counsel, Assistant General Counsel of Professional Staff Group IV, Deputy Assistant General Counsel of Professional Staff Group IV, the Deputy Assistant Secretary for Resolution Management, Office of Resolution Management District Managers, and Office of Resolution Management Field Supervisory Managers are delegated authority to make procedural decisions (decisions to dismiss for untimeliness, for failure to state a claim, or for other procedural grounds). On and after September 1, 1998, the Deputy Assistant Secretary for Resolution Management, Office of Resolution Management District Managers, and Office of Resolution Management Field Supervisory Managers are delegated the sole authority to make procedural decisions.

(ii) Through February 18, 1998, the General Counsel, Deputy General Counsel, Assistant General Counsel of Professional Staff Group IV, and the Deputy Assistant General Counsel of Professional Staff Group IV are delegated authority to make substantive decisions (merit decisions). On and after February 19, 1998, the Director, Office of Employment Discrimination Complaint Adjudication is delegated the sole authority to make substantive decisions.

(iii) Notwithstanding other provisions of this section, a complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to the matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural and substantive decision-making to the Department of Defense or the Department of Justice pursuant to a cost-reimbursable agreement. Referral will not be made when the action complained of relates merely to routine ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Director, National Cemetery Service, assistant secretaries, or staff offices heads.


(7) Under the provisions of 38 U.S.C. 7316(e), authority is delegated to the General Counsel, Deputy General Counsel, and the Assistant General Counsel (Professional Staff Group I) to hold harmless or provide liability insurance for any person to whom the immunity provisions of section 7316 apply, for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment in the exercise of his or her duties in or for the Veterans Health Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

(8) The General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations, and certify copies of public or private documents on all matters within the jurisdiction of the General Counsel. Pursuant to the provisions of
§ 2.6

The General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to countersign VA Form 4505.

(9) The General Counsel, or the Deputy General Counsel acting as or for the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans’ benefits under laws administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 512)

(10) Under the provisions of 38 U.S.C. 1729(c)(1), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), Deputy Assistant General Counsel of said staff group, and Regional Counsel, or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $100,000 may only be compromised, settled, or waived with the prior approval of the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or Deputy Assistant General Counsel of said staff group, or those authorized to act for them.

(Authority: 38 U.S.C. 1729(c)(1))

(11) The General Counsel and the Deputy General Counsel are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, 38 U.S.C. 5701 and 5705.

(Authority: 38 U.S.C. 512)

(12) All authority delegated in this paragraph to Regional Counsels will be exercised by them under the supervision of and in accordance with instructions issued by the General Counsel.

(f) National Cemetery System. Director, National Cemetery System is delegated authority:

(1) To act on all matters assigned to the National Cemetery System by statute (38 U.S.C. chapter 24) and by regulation except where specifically requiring the personal attention or action of the Secretary and to authorize supervisory personnel within the jurisdiction of the Director, National Cemetery System, to perform such functions as may be assigned.

(2) To designate, as deemed necessary, Superintendents of National Cemeteries as special investigators under 38 U.S.C. 901, however, such law enforcement authority is limited to enforcement of rules and regulations governing conduct on property under the charge and control of the Department of Veterans Affairs, as those rules and regulations apply to the cemetery over which the individual Superintendent exercises control and jurisdiction. Such designation will not authorize the carrying of firearms by any Superintendent.

(3) To accept donations of a minor nature, such as, individual trees for planting in burial areas and privately purchased grave markers.

(4) To name features in national cemeteries, such as, roads, walks, and special structures.

(5) To establish policies and specifications for inscriptions on Government headstones, markers, and private monuments.

(Authority: 38 U.S.C. 501, 512, 2404)

(g) Inspector General. (1) The Secretary delegates to the Inspector General, the authority, as head of the Department of Veterans Affairs, to make written requests under the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), for the transfer of records or copies of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the Office of Inspector General. This delegation is made pursuant to 38 U.S.C. 512. The Inspector General may redelegate the foregoing authority within the Office of Inspector General, but the delegation may only be to an official of sufficient rank to ensure that the request for the records has been the subject of a high level evaluation of the need for the information.

(2) The Inspector General delegates the authority under the Inspector General Act of 1978, and redelegates the authority under paragraph (a) of this section, to request Privacy Act-protected records from Federal agencies pursuant to subsection (b)(7) of the Privacy Act.
to each of the following Office of Inspector General officials: (i) Deputy Inspector General, (ii) Assistant Inspector General for Investigations, (iii) Deputy Assistant Inspector General for Investigations, (iv) Chief of Operations, and (v) Special Agents in Charge of Field Offices of Investigations. These officials may not redelegate this authority.

(Authority: 5 U.S.C. 552(a))

[25 FR 11095, Nov. 23, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 2.7 Delegation of authority to provide relief on account of administrative error.

(a) Section 503(a) of title 38 U.S.C., provides that if the Secretary determines that benefits administered by the Department of Veterans Affairs have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, the Secretary is authorized to provide such relief on account of such error as the Secretary determines equitable, including the payment of monies to any person whom he determines equitably entitled thereto.

(b) Section 210(c)(3) of title 38 U.S.C., provides that if the Secretary determines that any veteran, widow, child of a veteran, or other person, has suffered loss, as a consequence of reliance upon a determination by the Department of Veterans Affairs of eligibility or entitlement to benefits, without knowledge that it was erroneously made, the Secretary is authorized to provide such relief as the Secretary determines equitable, including the payment of monies to any person equitably entitled thereto. The Secretary is also required to submit an annual report to the Congress, containing a brief summary of each recommendation for relief and its disposition. Preparation of the report shall be the responsibility of the General Counsel.

(c) The authority to grant the equitable relief, referred to in paragraphs (a) and (b) of this section, has not been delegated and is reserved to the Secretary. Recommendation for the correction of administrative error and for appropriate equitable relief therefrom will be submitted to the Secretary, through the General Counsel. Such recommendation may be initiated by the head of the administration having responsibility for the benefit, or of any concerned staff office, or by the Chairman, Board of Veterans Appeals. When a recommendation for relief under paragraph (a) or (b) of this section is initiated by the head of a staff office, or the Chairman, Board of Veterans Appeals, the views of the head of the administration having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.


§ 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by them in order to obtain their commission.

(Authority: 5 U.S.C. 5945)

(b) Designated positions: Deputy Secretary, Chief Benefits Director, Director, Office of Data Management and Telecommunications, Chief Medical Director, General Counsel, Directors of regional offices, hospitals, domiciliaries, and centers.


PART 3—ADJUDICATION

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§ 3.1 Definitions.

(a) Armed Forces means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including their Reserve components.

(b) Reserve component means the Army, Naval, Marine Corps, Air Force, and Coast Guard Reserves and the National and Air National Guard of the United States.

(c) Reserve means members of a Reserve component of one of the Armed Forces.

(d) Veteran means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

1. For compensation and dependency and indemnity compensation the term veteran includes a person who died in active service and whose death was not due to willful misconduct.

2. For death pension the term veteran includes a person who died in active service under conditions which preclude payment of service-connected death benefits, provided such person

Accrued benefits payable to foreign beneficiaries.

Personal funds of patients.
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had completed at least 2 years honorable military, naval or air service, as certified by the Secretary concerned. (See §§3.3(b)(3)(i) and 3.3(b)(4)(i))

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

(e) Veteran of any war means any veteran who served in the active military, naval or air service during a period of war as set forth in §3.2.

(f) Period of war means the periods described in §3.2.

(g) Secretary concerned means:
   (1) The Secretary of the Army, with respect to matters concerning the Army;
   (2) The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;
   (3) The Secretary of the Air Force, with respect to matters concerning the Air Force;
   (4) The Secretary of Transportation, with respect to matters concerning the Coast Guard;
   (5) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and
   (6) The Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

(h) Discharge or release includes retirement from the active military, naval, or air service.

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

(j) Marriage means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued.

(Authority: 38 U.S.C. 103(c))

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

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

(m) In line of duty means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran’s own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. A service department finding that injury, disease or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:
   (1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.
   (2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.
   (3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court.

(Authority: 38 U.S.C. 105)

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

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

   (1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.
   (2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.
   (3) Willful misconduct will not be determinative unless it is the proximate
cause of injury, disease or death. (See §§ 3.301, 3.302.)

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

(p) Claim—Application means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.

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

(r) Date of receipt means the date on which a claim, information or evidence was received in the Department of Veterans Affairs, except as to specific provisions for claims or evidence received in the State Department (§ 3.108), or in the Social Security Administration (§§ 3.153, 3.201), or Department of Defense as to initial claims filed at or prior to separation.

(s) On the borders thereof means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and the nations of Guatemala and British Honduras.

(Authority: 38 U.S.C. 101(30))

(t) In the waters adjacent thereto means, with regard to service during the Mexican border period, the waters (including the islands therein) which are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico.

(Authority: 38 U.S.C. 101(30))

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

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

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

(x) Service pension is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth.

(Authority: 38 U.S.C. 1512, 1536)

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

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

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

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

(ii) Reason for detention or internment. The reason for which a serviceperson was detained or interned is immaterial in determining POW status, except that a serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a...
§ 3.2 Periods of war.

This section sets forth the beginning and ending dates of each war period beginning with the Indian wars. Note that the term period of war in reference to pension entitlement under 38 U.S.C. 1521, 1541 and 1542 means all of the war periods listed in this section except the Indian wars and the Spanish-American War. See § 3.3(a)(3) and (b)(4)(i).

(a) Indian wars. January 1, 1817, through December 31, 1898, inclusive. Service must have been rendered with the United States military forces against Indian tribes or nations.

(b) Spanish-American War. April 21, 1898, through July 4, 1902, inclusive. If the veteran served with the United States military forces engaged in hostilities in the Moro Province, the ending date is July 15, 1903. The Philippine Insurrection and the Boxer Rebellion are included.

(c) World War I. April 6, 1917, through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.

(d) World War II. December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July
§ 3.3 Pension

(a) Pension for veterans—(1) Service pension; Spanish-American War. A benefit payable monthly by the Department of Veterans Affairs because of service in the Spanish-American War. Basic entitlement exists if a veteran:

(i) Had 70 (or 90) days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability adjudged service connected with benefit of presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability; and

(v) Is in receipt of section 306 pension or (b) has an application for pension pending on December 31, 1978, or (c) meets the age or disability requirements for such pension on December 31, 1978, and files a claim within 1 year of that date and also within 1 year after meeting the age or disability requirements.

(vi) Meets the income and net worth requirements of 38 U.S.C. 1521 and 1522 as in effect on December 31, 1978, and all other provisions of title 38, United States Code.
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States Code, in effect on December 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of title 38 U.S.C., as in effect on December 31, 1978, are available in any VA regional office.

(3) Improved pension; Pub. L. 95-588 (92 Stat. 2497). A benefit payable by the Department of Veterans Affairs to veterans of a period or periods of war because of nonservice-connected disability or age. The qualifying periods of war for this benefit are the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era and the Persian Gulf War. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 1521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if a veteran:

(i) Served in the active military, naval or air service for 90 days or more during a period of war (38 U.S.C. 1521(j)); or

(ii) Served in the active military, naval or air service during a period of war and was discharged or released from such service for a disability adjudged service-connected without presumptive provisions of law, or at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability (38 U.S.C. 1521(j)); or

(iii) Served in the active military, naval or air service for a period of 90 consecutive days or more and such period began or ended during a period of war (38 U.S.C. 1521(j)); or

(iv) Served in the active military, naval or air service for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war (38 U.S.C. 1521(j)); and

(v) Is permanently and totally disabled from nonservice-connected disability not due to the veteran’s own willful misconduct; and

(Authority: 38 U.S.C. 1502(a))

(vi) Meets the net worth requirements under § 3.274 and does not have an annual income in excess of the applicable maximum annual pension rate specified in § 3.23.

(b) Pension for survivors—(1) Indian war death pension. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of an Indian war. Basic entitlement exists if a veteran had qualifying service as specified in 38 U.S.C. 1511. Indian war death pension rates are set forth in 38 U.S.C. 1534 and 1535.

(2) Spanish-American War death pension. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of the Spanish-American War, if the veteran:

(i) Had 90 days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability service-connected without benefit of presumptive provisions of law, or at time of discharge had such a service-connected disability, as shown by official service records, which in medical judgment would have justified a discharge for disability.

(Authority: 38 U.S.C. 1536, 1537)

(3) Section 306 death pension. A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran’s nonservice-connected death. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date but within 1 year after the veteran’s death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 1541, 1542 or 1543 as in effect on December 31, 1978, and all other provisions of title 38, 142
§ 3.5

(4) Improved death pension, Public Law 95-588. A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 1521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran (as defined in §3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section (38 U.S.C. 1541(a)); or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 1541(a)); and

(iii) The surviving spouse or child meets the net worth requirements of §3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§3.23 and 3.24.


§ 3.4 Compensation.

(a) Compensation. This term means a monthly payment made by the Department of Veterans Affairs to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957, or under the circumstances outlined in paragraph (c)(2) of this section. If the veteran was discharged or released from service, the discharge or release must have been under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(2), (13))

(b) Disability compensation. (1) Basic entitlement for a veteran exists if the veteran is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty.

(Authority: 38 U.S.C. 1110, 1131)

(2) An additional amount of compensation may be payable for a spouse, child, and/or dependent parent where a veteran is entitled to compensation based on disability evaluated as 30 per centum or more disabling.

(Authority: 38 U.S.C. 1115)

(c) Death compensation. Basic entitlement exists for a surviving spouse, child or children, and dependent parent or parents if:

(1) The veteran died before January 1, 1957; or

(2) The veteran died on or after May 1, 1957, and before January 1, 1972, if at the time of death a policy of United States Government Life Insurance or National Service Life Insurance was in effect under waiver of premiums under 38 U.S.C. 1924 unless the waiver was granted under the first proviso of section 622(a) of the National Service Life Insurance Act of 1940, and the veteran died before return to military jurisdiction or within 120 days thereafter. (See §3.5(d) as to Public Health Service.)

(Authority: 38 U.S.C. 1121, 1141)

(Cross References: Section 306 pension. See §3.1(u). Improved pension. See §3.1(w). Improved pension rates. See §3.23. Improved pension rates; surviving children. See §3.24. Frequency of payment of improved pension. See §3.30. Relationship of net worth to pension entitlement. See §3.274.)

§ 3.5 Dependency and indemnity compensation.

(a) Dependency and indemnity compensation. This term means a monthly payment made by the Department of Veterans Affairs to a surviving spouse, child, or parent:
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(1) Because of a service-connected death occurring after December 31, 1956, or

(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(Authority: 38 U.S.C. 101 (14))

(b) Entitlement. Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:

(1) Death occurred on or after January 1, 1957, except in the situation specified in §3.4(c)(2); or

(2) Death occurred prior to January 1, 1957, and the claimant was receiving or eligible to receive death compensation on December 31, 1956 (or, as to a parent, would have been eligible except for income), under laws in effect on that date or who subsequently becomes eligible by reason of a death which occurred prior to January 1, 1957, or

(3) Death occurred on or after May 1, 1957, and before January 1, 1972, and the claimant had been ineligible to receive dependency and indemnity compensation because of the exception in subparagraph (1) of this paragraph. In such case dependency and indemnity compensation is payable upon election. (38 U.S.C. 410, 416, 417, Public Law 92-197, 85 Stat. 660)

(c) Exclusiveness of remedy. No person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for death pension or compensation under any other law administered by the Department of Veterans Affairs, except that, effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(d) Group life insurance. No dependency and indemnity compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occurring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended) based on the same death.


(e) Surviving spouses' rate. (1) When death occurred on or after January 1, 1993, the monthly rate of dependency and indemnity compensation for a surviving spouse shall be the amount set forth in 38 U.S.C. 1311(a)(4). This rate shall be increased by the amount set forth in 38 U.S.C. 1311(a)(2) in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was evaluated as totally disabling for a continuous period of at least eight years immediately preceding death. In determining the eight year period, only periods during which the veteran was married to the surviving spouse shall be considered. The resulting rate is subject to increase as provided in paragraphs (e)(3) and (4) of this section.

(Authority: 38 U.S.C. 1311(a) and 1321)

(2) The monthly rate of dependency and indemnity compensation for a surviving spouse when the death of the veteran occurred prior to January 1, 1993, is based on the "pay grade" of the veteran, unless the formula provided in paragraph (e)(1) of this section results in a greater monetary benefit. The Secretary of the concerned service department will certify the "pay grade" of the veteran and the certification will be binding on the Department of Veterans Affairs. The resulting rate is subject to increase as provided in paragraphs (e)(3) and (4) of this section.

(Authority: 38 U.S.C. 1311(a) and 1321)

(3) If there is a surviving spouse with one or more children under the age of 18 (including a child not in the surviving spouse's actual or constructive custody and a child who is in active military, air, or naval service), the total amount payable shall be increased by
§ 3.6 Duty periods.

(a) Active military, naval, and air service. This includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

(b) Active duty. This means:

(1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date under circumstances affording entitlement to full military benefits, or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(3) Full-time duty as a commissioned officer of the Coast and Geodetic Survey or of its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration:

(i) On or after July 29, 1945, or

(ii) Before that date:

(a) While on transfer to one of the Armed Forces, or

(b) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or

(c) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(4) Service at any time as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy;

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy for enlisted active-duty members who are reassigned to a preparatory school without a release from active duty, and for other individuals who have a commitment to active duty in the Armed Forces that would be binding upon disenrollment from the preparatory school;

(6) Authorized travel to or from such duty or service; and

(7) A person discharged or released from a period of active duty, shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him or her to proceed to his or her home by the most direct route, and, in all instances, until midnight of the date of such discharge or release.

(Authority: 38 U.S.C. 106(c))

(c) Active duty for training. (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date:

(a) While on transfer to one of the Armed Forces, or

the amount set forth in 38 U.S.C. 1311(b) for each child.
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(iii) At any time, for the purposes of dependency and indemnity compensation:

(3) Full-time duty performed by members of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law or full-time duty by such members while participating in the reenactment of the Battle of First Manassas in July 1961;

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 U.S.C.

(i) The requirements of this paragraph are effective—

(A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and

(B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.

(ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy by an individual who enters the preparatory school directly from the Reserves, National Guard or civilian life, unless the individual has a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.

(Authority: 38 U.S.C. 101(22))

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(d) Inactive duty training. This means:

(1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under 37 U.S.C. 206 or any other provision of law;

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10 U.S.C.

(4) Duty (other than full-time duty) performed by a member of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law. The term inactive duty training does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 38 U.S.C. 101(23))

(e) Travel status—training duty (disability or death from injury). Any individual:

(1) Who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(2) Who is disabled or dies from an injury incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training shall be deemed to have been on active duty for training or inactive duty training, as the case may be. The Department of Veterans Affairs will determine whether such individual was so authorized or required to perform such duty, and whether the individual was disabled or died from injury so incurred. In making such determinations, there shall be taken into consideration the hour on which the individual began to proceed or return; the hour on which the individual was scheduled to arrive for, or on which the individual ceased to perform, such duty; the method of travel performed; the itinerary; the manner in which the
travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this paragraph, the burden of proof shall be on the claimant.

(Authority: 38 U.S.C. 106 (d))

§ 3.7 Individuals and groups considered to have performed active military, naval, or air service.

The following individuals and groups are considered to have performed active military, naval, or air service:

(a) Aerial transportation of mail (Pub. L. 140, 73d Congress). Persons who were injured or died while serving under conditions set forth in Pub. L. 140, 73d Congress.

(b) Aliens. Effective July 28, 1959, a veteran discharged for alienage during a period of hostilities unless evidence affirmatively shows he or she was discharged at his or her own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he or she is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under authority of section 301, Pub. L. 346, 78th Congress, as amended, or section 207, Pub. L. 601, 79th Congress, as amended (now 10 U.S.C. 1552 and 1553), will be considered as evidence that the discharge was not at the alien’s request. (See §3.12.)

(Authority: 38 U.S.C. 5303(c))

(c) Army field clerks. Included as enlisted men.

(d) Army Nurse Corps, Navy Nurse Corps, and female dietetic and physical therapy personnel. (1) Army and Navy nurses (female) on active service under order of the service department.

(2) Dietetic and physical therapy (female) personnel, excluding students and apprentices, appointed with relative rank on or after December 22, 1942, or commissioned on or after June 22, 1944.

(e) Aviation camps. Students who were enlisted men during World War I.

(f) Cadets and midshipmen. See §3.6(b)(4).

(g) Coast and Geodetic Survey, and its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration. See §3.6(b)(3).

(h) Coast Guard. Active service in Coast Guard on or after January 29, 1915, while under jurisdiction of the Treasury Department, Navy Department, or the Department of Transportation. (See §3.6 (c) and (d) as to temporary members of the Coast Guard Reserves.)

(i) Contract surgeons. For compensation and dependency and indemnity compensation, if the disability or death was the result of disease or injury contracted in line of duty during a war period while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transit or in hospital. (See §3.6 (c) and (d) as to temporary members of the Coast Guard Reserves.)

(k) Lighthouse service personnel. Transferred to the service and jurisdiction of War or Navy Departments by Executive order under the Act of August 29, 1916. Effective July 1, 1939, service was consolidated with the Coast Guard.

(l) Male nurses. Persons who were enlisted men of Medical Corps.

(m) National Guard. Members of the National Guard of the United States and Air National Guard of the United States are included as Reserves. See §3.6 (c) and (d) as to training duty performed by members of a State National Guard and paragraph (o) of this section as to disability suffered after being called into Federal service and before enrollment.

(n) Persons heretofore having a pensionable or compensable status.

(Authority: 38 U.S.C. 1152, 1504)

(o) Persons ordered to service. (1) Any person who has:

(i) Applied for enlistment or enrollment in the active military, naval, or
§ 3.7

air service and who is provisionally accepted and directed, or ordered, to report to a place for final acceptance into the service, or

(ii) Been selected or drafted for such service, and has reported according to a call from the person's local draft board and before final rejection, or

(iii) Been called into Federal service as a member of the National Guard, but has not been enrolled for Federal service, and

(iv) Suffered injury or disease in line of duty while going to, or coming from, or at such place for final acceptance or entry upon active duty, is considered to have been on active duty and therefore to have incurred such disability in active service.

(2) The injury or disease must be due to some factor relating to compliance with proper orders. Draftees and selectees are included when reporting for preinduction examination or for final induction on active duty. Such persons are not included for injury or disease suffered during the period of inactive duty, or period of waiting, after a final physical examination and prior to beginning the trip to report for induction. Members of the National Guard are included when reporting to a designated rendezvous.

(p) Philippine Scouts and others. See § 3.8.

(q) Public Health Service. See § 3.6 (a) and (b).

(r) Reserves. See § 3.6 (a), (b), and (c).

(s) Revenue Cutter Service. While serving under direction of Secretary of the Navy in cooperation with the Navy.

(t) Training camps. Members of training camps authorized by section 54 of the National Defense Act, except members of Student Army Training Corps.

(u) Women’s Army Corps (WAC). Service on or after July 1, 1943.

(v) Women’s Reserve of Navy, Marine Corps, and Coast Guard. Same benefits as members of the Officers Reserve Corps or enlisted men of the United States Navy, Marine Corps or Coast Guard.

(w) Russian Railway Service Corps. Service during World War I as certified by the Secretary of the Army.

(x) Active military service certified as such under section 401 of Pub. L. 95-202. Such service if certified by the Secretary of Defense as active military service and if a discharge under honorable conditions is issued by the Secretary. The effective dates for an award based upon such service shall be as provided by § 3.400(z) and 38 U.S.C. 5110, except that in no event shall such an award be made effective earlier than November 23, 1977. Service in the following groups has been certified as active military service.

(1) Women’s Air Forces Service Pilots (WASP).

(2) Signal Corps Female Telephone Operators Unit of World War I.

(3) Engineer Field Clerks.

(4) Women’s Army Auxiliary Corps (WAAC).

(5) Quartermaster Corps Female Clerical Employees serving with the AEF (American Expeditionary Forces) in World War I.

(6) Civilian Employees of Pacific Naval Air Bases Who Actively Participated in Defense of Wake Island During World War II.

(7) Reconstruction Aides and Dietitians in World War I.

(8) Male Civilian Ferry Pilots.

(9) Wake Island Defenders from Guam.

(10) Civilian Personnel Assigned to the Secret Intelligence Element of the OSS.

(11) Guam Combat Patrol.

(12) Quartermaster Corps Keswick Crew on Corregidor (WWII).

(13) U.S. Civilian Volunteers Who Actively Participated in the Defense of Bataan.


(15) American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945.

(16) Civilian Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945). As used in
the official name of this group, the acronym IFF stands for Identification Friend or Foe.

(17) U.S. Civilians of the American Field Service (AFS) Who Served Overseas Operationally in World War I during the Period August 31, 1917 to January 1, 1918.


(20) Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

(21) Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

(22) U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL’s Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

(23) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA’s Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

(24) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division) Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.


(26) Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command During the Period June 21, 1942 to March 31, 1943.

(27) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline’s Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945.

(28) U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945.


(30) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945.

(Authority: Sec. 401, Pub. L. 95±202, 91 Stat. 1449)


(Authority: Sec. 401, Pub. L. 95±202, 91 Stat. 1450)

[26 FR 1565, Feb. 24, 1961]

EDITORIAL NOTE: For Federal Register citations affecting §3.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

CROSS REFERENCE: Office of Workers’ Compensation Programs. See §3.708.

§ 3.8 Philippine and Insular Forces.

(a) Regular Philippine Scouts. Service in the Philippine Scouts (except that described in paragraph (b) of this section), the Insular Force of the Navy, Samoan Native Guard, and Samoan Native Band of the Navy is included for pension, compensation, dependency and
§ 3.9 Philippine service.

(a) For a Regular Philippine Scout or a member of one of the regular components of the Philippine Commonwealth Army while serving with Armed Forces of the United States, the period of active service will be from the date certified by the Armed Forces as the date of enlistment or date of report for active duty whichever is later to date of release from active duty, discharge, death, or in the case of a member of the Philippine Commonwealth Army June 30, 1946, whichever was earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of or due to the capitulation.
(2) Escape from prisoner-of-war status.

(3) Parole by the Japanese.

(4) Beginning of missing-in-action status, except where factually shown at that time he was with his or her unit or death is presumed to have occurred while carried in such status: Provided, however, That where there is credible evidence that he was alive after commencement of his or her missing-in-action status, the presumption of death will not apply for Department of Veterans Affairs purposes.

(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

(b) Active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army serving with the Armed Forces of the United States will include a prisoner-of-war status immediately following a period of active duty, or a period of recognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

§ 3.12 Character of discharge.

(a) If the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2)). A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge.

(b) A discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release or unless otherwise specifically provided (38 U.S.C. 5303(b)).

(c) Benefits are not payable where the former service member was discharged or released under one of the following conditions:

(1) As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful orders of competent military authorities.

(2) By reason of the sentence of a general court-martial.

(3) Resignation by an officer for the good of the service.

(4) As a deserter.
§ 3.12 38 CFR Ch. 1 (7-1-98 Edition)

(5) As an alien during a period of hostilities, where it is affirmatively shown that the former service member requested his or her release. See §3.7(b).

(6) By reason of a discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days. This bar to benefit entitlement does not apply if there are compelling circumstances to warrant the prolonged unauthorized absence. This bar applies to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Department of Veterans Affairs benefits. The term established basic eligibility to receive Department of Veterans Affairs benefits means either a Department of Veterans Affairs determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge prior to October 8, 1977, under criteria other than those prescribed by one of the programs listed in paragraph (h) of this section, and to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Department of Veterans Affairs benefits. The term established basic eligibility to receive Department of Veterans Affairs benefits means either a Department of Veterans Affairs determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge prior to October 8, 1977, under criteria other than those prescribed by one of the programs listed in paragraph (h) of this section. However, if a person was discharged or released by reason of the sentence of a general court-martial, only a finding of insanity (paragraph (b) of this section) or a decision of a board of correction of records established under 10 U.S.C. 1552 can establish basic eligibility to receive Department of Veterans Affairs benefits. The following factors will be considered in determining whether there are compelling circumstances to warrant the prolonged unauthorized absence:

(i) Length and character of service exclusive of the period of prolonged AWOL. Service exclusive of the period of prolonged AWOL should generally be of such quality and length that it can be characterized as honest, faithful and meritorious and of benefit to the Nation.

(ii) Reasons for going AWOL. Reasons which are entitled to be given consideration when offered by the claimant include family emergencies or obligations, or similar types of obligations or duties owed to third parties. The reasons for going AWOL should be evaluated in terms of the person’s age, cultural background, educational level and judgmental maturity. Consideration should be given to how the situation appeared to the person himself or herself, and not how the adjudicator might have reacted. Hardship or suffering incurred during overseas service, or as a result of combat wounds of other service-incurred or aggravated disability, is to be carefully and sympathetically considered in evaluating the person’s state of mind at the time the prolonged AWOL period began.

(iii) A valid legal defense exists for the absence which would have precluded a conviction for AWOL. Compelling circumstances could occur as a matter of law if the absence could not validly be charged as, or lead to a conviction of, an offense under the Uniform Code of Military Justice. For purposes of this paragraph the defense must go directly to the substantive issue of absence rather than to procedures, technicalities or formalities.

(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions.

(1) Acceptance of an undesirable discharge to escape trial by general court-martial.

(2) Mutiny or spying.

(3) An offense involving moral turpitude. This includes, generally, conviction of a felony.

(4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.

(5) Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or
status when a service member has taken advantage of his or her superior rank, grade, or status.

(e) An honorable discharge or discharge under honorable conditions issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Department of Veterans Affairs. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) of this section.

(f) An honorable or general discharge issued prior to October 8, 1977, under authority other than that listed in paragraphs (h) (1), (2) and (3) of this section by a discharge review board established under 10 U.S.C. 1553 set aside any bar to benefits imposed under paragraph (c) or (d) of this section except the bar contained in paragraph (c)(2) of this section.

(g) An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553, sets aside a bar to benefits imposed under paragraph (c) or (d) of this section provided that:

(1) The discharge is upgraded as a result of an individual case review;

(2) The discharge is upgraded under uniform published standards and procedures that generally apply to all persons administratively discharged or released from active military, naval or air service under conditions other than honorable; and

(3) Such standards are consistent with historical standards for determining honorable service and do not contain any provision for automatically granting or denying an upgraded discharge.

(h) Unless a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis that the discharge would be upgraded under uniform standards meeting the requirements set forth in paragraph (g) of this section, an honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed under this section:

(1) The President's directive of January 19, 1977, implementing Presidential Proclamation 4313 of September 16, 1974; or

(2) The Department of Defense's special discharge review program effective April 5, 1977; or

(3) Any discharge review program implemented after April 5, 1977, that does not apply to all persons administratively discharged or released from active military service under other than honorable conditions.

(Authority: 38 U.S.C. 5303(e))

(i) No overpayments shall be created as a result of payments made after October 8, 1977, based on an upgraded honorable or general discharge issued under one of the programs listed in paragraph (h) of this section which would not be awarded under the standards set forth in paragraph (g) of this section.

Accounts in payment status on or after October 8, 1977, shall be terminated the end of the month in which it is determined that the original other than honorable discharge was not issued under conditions other than dishonorable following notice from the appropriate discharge review board that the discharge would not have been upgraded under the standards set forth in paragraph (g) of this section, or April 7, 1978, whichever is the earliest.

Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment or April 7, 1978, whichever is the earliest.

(j) No overpayment shall be created as a result of payments made after October 8, 1977, in cases in which the bar contained in paragraph (c)(6) of this section is for application. Accounts in payment status on or after October 8, 1977, shall be terminated at the end of the month in which it is determined that compelling circumstances do not exist, or April 7, 1978, whichever is the earliest.

Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment, or April 7, 1978, whichever is the earliest.

(k) Uncharacterized separations. Where enlisted personnel are administratively separated from service on the basis of proceedings initiated on or after October 1, 1982, the separation may be classified as one of the three categories of administrative separation that do not require characterization of service by the military department concerned.
such cases conditions of discharge will be determined by the VA as follows:

1. Entry level separation. Uncharacterized administrative separations of this type shall be considered under conditions other than dishonorable.

2. Void enlistment or induction. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation, with reference to the provisions of §3.14 of this part, to determine whether the separation was under conditions other than dishonorable.

3. Dropped from the rolls. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation to determine whether separation was under conditions other than dishonorable.

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


§ 3.12a Minimum active-duty service requirement.

(a) Definitions. (1) The term minimum period of active duty means, for the purposes of this section, the shorter of the following periods:

(i) Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the Department of Veterans Affairs benefit entitlement (e.g., see §3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served.

(ii) The full period for which a person was called or ordered to active duty.

(2) The term benefit includes a right or privilege but does not include a refund of a participant's contributions under 38 U.S.C. Ch. 32.

(b) Effect on Department of Veterans Affairs benefits. Except as provided in paragraph (d) of this section, a person listed in paragraph (c) of this section who does not complete a minimum period of active duty is not eligible for any benefit under title 38, United States Code or under any law administered by the Department of Veterans Affairs based on that period of active service.

(c) Persons included. Except as provided in paragraph (d) of this section, the provisions of paragraph (b) of this section apply to the following persons:

(1) A person who originally enlists (enlisted person only) in a regular component of the Armed Forces, after September 7, 1980 (a person who signed a delayed-entry contract with one of the service branches prior to September 8, 1980, and under that contract was assigned to a reserve component until entering on active duty after September 7, 1980, shall be considered to have enlisted on the date the person entered on active duty); and

(2) Any other person (officer as well as enlisted) who enters on active duty after October 16, 1981 and who has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171 (early out).

(d) Exclusions. The provisions of paragraph (b) of this section are not applicable to the following cases:

(1) To a person who is discharged or released under 10 U.S.C. 1171 or 1173 (early out or hardship discharge).

(2) To a person who is discharged or released from active duty for a disability adjudged service connected without presumptive provisions of law, or who at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(3) To a person with a compensable service-connected disability.

(4) To the provision of a benefit for or in connection with a service-connected disability, condition, or death.

(5) To benefits under chapter 19 of title 38, United States Code.

(e) Dependent or survivor benefits—(1) General. If a person is, by reason of this section, barred from receiving any benefits under title 38, United States Code (or under any other law administered by the Department of Veterans Affairs...
based on a period of active duty, the person’s dependents or survivors are also barred from receiving benefits based on the same period of active duty.

(2) Exceptions. Paragraph (e)(1) of this section does not apply to benefits under chapters 19 and 37 of title 38, United States Code. (38 U.S.C. 5303A)

[47 FR 24549, June 7, 1982]

§ 3.13 Discharge to change status.

(a) A discharge to accept appointment as a commissioned or warrant officer, or to change from a Reserve or Regular commission to accept a commission in the other component, or to reenlist is a conditional discharge if it was issued during one of the following periods:

(1) World War I; prior to November 11, 1918. As to reenlistments, this subparagraph applies only to Army and National Guard. No involuntary extension or other restrictions existed on Navy enlistments.

(2) World War II, the Korean conflict or the Vietnam era; prior to the date the person was eligible for discharge under the point or length of service system, or under any other criteria in effect.

(3) Peacetime service; prior to the date the person was eligible for an unconditional discharge.

(b) Except as provided in paragraph (c) of this section, the entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of such period of active service except that, for death, pension purposes, §3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

(c) Despite the fact that no unconditional discharge may have been issued, a person shall be considered to have been unconditionally discharged or released from active military, naval or air service when the following conditions are met:

(1) The person served in the active military, naval or air service for the period of time the person was obligated to serve at the time of entry into service;

(2) The person was not discharged or released from such service at the time of completing that period of obligation due to an intervening enlistment or reenlistment; and

(3) The person would have been eligible for a discharge or release under conditions other than dishonorable at that time except for the intervening enlistment or reenlistment.


§ 3.14 Validity of enlistments.

Service is valid unless the enlistment is voided by the service department.

(a) Enlistment not prohibited by statute. Where an enlistment is voided by the service department for reasons other than those stated in paragraph (b) of this section, service is valid from the date of entry upon active duty to the date of voidance by the service department. Benefits may not be paid, however, unless the discharge is held to have been under conditions other than dishonorable. Generally discharge for concealment of a physical or mental defect except incompetency or insanity which would have prevented enlistment will be held to be under dishonorable conditions.

(b) Statutory prohibition. Where an enlistment is voided by the service department because the person did not have legal capacity to contract for a reason other than minority (as in the case of an insane person) or because the enlistment was prohibited by statute (a deserter or person convicted of a felony), benefits may not be paid based on that service even though a disability was incurred during such service. An undesirable discharge by reason of the fraudulent enlistment voids the enlistment from the beginning.

(c) Misrepresentation of age. Active service which was terminated because of concealment of minority or misrepresentation of age is honorable if the veteran was released from service under conditions other than dishonorable. Service is valid from the date of entry upon active duty to the date of discharge.

(d) Honorable discharges. Determinations as to honorable service will be
§ 3.15 Computation of service.

For nonservice-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in §3.9. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.

[40 FR 16064, Apr. 9, 1975]

CROSS REFERENCE: Duty periods. See §3.6(b)(6).

§ 3.16 Service pension.

In computing the 70 or 90 days required under §3.3(a) active service which began before or extended beyond the war period will be included if such service was continuous. Broken periods of service during a war period may be added together to meet the requirement for length of service.

[41 FR 18299, May 3, 1976, as amended at 44 FR 45992, Aug. 6, 1979]

§ 3.17 Disability and death pension; Mexican border period and later war periods.

In computing the 90 days’ service required for pension entitlement (see §3.3), there will be included active service which began before and extended into the Mexican border period or ended during World War I, or began or ended during World War II, the Korean conflict, the Vietnam era or the Persian Gulf War, if such service was continuous. Service during different war periods may be combined with service during any other war period to meet the 90 days’ service requirement.

(Authority: 38 U.S.C. 1521)

[37 FR 6676, Apr. 1, 1972, as amended at 44 FR 45992, Aug. 6, 1979; 56 FR 57986, Nov. 15, 1991]

§§ 3.18—3.19 [Reserved]

§ 3.20 Surviving spouse’s benefit for month of veteran’s death.

(a) Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death.

(Authority: 38 U.S.C. 5310)

(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died.

(Authority: 38 U.S.C. 5111(c))

(c)(1) Where a veteran receiving compensation or pension dies after December 31, 1996, the surviving spouse, if not entitled to death compensation, dependency and indemnity compensation, or death pension for the month of death, shall be entitled to a benefit for that month in an amount equal to the amount of compensation or pension the veteran would have received for that month but for his or her death.

(2) A payment issued to a deceased veteran as compensation or pension for the month in which death occurred shall be treated as payable to that veteran’s surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that
§ 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) Entitlement criteria. Benefits authorized by section 1318 of title 38 U.S.C., shall be paid to a deceased veteran’s surviving spouse (see §3.54(c)(2)) or children in the same manner as if the veteran’s death is service connected when the following conditions are met:

(1) The veteran’s death was not caused by his or her own willful misconduct; and

(2) The veteran was in receipt of or for any reason (including receipt of military retired or retirement pay or correction of a rating after the veteran’s death based on clear and unmistakable error) was not in receipt of but would have been entitled to receive compensation at the time of death for a service-connected disability that either:

(i) Was continuously rated totally disabling by a schedular or unemployability rating for a period of 10 or more years immediately preceding death; or

(ii) Was continuously rated totally disabling by a schedular or unemployability rating from the date of the veteran’s discharge or release from active duty for a period of not less than 5 years immediately preceding death.

(b) Effect of judgment or settlement. If a surviving spouse or child eligible for benefits under paragraph (a) of this section receives any money or property pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran, benefits payable under paragraph (a) of this section shall not be paid for any month following the month in which such money or property is received until the amount of benefits that would otherwise have been payable under paragraph (a) of this section equals the total of the amount of money received and the fair market value of the property received. The provisions of this paragraph do not apply, however, to any portion of such benefits payable for any period preceding the end of the month in which such money or property of value is received.

(c) Social security and worker’s compensation. Benefits received under social security or worker’s compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) Beneficiary’s duty to report. Any person entitled to benefits under paragraph (a) of this section shall promptly report to the Department of Veterans Affairs the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran. The amount to be reported is the total
§ 3.23

of the amount of money received and
the fair market value of property re-
ceived. Expenses incident to recovery,
such as attorney's fees, may not be de-
ducted from the amount to be reported.

(e) Relationship to survivor benefit
plan. For the purpose of 10 U.S.C.
1448(d) and 1450(c) eligibility for bene-
fits under paragraph (a) of this section
shall be deemed eligibility for depend-
cy and indemnity compensation
under 38 U.S.C. 1311(a).

(Authority: 38 U.S.C. 1318)

[44 FR 22718, Apr. 17, 1979, as amended at 48
FR 41161, Sept. 14, 1983; 53 FR 23235, June 21,
1988; 54 FR 31829, Aug. 2, 1989]

CROSS REFERENCES: Marriage dates. See
§3.54. Homicide. See §3.11.

§ 3.23 Improved pension rates—Veter-
ans and surviving spouses.

(a) Maximum annual rates of improved
pension. The maximum annual rates of
improved pension for the following cat-
egories of beneficiaries shall be the
amounts specified in 38 U.S.C. 1521 and
1542, as increased from time to time
under 38 U.S.C. 5312. Each time there is
an increase under 38 U.S.C. 5312, the ac-
tual rates will be published in the "No-
tices" section of the FEDERAL REG-
ISTER.

(1) Veterans who are perma-
nently and totally disabled.

(Authority: 38 U.S.C. 1521(b) or (c))

(2) Veterans in need of aid and at-
tendance.

(Authority: 38 U.S.C. 1521(d))

(3) Veterans who are housebound.

(Authority: 38 U.S.C. 1521(e))

(4) Two veterans married to one an-
other; combined rates.

(Authority: 38 U.S.C. 1521(f))

(5) Surviving spouse alone or with a
child or children of the deceased vet-
eran in custody of the surviving
spouse.

(Authority: 38 U.S.C. 1541(b) or (c))

(6) Surviving spouses in need of aid
and attendance.

(Authority: 38 U.S.C. 1541(d))

(7) Surviving spouses who are house-
bound.

(Authority: 38 U.S.C. 1541(e))

(b) Reduction for income. The maxi-
mum rates of improved pension in
paragraph (a) of this section shall be
reduced by the amount of the count-
able annual income of the veteran or
surviving spouse.

(Authority: 38 U.S.C. 1521, 1541)

(c) Mexican border period and World
War I veterans. The applicable maximum
annual rate payable to a Mexican
border period or World War I veteran
under this section shall be increased by
the amount specified in 38 U.S.C.
1521(g), as increased from time to time
under 38 U.S.C. 5312. Each time there is
an increase under 38 U.S.C. 5312, the ac-
tual rate will be published in the "No-
tices" section of the FEDERAL REG-
ISTER.

(Authority: 38 U.S.C. 1521(g))

(d) Definitions of terms used in this sec-
tion—(1) Dependent. A veteran's spouse
or child. A veteran's spouse who resides
apart from the veteran and is es-
tranged from the veteran may not be
considered the veteran's dependent un-
less the spouse receives reasonable sup-
port contributions from the veteran.
(Note that under §3.60 a veteran and
spouse who reside apart are considered
to be living together unless they are
estranged.) A child of a veteran not in
custody of the veteran and to whose
support the veteran is not reasonably
contributing, may not be considered
the veteran's dependent.

(Authority: 38 U.S.C. 1521(b)).

(2) In need of aid and attendance. As
defined in §3.351(b).

(3) Housebound. As defined in
§3.351(d)(2), (f). This term also includes
a veteran who has a disability or dis-
abilities evaluated as 60 percent or
more disabling in addition to a perma-
nent and totally disabling condition.
See §3.351(d)(1).

(4) Veteran's annual income. This term
includes the veteran's annual income,
the annual income of the veteran's de-
pendent spouse, and the annual income
of each child of the veteran (other than
a child for whom increased pension is
not payable under 38 U.S.C. 1522(b)) in
§ 3.24 Improved pension rates—Surviving children.

(a) General. The provisions of this section apply to children of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. Children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement. Basic eligibility to receive improved pension means that the surviving spouse is in receipt of improved pension or could become entitled to receive improved pension except for the amount of the surviving spouse's countable annual income or the size of the surviving spouse's estate (See § 3.274(c)). Under § 3.23(d)(5) the countable annual income of a surviving spouse includes the countable annual income of each child of the veteran in custody of the surviving spouse to the extent the child's income is reasonably available to or for the surviving spouse.

(b) Child with no personal custodian or in the custody of an institution. In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate specified in 38 U.S.C. 1542, as increased from time to time under 38 U.S.C. 5312, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 5312, the actual rate will be published in the "Notices" section of the Federal Register.

(c) Child in the custody of person legally responsible for support—(1) Single child. Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.


CROSS REFERENCES: Improved pension. See § 3.1(w). Child. See § 3.57(d). Definition of living with. See § 3.60. Exclusions from income. See § 3.272.
More than one child. Pension shall be paid to children in custody of a person legally responsible for the children’s support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less).

(Authority: 38 U.S.C. 1542)

CROSS REFERENCES: Child. See §3.57(d). Exclusions from income. See §3.272.

§ 3.25 Parent’s dependency and indemnity compensation (DIC)—Method of payment computation.

Monthly payments of parents’ DIC shall be computed in accordance with the following formulas:

(a) One parent. Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 1315(b)(1), as increased from time to time under 38 U.S.C. 5312, reduced by $.08 for each dollar of such parent’s countable annual income in excess of $800. No payments of DIC may be made under this paragraph, however, if such parent’s countable annual income exceeds the amount specified in 38 U.S.C. 1315(b)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent’s spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater amount being paid to the veteran’s parent. In the case of remarriage, the total combined annual income of the parent and the parent’s spouse shall be counted in determining the monthly rate of DIC.

(c) Two parents not living together. The rate computation method in this paragraph applies to:

(1) Two parents who are not living together, or

(2) An unremarried parent when both parents are living and the other parent has remarried.

The monthly rate of DIC paid to such parent shall be the rate specified in 38 U.S.C. 1315(c)(1), as increased from time to time under 38 U.S.C. 5312, reduced by an amount no greater than $.08 for each dollar of such parent’s countable annual income in excess of $800, except that no payments of DIC may be made under this paragraph if such parent’s countable annual income exceeds the amount specified in 38 U.S.C. 1315(c)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in a scheduled format in the ‘‘Notices’’ section of the Federal Register as provided in paragraph (f) of this section.

(d) Two parents living together or remarried parents living with spouse. The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 1315(d)(1), as increased from time to time under 38 U.S.C. 5312, reduced to an amount no greater than $.08 for each dollar of such parent’s and spouse’s combined countable annual income in excess of $1,000 except that no payments of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the reduction under this paragraph shall be...
recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the “Notices” section of the FEDERAL REGISTER as provided in paragraph (f) of this section.

(e) Aid and attendance. The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 1315(g), as increased from time to time under 38 U.S.C. 5312, if such parent is:

(1) A patient in a nursing home, or

(2) Helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) Rate publication. Each time there is an increase under 38 U.S.C. 5312, the actual rates will be published in the “Notices” section of the FEDERAL REGISTER.

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


§ 3.26 Section 306 and old-law pension annual income limitations.

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95-588, as increased from time to time under section 306(a)(3) of Pub. L. 95-588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 1521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95-588, as increased from time to time under section 306(b)(4) of Pub. L. 95-588.

(d) Each time there is an increase under section 306(a)(3) or (b)(4) of Pub. L. 95-588, the actual income limitations will be published in the “Notices” section of the FEDERAL REGISTER.

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

[52 FR 34908, Sept. 14, 1987]

§ 3.27 Automatic adjustment of benefit rates.

(a) Improved pension. Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of pension.

(Authority: 38 U.S.C. 5312(a))

(b) Parents’ dependency and indemnity compensation—maximum annual income limitation and maximum monthly rates. Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency indemnity compensation for parents.

(Authority: 38 U.S.C. 5312(b)(1))

(c) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran. Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) Publishing requirements. Increases in pension rates, parents’ dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida made under this section shall be published in the FEDERAL REGISTER.

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))


§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.

Whenever the maximum annual rates of improved pension are increased by
§ 3.29

reason of the provisions of 38 U.S.C. 5312, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran’s spouse’s income that is excludable in determining the income of a veteran for section 306 pension purposes. (See § 3.26(b)(2))

These increases shall be published in the FEDERAL REGISTER at the same time that increases under §3.27 are published.


[52 FR 34008, Sept. 14, 1987]

CROSS REFERENCES: Section 306 and old-law pension annual income limitations. See §3.26.

§ 3.29 Rounding.

(a) Annual rates. Where the computation of an increase in improved pension rates under §§ 3.23 and 3.24 would otherwise result in a figure which includes a fraction of a dollar, the benefit rate will be adjusted to the next higher dollar amount. This method of computation will also apply to increases in old-law and section 306 pension annual income limitations under §3.26, including the income of a spouse which is excluded from a veteran’s countable income, and parents’ dependency and indemnity compensation benefit rates and annual income limitations under §3.25.

(Authority: 38 U.S.C. 5312(c)(2))

(b) Monthly or other periodic pension rates. After determining the monthly or other periodic rate of improved pension under §§3.273 and 3.30 or the rate payable under section 306(a) of Pub. L. 95-588 (92 Stat. 2508), the resulting rate, if not a multiple of one dollar, will be rounded down to the nearest whole dollar amount. The provisions of this paragraph apply with respect to amounts of pension payable for periods beginning on or after June 1, 1983, under the provisions of 38 U.S.C. 1521, 1541 or 1542, or under section 306(a) of Pub. L. 95-588.

(Authority: 38 U.S.C. 5123)

[48 FR 3471, July 29, 1983]

§ 3.30 Frequency of payment of improved pension and parents’ dependency and indemnity compensation (DIC).

Payment shall be made as shown in paragraphs (a), (b), (c), (d), (e), and (f) of this section; however, beneficiaries receiving payment less frequently than monthly may elect to receive payment monthly in cases in which other Federal benefits would otherwise be denied.

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

(a) Improved pension—Monthly. Payment shall be made monthly if the annual rate payable is $228 or more.

(b) Improved pension—Quarterly. Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $144 but less than $228.

(c) Improved pension—Semiannually. Payment shall be made every 6 months on or about June 1 and December 1, if the annual rate payable is at least $72 but less than $144.

(d) Improved pension—Annually. Payment shall be made annually on or about June 1, if the annual rate payable is less than $72.

(Authority: 38 U.S.C. 1508)

(e) Parents’ DIC—Semiannually. Benefits shall be paid every 6 months on or about June 1 and December 1, if the amount of the annual benefit is less than 4 percent of the maximum annual rate payable under 38 U.S.C. 1315.

(f) Payment of less than one dollar. Payments of less than $1 shall not be made.


CROSS REFERENCE: Pension. See §§3.3(a)(3), (b)(4).

§ 3.31 Commencement of the period of payment.

Regardless of VA regulations concerning effective dates of awards, and except as provided in paragraph (c) of
this section, payment of monetary benefits based on original, reopened, or increased awards of compensation, pension or dependency and indemnity compensation may not be made for any period prior to the first day of the calendar month following the month in which the award became effective. However, beneficiaries will be deemed to be in receipt of monetary benefits during the period between the effective date of the award and the date payment commences for the purpose of all laws administered by the Department of Veterans Affairs except that nothing in this section will be construed as preventing the receipt of retired or retirement pay prior to the effective date of waiver of such pay in accordance with 38 U.S.C. 5305.

(a) Increased award defined. For the purposes of this section the term increased award means an award which is increased because of an added dependent, increase in disability or disability rating, or reduction in income. The term also includes elections of improved pension under section 306 of Pub. L. 95-588 and awards pursuant to paragraphs 29 and 30 of the Schedule for Rating Disabilities except as provided in paragraph (c) of this section.

(b) General rule of applicability. The provisions of this section apply to all original, reopened, or increased awards unless such awards provide only for continuity of entitlement with no increase in rate of payment.

(c) Specific exclusions. The provisions of this section do not apply to the following types of awards.

(1) Surviving spouse's rate for the month of a veteran's death (for exception see §3.20(b))

(2) In cases where military retired or retirement pay is greater than the amount of compensation payable, compensation will be paid as of the effective date of waiver of such pay. However, in cases where the amount of compensation payable is greater than military retired or retirement pay, payment of the available difference for any period prior to the effective date of total waiver of such pay is subject to the general provisions of this section.

(3) Adjustments of awards—such as in the case of original or increased apportionments or the termination of any withholding, reduction, or suspension by reason of:

(i) Recoupment,

(ii) An offset to collect indebtedness,

(iii) Institutionalization (hospitalization),

(iv) Incompetency,

(v) Incarceration,

(vi) An estate that exceeds the limitation for certain hospitalized incompetent veterans, or

(vii) Discontinuance of apportionments.

(4) Increases resulting solely from the enactment of legislation—such as

(i) Cost-of-living increases in compensation or dependency and indemnity compensation,

(ii) Increases in improved Pension or parents' dependency and indemnity compensation pursuant to §3.27, or

(iii) Changes in the criteria for statutory award designations.

(5) Temporary total ratings pursuant to paragraph 29 of the Schedule for Rating Disabilities when the entire period of hospitalization or treatment, including any period of post-hospitalization convalescence, commences and terminates within the same calendar month. In such cases the period of payment shall commence on the first day of the month in which the hospitalization or treatment began.

(Authority: 38 U.S.C. 5111(c))


§ 3.32 Exchange rates for foreign currencies.

When determining the rates of pension or parents' DIC or the amounts of burial, plot or headstone allowances or accrued benefits to which a claimant or beneficiary may be entitled, income received or expenses paid in a foreign currency shall be converted into U.S. dollar equivalents employing quarterly exchange rates established by the Department of the Treasury.

(a) Pension and parents' DIC. (1) Because exchange rates for foreign currencies cannot be determined in advance, rates of pension and parents' DIC shall be projected using the most recent quarterly exchange rate and shall be adjusted retroactively based
§ 3.50 Spouse and surviving spouse.

(a) Spouse. “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of §3.1(j).

(b) Surviving spouse. Except as provided in §3.52, “surviving spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of §3.1(j) and who was the spouse of the veteran at the time of the veteran’s death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran’s death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in §3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

§ 3.52 Marriages deemed valid.

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage (see §3.54(d)), and

(b) The claimant entered into the marriage without knowledge of the impediment, and

(c) The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death as outlined in §3.53, and

(d) No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran’s death.

(Authority: 38 U.S.C. 103(a))

§ 3.53 Continuous cohabitation.

(a) General. The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the
surviving spouse. Temporary separations which ordinarily occur, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.

(b) Findings of fact. The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information. If the evidence establishes that the separation was by mutual consent and that the parties lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will not be considered as having been broken. State laws will not control in determining questions of desertion; however, due weight will be given to findings of fact in court decisions made during the life of the veteran on issues subsequently involved in the application of this section.

§ 3.54 Marriage dates.

A surviving spouse may qualify for pension, compensation, or dependency and indemnity compensation if the marriage to the veteran occurred before or during his or her service or, if married to him or her after his or her separation from service, before the applicable date stated in his section.

(a) Pension. Death pension may be paid to a surviving spouse who was married to the veteran:

(1) One year or more prior to the veteran’s death, or
(2) For any period of time if a child was born of the marriage, or was born to them before the marriage, or
(3) Prior to the applicable delimiting dates, as follows:

(i) Civil War—June 27, 1905.
(ii) Indian wars—March 4, 1917.
(iii) Spanish-American War—January 1, 1938.
(iv) Mexican border period and World War I—December 14, 1944.
(vi) Korean conflict—February 1, 1965.

(Authority: 38 U.S.C. 532(d), 534(c), 536(c), 541(e), 541(f))

(b) Compensation. Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Department of Veterans Affairs in effect on December 31, 1957, or who was married to the veteran:

(1) Before the expiration of 15 years after termination of the period of service in which the injury or disease which caused the veteran’s death was incurred or aggravated, or
(2) One year or more, or
(3) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1102)

(c) Dependency and indemnity compensation. (1) Dependency and indemnity compensation payable under 38 U.S.C. 1310(a) may be paid to the surviving spouse of a veteran who died on or after January 1, 1957, who was married to the veteran:

(i) Before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated, or
(ii) For 1 year or more, or
(iii) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1304)

(2) In order for a surviving spouse to be entitled to benefits under section 1318 of title 38 U.S.C., in the same manner as if death is service connected, the marriage to the veteran shall have been for a period of not less than 1 year immediately preceding the date of the veteran’s death, or for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1318)

(d) Child born. The term child born of the marriage means a birth on or after the date of the marriage on which the

[41 FR 18300, May 3, 1976, as amended at 59 FR 32659, June 24, 1994]
§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

(a) Surviving spouse. (1) Remarriage of a surviving spouse shall not bar the furnishing of benefits to such surviving spouse if the marriage:
   (i) Was void, or
   (ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

   (3) On or after January 1, 1971, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person shall not bar the furnishing of benefits to him or her after he or she terminates the relationship, if the relationship terminated prior to November 1, 1990.

   (4) On or after January 1, 1971, the fact that benefits to a surviving spouse may previously have been barred because his or her conduct or a relationship into which he or she had entered had raised an inference or presumption that he or she had remarried or had been determined to be open and notorious adulterous cohabitation, or similar conduct, shall not bar the furnishing of benefits to such surviving spouse after he or she terminates the conduct or relationship, if the relationship terminated prior to November 1, 1990.

   (b) Child. (1) Marriage of a child shall not bar the furnishing of benefits to or on account of such child, if the marriage:
       (i) Was void, or
       (ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

   (2) On or after January 1, 1975, the marriage of a child terminated prior to November 1, 1990, shall not bar the furnishing of benefits to or for such child provided that the marriage:
       (i) Has been terminated by death, or
       (ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by either party or by collusion.
§ 3.56  [Reserved]

§ 3.57  Child.

(a) General. (1) Except as provided in paragraphs (a)(2) and (3) of this section, the term child of the veteran means an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and

(i) Who is under the age of 18 years; or

(ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution.

(2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term child of the veteran also includes the following unmarried persons:

(i) A person who was adopted by the veteran between the ages of 18 and 23 years.

(ii) A person who became a stepchild of the veteran between the ages of 18 and 23 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.

(3) Subject to the provisions of paragraphs (c) and (e) of this section, the term child also includes a person who became permanently incapable of self-support before reaching the age of 18 years, who was a member of the veteran's household at the time he or she became 18 years of age, and who was adopted by the veteran, regardless of the age of such person at the time of adoption.

(b) Stepchild. The term means a legitimate or an illegitimate child of the veteran's spouse. A child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of §3.52, and who otherwise meets the requirements of this section is included.

(c) Adopted child. Except as provided in paragraph (e) of this section, the term means a child adopted pursuant to a final decree of adoption, a child adopted pursuant to an unrescinded interlocutory decree of adoption while remaining in the custody of the adopting parent (or parents) during the interlocutory period, and a child who has been placed for adoption under an agreement entered into by the adopting parent (or parents) with any agency authorized under law to so act, unless and until such agreement is terminated, while the child remains in the custody of the adopting parent (or parents) during the period of placement for adoption under such agreement. The term includes, as of the date of death of a veteran, such a child who:

(1) Was living in the veteran's household at the time of the veteran's death, and

(2) Was adopted by the veteran's spouse under a decree issued within 2 years after August 25, 1959, or the veteran's death whichever is later, and

(3) Was not receiving from an individual other than the veteran or the veteran's spouse, or from a welfare organization which furnishes services or assistance for children, recurring contributions of sufficient size to constitute the major portion of the child's support.

(Authority: 38 U.S.C. 101(4))

(d) Definition of child custody. The provisions of this paragraph are for the purpose of determining entitlement to improved pension under §§3.23 and 3.24.

(1) Custody of a child shall be considered to rest with a veteran, surviving spouse of a veteran or person legally responsible for the child's support if that person has the legal right to exercise parental control and responsibility for the welfare and care of the child. A child of the veteran residing with the veteran, surviving spouse of the veteran who is the child's natural or adoptive parent, or person legally responsible for the child's support shall be presumed to be in the custody of that individual. Where the veteran, surviving spouse, or person legally responsible for the child's support has not
been divested of legal custody, but the child is not residing with that individual, the child shall be considered in the custody of the individual for purposes of Department of Veterans Affairs benefits.

(2) The term person legally responsible for the child's support means a person who is under a legally imposed obligation (e.g., by statute or court order) to provide for the child's support, as well as a natural or adoptive parent who has not been divested of legal custody. If the child's natural or adoptive parent has remarried, the stepparent may also be considered a person legally responsible for the child's support. A child shall be considered in the joint custody of his or her stepparent and natural or adoptive parent so long as the natural or adoptive parent and the stepparent are not estranged and residing apart, and the natural or adoptive parent has not been divested of legal custody. When a child is in such joint custody the combined income of the natural or adoptive parent and the stepparent shall be included as income of the person legally responsible for support under §3.24(c).

(3) A person having custody of a child prior to the time the child attains age 18 shall be considered to retain custody of the child for periods on and after the child's 18th birthday, unless the person is divested of legal custody. This applies without regard to whether the child was entitled to pension prior to age 18, or whether increased pension was payable to a veteran or surviving spouse on behalf of the child prior to the child's 18th birthday. If the child's custodian dies after the child has attained age 18, the child shall be considered to be in custody of a successor custodian provided the successor custodian has the right to exercise parental control and responsibility for the welfare and care of the child.

(Authority: 38 U.S.C. 501, 1521(c), 1541(c))

(e) Child adopted under foreign law—

(1) General. The provisions of this paragraph are applicable to a person adopted under the laws of any jurisdiction other than a State. The term State is defined in 38 U.S.C. 101(20) and also includes the Commonwealth of the Northern Mariana Islands. The term veteran includes, for the purposes of this paragraph, a Commonwealth Army veteran or new Philippine Scout as defined in 38 U.S.C. 3566.

(2) Adopted child of living veteran. A person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of the veteran unless all of the following conditions are met.

(i) The person was less than 18 years of age at the time of adoption.

(ii) The person is receiving one-half or more of the person's support from the veteran.

(iii) The person is not in the custody of the person's natural parent unless the natural parent is the veteran's spouse.

(iv) The person is residing with the veteran (or in the case of divorce following adoption, with the divorced spouse who is also a natural or adoptive parent) except for periods during which the person is residing apart from the veteran for purposes of full-time attendance at an educational institution or during which the person or the veteran is confined in a hospital, nursing home, other health-care facility, or other institution.

(3) Adopted child of deceased veteran. A person shall not be considered to have been a legally adopted child of a veteran as of the date of the veteran's death and thereafter unless one of the following conditions is met.

(i) The veteran was entitled to and was receiving for the person a dependent's allowance or similar monetary benefit payable under title 38, United States Code at any time within the 1-year period immediately preceding the veteran's death; or

(ii) The person met the requirements of paragraph (e)(2) of this section for a period of at least 1 year prior to the veteran's death.

(4) Verification. In the case of an adopted child of a living veteran, the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section are for prospective application. That is, in addition to meeting all of the requirements of paragraph (e)(2) of this section at
the time of initial adjudication, benefits are not payable thereafter for or to a child adopted under the laws of any jurisdiction other than a State unless the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section continue to be met. Consequently, whenever Department of Veterans Affairs benefits are payable to or for a child adopted under the laws of any jurisdiction other than a State, and the veteran who adopted the child is living, the beneficiary shall submit, upon Department of Veterans Affairs request, a report, or other evidence, to determine if the requirements of paragraph (e)(2)(ii), (iii), and (iv) of this section were met for any period for which payment was made for or to the child and whether such requirements will continue to be met for future entitlement periods. Failure to submit the requested report or evidence within a reasonable time from date of request may result in termination of benefits payable for or to the child.

(Authority: 38 U.S.C. 101(4), 501)

§ 3.59 Parent.

(a) The term parent means a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before his or her entry into active service.

(b) Foster relationship must have begun prior to the veteran's 21st birthday. Not more than one father and one mother, as defined, will be recognized in any case. If two persons stood in the relationship of father or mother for 1 year or more, the person who last stood in such relationship before the veteran's last entry into active service will be recognized as the parent.

(Authority: 38 U.S.C. 101(5))

[26 FR 1568, Feb. 24, 1961, as amended at 44 FR 45935, Aug. 6, 1979]

§ 3.60 Definition of "living with".

For the purposes of determining entitlement to pension under 38 U.S.C. 1521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged.

(Authority: 38 U.S.C. 1521(h)(2))

[44 FR 45935, Aug. 6, 1979]
§ 3.102 Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence; the claimant is required to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.

(Authority: 38 U.S.C. 512(a))


§ 3.103 Procedural due process and appellate rights.

(a) Statement of policy. Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) The right to notice—(1) General. Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.

(2) Pretermination/reduction notice. Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) Exceptions. Pretermination/reduction notice is not required but notice contemporaneous with the adverse action is required when:

(i) An adverse action is based solely on written, factual, unambiguous information as to income, net worth, dependency or marital status provided to VA by the beneficiary or his/her fiduciary with knowledge or notice that such information would be used to calculate benefits, and the legal standards applied to this information are numerical in nature;

(ii) An adverse action is based upon the beneficiary’s or fiduciary’s failure to return a required eligibility verification report;

(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital
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report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required,

(iv) An adverse action is based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 on renouncement),

(v) An adverse action is based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see § 3.654 regarding active service pay), or

(vi) An adverse action is based upon a garnishment order issued under 42 U.S.C. 659(a).

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

(c) The right to a hearing. (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant’s home having adjudicative functions, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more VA employees having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant’s position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician’s observations will be read into the record.

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

(d) Submission of evidence. Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) The right to representation. Subject to the provisions of §§ 14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) Notification of decisions. The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this
§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) Difference of opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.

(c) Character of discharge. A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) Severance of service connection. Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of § 3.114 are for application.) A change in diagnosis
may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. The claimant will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor and will be given 60 days for the presentation of additional evidence to show that service connection should be maintained. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 5112(b)(6))

(e) Reduction in evaluation—compensation. Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that service connection should be maintained. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 5112(b)(6))

(f) Reduction in evaluation—pension. Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 5112(b)(5))

(g) Reduction in evaluation—monetary allowance to a child suffering from spina bifida under 38 U.S.C. 1805. Where a change in disability level warrants a reduction of the monthly allowance currently being paid, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

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

(h) Other reductions/discontinuances. Except as otherwise specified at §3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status,
§ 3.106 Renouncement.

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Department of Veterans Affairs may renounce a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 5112)

(i) Predetermination hearings. (1) In the advance written notice concerning proposed actions under paragraphs (d) through (h) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f), (g) or (h) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the beneficiary and his or her representative, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraphs (f) and (g) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (h) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 5112)


CROSS REFERENCES: Effective dates. See §3.400. Reductions and discontinuances. See §3.500. Protection; service connection. See §3.957.
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his or her right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renouncement will be in writing over the person's signature. Upon receipt of such renouncement in the Department of Veterans Affairs, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing.

(Authority: 38 U.S.C. 5306(a))

(b) The renouncement will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5306(b))

(c) Notwithstanding the provisions of paragraph (b) of this section, if a new application for pension or parents' dependency and indemnity compensation is filed within one year after the date that the Department of Veterans Affairs receives a renouncement of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renouncement had not occurred.

(Authority: 38 U.S.C. 5306(c))

d) The renouncement of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class.

e) The renouncement of dependency and indemnity compensation by a surviving spouse will not serve to vest title to this benefit in children under the age of 18 years or to increase the rate payable to a child or children over the age of 18 years.


§ 3.107 Awards where not all dependents apply.

Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there were no other dependents. However, if the file reflects the existence of other dependents who have not filed claim and there is potential entitlement to benefits for a period prior to the date of filing claim, the award to a person who has filed claim will be made at the rate which would be payable if all dependents were receiving benefits. If at the expiration of the period allowed, claims have not been filed for such dependents, the full rate will be authorized for the first payee.

[29 FR 9564, July 15, 1964]

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

Diplomatic and consular officers of the Department of State are authorized to act as agents of the Department of Veterans Affairs and therefore a formal or informal claim or evidence submitted in support of a claim filed in a foreign country will be considered as filed in the Department of Veterans Affairs as of the date of receipt by the State Department representative.

[26 FR 1569, Feb. 24, 1961]


§ 3.109 Time limit.

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

(2) The provisions of this paragraph are applicable to original applications, formal or informal, and to applications
§ 3.110 Computation of time limit.

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

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

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

[55 FR 13529, Apr. 11, 1990, as amended at 58 FR 32043, June 10, 1993]

§ 3.111 [Reserved]

§ 3.112 Fractions of one cent.

In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

[26 FR 1570, Feb. 24, 1961]

§ 3.113 Signature by mark.

All signatures by mark or thumbprint must be:

(a) Witnessed by two persons who can write and who have signed their names and addresses; or

(b) Certified by a notary public or other person having authority to administer oaths for general purposes; or

(c) Certified by a Department of Veterans Affairs employee under authority of Department of Veterans Affairs Form 4505 series.

[27 FR 4365, May 8, 1962]

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary’s direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that
§ 3.151 Claims for disability benefits.

(a) General. A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(b) Information received pursuant to a request referred to in paragraph (a) of this section shall not be used for any purpose other than the administration of benefits programs under the laws administered by the Secretary if the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 through 3422).

(Cross Reference: Failure to furnish claim form or notice of time limit. See § 3.109(b)).
to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

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

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits.

(Authority: 38 U.S.C. 5101(b)(2))

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

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

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

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

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

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

[50 FR 25981, June 24, 1985]

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

§ 3.154 Injury due to hospital treatment, etc.

A formal claim for pension, compensation, dependency and indemnity compensation or any statement in a communication showing an intent to file a claim for disability or for death benefits resulting from the pursuit of a course of vocational rehabilitation, hospitalization, medical or surgical treatment, or examination under Department of Veterans Affairs laws may not preclude a request for any necessary evidence.

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

[26 FR 1570, Feb. 24, 1961]

§ 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal request for increase or reopening will be accepted as a claim.


Cross References: State Department as agent of VA. See § 3.108. Report of examination or hospitalization—as claim for increase or to reopen. See § 3.157.

§ 3.156 New and material evidence.

(a) New and material evidence means evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter under consideration, which is neither cumulative nor redundant, and which by itself or in connection with evidence previously assembled is so significant that it must be considered in order to fairly decide the merits of the claim.

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

[27 FR 11887, Dec. 1, 1962]

Cross References: Effective dates. See § 3.400. Disability or death due to hospitalization, etc. See § 3.800(a).

§ 3.157 Supplemental report.
§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

(a) General. Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Department of Veterans Affairs issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of § 3.114 with respect to action on Department of Veterans Affairs initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of 1 year prior to the date of receipt of the report.

(b) Claim. Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following will be accepted as an informal claim for increased benefits or an informal claim to reopen. In addition, receipt of one of the following will be accepted as an informal claim in the case of a retired member of a uniformed service whose formal claim for pension or compensation has been disallowed because of receipt of retirement pay. The evidence listed will also be accepted as an informal claim for pension previously denied for the reason the disability was not permanently and totally disabling.

(1) Report of examination or hospitalization by Department of Veterans Affairs or uniformed services. The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of a claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission.

(2) Evidence from a private physician or layman. The date of receipt of such evidence will be accepted when the evidence furnished by or in behalf of the claimant is within the competence of the physician or lay person and shows
the reasonable probability of entitlement to benefits.

(3) State and other institutions. When submitted by or on behalf of the veteran and entitlement is shown, date of receipt by the Department of Veterans Affairs of examination reports, clinical records, and transcripts of records will be accepted as the date of receipt of a claim if received from State, county, municipal, recognized private institutions, or other Government hospitals (except those described in paragraph (b)(1) of this section). These records must be authenticated by an appropriate official of the institution. Benefits will be granted if the records are adequate for rating purposes; otherwise findings will be verified by official examination. Reports received from private institutions not listed by the American Hospital Association must be certified by the Chief Medical Officer of the Department of Veterans Affairs or physician designee.


§ 3.159 Department of Veterans Affairs assistance in developing claims.

(a) Although it is the responsibility of any person filing a claim for a benefit administered by the Department of Veterans Affairs to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded, the Department of Veterans Affairs shall assist a claimant in developing the facts pertinent to his or her claim. This requirement to provide assistance shall not be construed as shifting from the claimant to the Department of Veterans Affairs the responsibility to produce necessary evidence.

(b) When information sufficient to identify and locate necessary evidence is of record, the Department of Veterans Affairs shall assist a claimant by requesting, directly from the source, existing evidence which is either in the custody of military authorities or maintained by another Federal agency. At the claimant’s request, and provided that he or she has authorized the release of such evidence in a form acceptable to the custodian thereof, the Department of Veterans Affairs shall assist a claimant by attempting to obtain records maintained by State or local governmental authorities and medical, employment, or other non-government records which are pertinent and specific to the claim. The Department of Veterans Affairs shall not


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§ 3.160 Status of claims.

The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.

(a) Informal claim. See § 3.155.

(b) Original claim. An initial formal application on a form prescribed by the Secretary. (See §§ 3.151, 3.152).

(c) Pending claim. An application, formal or informal, which has not been finally adjudicated.

(d) Finally adjudicated claim. An application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier. (See §§ 20.1103 and 20.1104 of this chapter.)

(e) Reopened claim. Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter.

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

(Authority: 38 U.S.C. 5107)

[55 FR 52273, Dec. 21, 1990]

§ 3.160 Status of claims.

The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.

(a) Informal claim. See § 3.155.

(b) Original claim. An initial formal application on a form prescribed by the Secretary. (See §§ 3.151, 3.152).

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

(Authority: 38 U.S.C. 5107)

[55 FR 52273, Dec. 21, 1990]
§ 3.202 Evidence from foreign countries.

(a) Except as provided in paragraph (b) of this section, where an affidavit or other document is required to be executed under oath before an official in a foreign country, the signature of that official must be authenticated by a United States Consular Officer in that jurisdiction or by the State Department. Where the United States has no consular representative in a foreign country, such authentication may be made as follows:

(1) By a consular agent of a friendly government whereupon the signature and seal of the official of the friendly government may be authenticated by the State Department; or

(2) By the nearest American consul who will attach a certificate showing the result of the investigation concerning its authenticity.

(b) Authentication will not be required:

(1) On documents approved by the Deputy Minister of Veterans Affairs, Department of Veterans Affairs, Ottawa, Canada; or

(2) When it is indicated that the attesting officer is authorized to administer oaths for general purposes and the document bears his or her signature and seal; or

(3) When the document is executed before a Department of Veterans Affairs employee authorized to administer oaths; or

(4) When a copy of a public or church record from any foreign country purports to establish birth, adoption, marriage, annulment, divorce, or death, provided it bears the signature and seal of the custodian of such record and there is no evidence which would serve to create doubt as to the correctness of the records; or

(5) When affidavits prepared in the Republic of the Philippines are certified by a Department of Veterans Affairs representative located in the Philippines having authority to administer oaths.

(c) Photocopies of original documents meeting the requirements of this section will be accepted if they satisfy the requirements of §3.204 of this part.

§ 3.203 Service records as evidence of service and character of discharge.

(a) Evidence submitted by a claimant. For the purpose of establishing entitlement to pension, compensation, dependency and indemnity compensation or burial benefits the Department of Veterans Affairs may accept evidence of service submitted by a claimant (or sent directly to the Department of Veterans Affairs), such as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, without verification from the appropriate service department if the evidence meets the following conditions:

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if the copy was issued by the service department or if the copy was issued by a public custodian of records who certifies that it is a true and exact copy of the document in the custodian’s custody; and

(2) The document contains needed information as to length, time and character of service; and

(3) In the opinion of the Department of Veterans Affairs the document is genuine and the information contained in it is accurate.
§ 3.204 Evidence of dependents and age.

(a) (1) Except as provided in paragraph (a)(2) of this section, VA will accept, for the purpose of determining entitlement to benefits under laws administered by VA, the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a dependent, provided that the statement contains: the date (month and year) and place of the event; the full name and relationship of the other person to the claimant; and, where the claimant’s dependent child does not reside with the claimant, the name and address of the person who has custody of the child. In addition, a claimant must provide the social security number of any dependent on whose behalf he or she is seeking benefits (see § 3.216).

(b) Marriage or birth. The classes of evidence to be furnished for the purpose of establishing marriage, dissolution of marriage, age, relationship, or death, if required under the provisions of paragraph (a)(2), are indicated in §§ 3.205 through 3.211 in the order of preference. Failure to furnish the higher class, however, does not preclude the acceptance of a lower class if the evidence furnished is sufficient to prove the point involved.

(c) Acceptability of photocopies. Photocopies of documents necessary to establish birth, death, marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if the Department of Veterans Affairs is satisfied that the copies are genuine and free from alteration. Otherwise, VA may request a copy of the document certified over the signature and official seal of the person having custody of such record.

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

§ 3.205 Marriage.

(a) Proof of marriage. Marriage is established by one of the following types of evidence:

(b) Additional requirements for pension claimants. In addition to meeting the requirements of paragraph (a) of this section, a document submitted to establish a creditable period of wartime service for pension entitlement may be accepted without verification if the document (or other evidence of record) shows:

(1) Service of 4 months or more; or

(2) Discharge for disability incurred in line of duty; or

(3) Ninety days creditable service based on records from the service department such as hospitalization for 90 days for a line of duty disability.

(c) Verification from the service department. When the claimant does not submit evidence of service or the evidence submitted does not meet the requirements of paragraph (a) of this section (and paragraph (b) of this section in pension claims), the Department of Veterans Affairs shall request verification of service from the service department. However, payment of nonservice-connected burial benefits may be authorized, if otherwise in order, based upon evidence of service which VA relied upon to authorize payment of compensation or pension during the veteran’s lifetime, provided that there is no evidence which would serve to create doubt as to the correctness of that service evidence. If it appears that a length of service requirement may not be met (e.g., the 90 days wartime service requirement to receive pension under 38 U.S.C. 1521(j)), the Department of Veterans Affairs shall request a complete statement of service to determine if there are any periods of active service that are required to be excluded under § 3.15.


§ 3.206 Evidence of dependents and age.

(a)(1) Except as provided in paragraph (a)(2) of this section, VA will accept, for the purpose of determining entitlement to benefits under laws administered by VA, the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a dependent, provided that the statement contains: the date (month and year) and place of the event; the full name and relationship of the other person to the claimant; and, where the claimant’s dependent child does not reside with the claimant, the name and address of the person who has custody of the child. In addition, a claimant must provide the social security number of any dependent on whose behalf he or she is seeking benefits (see § 3.216).

(b) VA shall require the types of evidence indicated in §§ 3.205 through 3.211 where: the claimant does not reside within a state; the claimant’s statement on its face raises a question of its validity; the claimant’s statement conflicts with other evidence of record; or, there is a reasonable indication, in the claimant’s statement or otherwise, of fraud or misrepresentation of the relationship in question.

(Authority: 38 U.S.C. 5124)

(1) Copy or abstract of the public record of marriage, or a copy of the church record of marriage, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages if shown on the official record.

(2) Official report from service department as to marriage which occurred while the veteran was in service.

(3) The affidavit of the clergyman or magistrate who officiated.

(4) The original certificate of marriage, if the Department of Veterans Affairs is satisfied that it is genuine and free from alteration.

(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony.

(6) In jurisdictions where marriages other than by ceremony are recognized the affidavits or certified statements of one or both of the parties to the marriage, if living, setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the periods of cohabitation, places of residences, whether the parties held themselves out as married, and whether they were generally accepted as such in the communities in which they lived.

(7) Any other secondary evidence which reasonably supports a belief by the Adjudicating activity that a valid marriage actually occurred.

(a) Valid marriage. In the absence of conflicting information, proof of marriage which meets the requirements of paragraph (a) of this section together with the claimant’s certified statement concerning the date, place and circumstances of dissolution of any prior marriage may be accepted as establishing a valid marriage, provided that such facts, if they were to be corroborated by record evidence, would warrant acceptance of the marriage as valid. Where necessary to a determination because of conflicting information or protest by a party having an interest therein, proof of termination of a prior marriage will be shown by proof of death, or a certified copy or a certified abstract of final decree of divorce or annulment specifically reciting the effects of the decree.

(b) Marriages deemed valid. Where a surviving spouse has submitted proof of marriage in accordance with paragraph (a) of this section and also meets the requirements of §3.52, the claimant’s signed statement that he or she had no knowledge of an impediment to the marriage to the veteran will be accepted, in the absence of information to the contrary, as proof of that fact.

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


CROSS REFERENCES: Marriages deemed valid. See §3.52. Definitions; marriage. See §3.1(j). Evidence of dependents and age. See §3.204.

§ 3.206 Divorce.

The validity of a divorce decree regular on its face, will be questioned by the Department of Veterans Affairs only when such validity is put in issue by a party thereto or a person whose interest in a claim for Department of Veterans Affairs benefits would be affected thereby. In cases where recognition of the decree is thus brought into question:

(a) Where the issue is whether the veteran is single or married (dissolution of a subsisting marriage), there must be a bona fide domicile in addition to the standards of the granting jurisdiction respecting validity of divorce;

(b) Where the issue is the validity of marriage to a veteran following a divorce, the matter of recognition of the divorce by the Department of Veterans Affairs (including any question of bona fide domicile) will be determined according to the laws of the jurisdictions specified in §3.1(j).
§ 3.207 Void or annulled marriage.

(c) Where a foreign divorce has been granted the residents of a State whose laws consider such decrees to be valid, it will thereafter be considered as valid under the laws of the jurisdictions specified in §3.1(j) in the absence of a determination to the contrary by a court of last resort in those jurisdictions.


Cross Reference: Evidence of dependents and age. See §3.204.

§ 3.208 Claims based on attained age.

In claims for pension where the age of the veteran or surviving spouse is material, the statements of age will be accepted where they are in agreement with other statements in the record as to age. However, where there is a variance in such records, the youngest age will be accepted subject to the submission of evidence as outlined in §3.209.

[40 FR 53581, Nov. 19, 1975, as amended at 52 FR 19349, May 22, 1987]

Cross Reference: Evidence of dependents and age. See §3.204.

§ 3.209 Birth.

Age or relationship is established by one of the following types of evidence.

If the evidence submitted for proof of age or relationship indicates a difference in the name of the person as shown by other records, the discrepancy is to be reconciled by an affidavit or certified statement identifying the person having the changed name as the person whose name appears in the evidence of age or relationship.

(a) A copy or abstract of the public record of birth. Such a record established more than 4 years after the birth will be accepted as proof of age or relationship if it is not inconsistent with material of record with the Department of Veterans Affairs, or if it shows on its face that it is based upon evidence which would be acceptable under this section.

(b) A copy of the church record of baptism. Such a record of baptism performed more than 4 years after birth will not be accepted as proof of age or relationship unless it is consistent with material of record with the Department of Veterans Affairs, which will include at least one reference to age or relationship made at a time when such reference was not essential to establishing entitlement to the benefit claimed.

(c) Official report from the service department as to birth which occurred while the veteran was in service.

(d) Affidavit or a certified statement of the physician or midwife in attendance at birth.

(e) Copy of Bible or other family record certified to by a notary public or other officer with authority to administer oaths, who should state in what year the Bible or other book in which the record appears was printed, whether the record bears any erasures or other marks of alteration, and whether from the appearance of the writing he or she believes the entries to have been made at the time purported.

(f) Affidavits or certified statements of two or more persons, preferably disinterested, who will state their ages, showing the name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents (naming the parents) and stating the source of their knowledge.
(g) Other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration, or naturalization records.

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


CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

§ 3.210 Child’s relationship.

(a) Legitimate child. Where it is necessary to determine the legitimacy of a child, evidence will be required to establish the legality of the marriage of the mother of the child to the veteran or to show that the child is otherwise legitimate by State laws together with evidence of birth as outlined in § 3.209. Where the legitimacy of a child is not a factor, evidence to establish legitimacy will not be required: Provided, That, evidence is on file which meets the requirements of paragraph (b) of this section sufficient to warrant recognition of the relationship of the child without regard to legitimacy.

(b) Illegitimate child. As to the mother of an illegitimate child, proof of birth is all that is required. As to the father, the sufficiency of evidence will be determined in accordance with the facts in the individual case. Proof of such relationship will consist of:

(1) An acknowledgment in writing signed by him; or

(2) Evidence that he has been identified as the child’s father by a judicial decree ordering him to contribute to the child’s support or for other purposes; or

(3) Any other secondary evidence which reasonably supports a finding of relationship, as determined by an official authorized to approve such findings, such as:

(i) A copy of the public record of birth or church record of baptism, showing that the veteran was the informant and was named as parent of the child; or

(ii) Statements of persons who know that the veteran accepted the child as his; or

(iii) Information obtained from service department or public records, such as school or welfare agencies, which shows that with his knowledge the veteran was named as the father of the child.

(c) Adopted child. Except as provided in paragraph (c)(1) of this section evidence of relationship will include a copy of the decree of adoption or a copy of the adoptive placement agreement and such other evidence as may be necessary.

(1) In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, the following may be accepted to establish the fact of adoption:

(i) As to a child adopted into the veteran’s family, a copy of the child’s revised birth certificate.

(ii) As to a child adopted out of the veteran’s family, a statement over the signature of the judge or the clerk of the court setting forth the child’s former name and the date of adoption, or a certified statement by the veteran, the veteran’s surviving spouse, apportionee, or their fiduciaries setting forth the child’s former name, date of birth, and the date and fact of adoption together with evidence indicating that the child’s original public record of birth has been removed from such records. Where application is made for an apportionment under § 3.458(d) on behalf of a child adopted out of the veteran’s family, the evidence must be sufficient to establish the veteran as the natural parent of the child.

(2) As to a child adopted by the veteran’s surviving spouse after the veteran’s death, the statement of the adoptive parent or custodian of the child will be accepted in absence of information to the contrary, to show that the child was a member of the veteran’s household at the date of the veteran’s death and that recurring contributions were not being received for the child’s maintenance sufficient to provide for the major portion of the child’s support, from any person other than the veteran or surviving spouse or from any public or private welfare organization which furnished services or assistance to children. (Pub. L. 86-195)
§ 3.211

(d) Stepchild. Evidence of relationship of a stepchild will consist of proof of birth as outlined in §3.209, evidence of the marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran’s household or was a member of the veteran’s household at the date of the veteran’s death.

§ 3.211 Death.

Death should be established by one of the following types of evidence:

(a)(1) A copy of the public record of the State or community where death occurred.

(a)(2) A copy of a coroner’s report of death or a verdict of a coroner’s jury of the State or community where death occurred, provided such report or verdict properly identified the deceased.

(b) Where death occurs in a hospital or institution under the control of the United States Government:

(1) A death certificate signed by a medical officer; or

(2) A clinical summary or other report showing fact and date of death signed by a medical officer.

(c) An official report of death of a member of a uniformed service from the Secretary of the department concerned where death occurs while deceased was on the retired list, in an inactive duty status, or in the active service.

(d) Where death occurs abroad:

(1) A United States consular report of death bearing the signature and seal of the United States consul; or

(2) A copy of the public record of death authenticated (see §3.202(b)(4) for exception) by the United States consul or other agency of the State Department; or

(3) An official report of death from the head of the department concerned, where the deceased person was, at the time of death, a civilian employee of such department.

(e) If the foregoing evidence cannot be furnished, the reason must be stated. The fact of death may then be established by the affidavits of persons who have personal knowledge of the fact of death, have viewed the body of the deceased, know it to be the body of the person whose death is being established, setting forth all the facts and circumstances concerning the death, place, date, time, and cause thereof.

(f) If proof of death, as defined in paragraphs (a) through (e) of this section cannot be furnished, a finding of fact of death, where death is otherwise shown by competent evidence, may be made by an official authorized to approve such findings. Where it is indicated that the veteran died under circumstances which precluded recovery or identification of the body, the fact of death should be established by the best evidence, which from the nature of the case must be supposed to exist.

(g) In the absence of evidence to the contrary, a finding of fact of death made by another Federal agency will be accepted for the purposes of paragraph (f) of this section.

§ 3.212 Unexplained absence for 7 years.

(a) If satisfactory evidence is produced establishing the fact of the continued and unexplained absence of any individual from his or her home and family for a period of 7 years or more and that a diligent search disclosed no evidence of his or her existence after the date of disappearance, and if evidence as provided in §3.211 cannot be furnished, the death of such individual as of the expiration of such period may be considered as sufficiently proved.

(b) No State law providing for presumption of death will be applicable to claims for benefits under laws administered by the Department of Veterans Affairs and the finding of death will be final and conclusive except where suit is filed for insurance under 38 U.S.C. 1984.

(Approval: 38 U.S.C. 108)
§ 3.213 Change of status affecting entitlement.

(a) General. For the purpose of establishing entitlement to a higher rate of pension, compensation, or dependency and indemnity compensation based on the existence of a dependent, VA will require evidence which satisfies the requirements of §3.204. For the purpose of reducing or discontinuing such benefits, a statement by a claimant or payee setting forth the month and year of change of status which would result in a reduction or discontinuance of benefits to that person will be accepted, in the absence of contradictory information. This includes:

(1) Veteran. A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) Surviving spouse. A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of any payments to the surviving spouse.)

(3) Child. A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veteran or surviving spouse for a child), or fiduciary, setting forth the month and year of the child’s death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child’s marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child.

(4) Parent. A statement by a parent setting forth the month and year:

(i) Of marriage or remarriage;

(ii) When two parents or a parent and spouse ceased living together;

(iii) When two parents or a parent and spouse resumed living together following a period of separation;

(iv) Of divorce or death of a spouse.

(b) Date not reported. If the month and year of the event is not reported, the award will be reduced or discontinued, whichever is appropriate, effective date of last payment. The payee will be requested to furnish within 60 days from the date of request a statement setting forth the date of the event. Where payments are continued at a reduced rate, the award will be discontinued effective date of last payment if the required statement is not received within the 60-day period. Payments on a discontinued award may be resumed, if otherwise in order, from the date of discontinuance if the necessary information is received within 1 year from the date of request; otherwise from the date of receipt of a new claim.

(c) Contradictory information. Where there is reason to believe that the event reported may have occurred at an earlier date, formal proof will be required.


CROSS REFERENCES: Abandoned claims. See §3.158. Change in status of dependents. See §3.651. Material change in income, net worth or change in status. See §3.660. Evidence of dependents and age. See §3.204.

§ 3.214 Court decisions; unremarried surviving spouses.

Effective July 15, 1958, a decision rendered by a Federal court in an action to which the United States was a party holding that a surviving spouse of a veteran has not remarried will be followed in determining eligibility for pension, compensation or dependency and indemnity compensation.


CROSS REFERENCES: Abandoned claims. See §3.158. Change in status of dependents. See §3.651. Dependency, income and estate. See §3.660. Evidence of dependents and age. See §3.204.
§ 3.215 Termination of marital relationship or conduct.

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding himself or herself out openly to the public as that person’s spouse or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption of remarriage or related to open or notorious adulterous cohabitation or similar conduct, if the relationship terminated prior to November 1, 1990. Such evidence may consist of, but is not limited to, the surviving spouse’s certified statement of the fact.


§ 3.216 Mandatory disclosure of social security number.

Any person who applies for or receives any compensation or pension benefit as defined in §§3.3, 3.4, or 3.5 of this part shall, as a condition for receipt or continued receipt of benefits, furnish the Department of Veterans Affairs upon request with his or her social security number and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received. However, no one shall be required to furnish a social security number for any person to whom none has been assigned. Benefits will be terminated if a beneficiary fails to furnish the Department of Veterans Affairs with his or her social security number or the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received, within 60 days from the date the beneficiary is requested to furnish the social security number.

(Authority: 38 U.S.C. 8301)

(Approved by the Office of Management and Budget under control number 2900-0522)

[57 FR 8268, Mar. 9, 1992, as amended at 57 FR 27935, June 23, 1992]
relative in the ascending as well as de-
scending class, whom the father or
mother is under moral or legal obliga-
tion to support. In determining wheth-
er other members of the family under
legal age are factors in necessary ex-
penses of the mother or father, consid-
eration will be given to any income
from business or property (including
trusts) actually available, directly or
indirectly, to the mother or father for
the support of the minor but not to the
corpus of the estate or the income of
the minor which is not so available.

(c) Inception of dependency. The fact
that the veteran has made habitual
contributions to the father or
mother, or both, is not conclusive evidence that
dependency existed but will be consid-
ered in connection with all other evi-
dence. In death claims, it is not mate-
rial whether dependency arose prior or
subsequent to the veteran’s death. (See
§ 3.100(d)(3) as to accrued.)

(Authority: 38 U.S.C. 102(a))

(d) Remarriage. Dependency will not
be denied solely because of remarriage
(38 U.S.C. 102(b)(1)). Compensation may
be continued if the parent submits evi-
dence to show that dependency exists,
considering the combined income and
expenses of the parent and spouse.

[28 FR 29, Jan. 1, 1963, as amended at 40 FR
16065, Apr. 9, 1975; 40 FR 47004, Nov. 30, 1984;
61 FR 20727, May 8, 1996]

§ 3.252 Annual income; pension; Mexi-
can border period and later war pe-
riods.

(a) Annual income limitations; old-law
pension. Where the right to old-law
pension is payable under section 306(b)
of Pub. L. 95±588 (92 Stat. 2497), pension
is not payable if the pensioner’s annual
income exceeds the income limitations
prescribed by § 3.26(c).

(b) Annual income and net worth limi-
tations; Pub. L. 86-211. Pension is not
payable to a veteran, surviving spouse
or child whose annual income exceeds
the limitations set forth in 38 U.S.C.
1521, 1541 or 1542, or to a veteran, sur-
viving spouse or child if it is reason-
able that some part of the claimant’s
estate be consumed for his or her main-
tenance. Where a veteran and spouse
are living together, the separate in-
come of the spouse will be considered

(3) Where the claim is based on serv-
ice in the Commonwealth Army of the
Philippines, or as a guerrilla or as a
Philippine Scout under section 14, Pub.
L. 190, 79th Congress, the income limi-
tation will be at a rate of $0.50 for each
dollar. See § 3.100(b).

(Authority: 38 U.S.C. 107)

(4) If the remarriage of a parent has
been terminated, or the parent is sepa-
rated from his or her spouse, the rate
of dependency and indemnity com-
pensation for the parent will be that
which would be payable if there were
one parent alone or two parents not
living together, whichever is applica-
able.

(5) Where there are two parents liv-
ing and only one parent has filed claim,
the rate of dependency and indemnity
compensation will be that which would
be payable if both parents had filed
claim.

(b) Basic rule. Payments of any kind
or from any source will be counted as
income unless specifically excluded. In-
come will be counted for the calendar
year in which it is received and total
income for the full calendar year will
be considered except as provided in
§ 3.260.

[28 FR 29, Jan. 1, 1963, as amended at 31 FR
14455, Nov. 10, 1966; 40 FR 16065, Apr. 9, 1975;
41 FR 15411, Apr. 13, 1976; 60 FR 18355, Apr. 11,
1995]

§ 3.251 Income of parents; dependency
and indemnity compensation.

(a) Annual income limitations and rates.
(1) Dependency and indemnity
compensation is not payable to a par-
ent or parents whose annual income ex-
ceds the limitations set forth in 38
U.S.C. 1315 (b), (c), or (d).

(2) Where there is only one parent,
and the parent has remarried and is
living with his or her spouse, depend-
ency and indemnity compensation will
be paid under either the formula in 38
U.S.C. 1315(b)(1) or the formula in 38
U.S.C. 1315(d), whichever will provide
the greater monthly rate of depend-
ency and indemnity compensation. The
total combined annual income of the
parent and spouse will be counted.

(Authority: 38 U.S.C. 1315)
as the veteran's income as provided in §3.262(b).

(Authority: 38 U.S.C. 1543)

(c) Basic rule. Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year will be considered except as provided in §3.260.

(d) Veteran with a spouse. For the purpose of determining eligibility under paragraph (b) of this section the pension rates provided by 38 U.S.C. 1521(c) may be authorized for a married veteran if he or she is living with or, if estranged, is reasonably contributing to the support of his or her spouse. The determination of "reasonable" contribution will be based on all the circumstances in the case, considering the income and estate of the veteran and the separate income and estate of the spouse. Apportionment of the veteran's pension under §3.451 meets the requirement of reasonable contribution.

(e) Surviving spouse with a child—(1) Child. The term "child" means a child as defined in §3.57. Where a veteran's child is born after the veteran dies, the surviving spouse will not be considered a surviving spouse with a child prior to the child's date of birth.

(2) Veteran's child not in surviving spouse's custody. Where the veteran was survived by a surviving spouse and by a child, the income increments for a surviving spouse with a child prior to the child's date of birth.

(3) Income of child. The separate income received by a child or children, regardless of custody, will not be considered in computing the surviving spouse's income. Where the separate income of the child is turned over to the surviving spouse, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the surviving spouse's income.

(4) Alternative rate. Whenever the monthly pension rate payable to the surviving spouse under the formula in 38 U.S.C. 1521(c) is less than the rate payable for one child under section 1542 if the surviving spouse were not entitled, the surviving spouse will be paid the child's rate.

(f) Income over maximum; reduced aid and attendance allowance. Beginning January 1, 1977, veterans in need of regular aid and attendance who are not receiving pension because their income exceeds the applicable statutory limitation may be eligible for a reduced aid and attendance allowance. The amount payable is the regular aid and attendance allowance authorized by 38 U.S.C. 1521(d)(1) reduced by 16.6 percent for each $100, or portion thereof, by which the veteran's annual income exceeds the applicable maximum income limitation. The reduced aid and attendance allowance is payable when:

(1) A veteran in need of regular aid and attendance is denied pension under 38 U.S.C. 1521 solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521(b)(3) and (c)(3); or

(2) Pension payable under 38 U.S.C. 1521 to a veteran in need of regular aid and attendance is discontinued solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521(b)(3) or (c)(3); and

(3) The veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521(b)(3) or (c)(3) by an amount not greater than the amount specified in 38 U.S.C. 1521(d)(2).


CROSS REFERENCES: Basic pension determinations. See §3.314. Determination of permanent need for regular aid and attendance and "permanently bedridden". See §3.352.

§§3.253—3.255 [Reserved]

§3.256 Eligibility reporting requirements.

(a) Obligation to report changes in factors affecting entitlement. Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary in writing of any change
§ 3.260 Computation of income.

(a) Installments. Income will be determined by the total amount received or anticipated during the calendar year.

(b) Deferred determinations. Where there is doubt as to the amount of the anticipated income, pension or dependency and indemnity compensation will be allowed at the lowest appropriate rate or will be withheld, as may be in order, until the end of the calendar year when the total income received during the year may be determined.

(c) Proportionate income limitations; excess income. A proportionate income limitation will be established under the conditions set forth in paragraph (d) of this section except where application of a proportionate income limitation would result in payment of a lower rate than would be payable on the basis of income for the full calendar year.

(d) Proportionate income limitations; computation. Income limitations will be computed proportionately for the purpose of determining initial entitlement, or for resuming payments on an award which was discontinued for a reason other than excess income or a change in marital or dependency status. A proportionate income limitation will be established for the period from the date of entitlement to the end of that calendar year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.
(e) Proportionate income limitations; spouse. In determining whether proportionate computation is applicable to a claim under Pub. L. 86-211 (73 Stat. 432), the total income for the calendar year of entitlement of both veteran and that of the spouse available for use of the veteran will be considered. If a proportionate income limitation is then applicable, it will be applied to both the veteran's and the spouse's income. The spouse's income will not be included, however, where his or her total income for the calendar year does not exceed $1,200.

(f) Rate changes. In years after that for which entitlement to pension or dependency and indemnity compensation has been established or reestablished as provided in paragraph (d) of this section, total income for the calendar year will govern the payment of benefits. Where there is a change in the conditions of entitlement because of a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) Fractions of dollars. In computing a claimant's annual income a fraction of a dollar will be disregarded for the purpose of determining entitlement to monthly payments of pension and dependency and indemnity compensation.

(Authority: 38 U.S.C. 1315(g)(2); 1503(b))


§ 3.261. Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

(a) Income.

<table>
<thead>
<tr>
<th>Income</th>
<th>Dependency (parents)</th>
<th>Dependency and indemnity compensation (parents)</th>
<th>Pension; old-law (veterans, surviving spouses and children)</th>
<th>Pension; section 306 (veterans, surviving spouses and children)</th>
<th>See—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Total income from employment, business, investments, or rents.</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>§ 3.262(a).</td>
</tr>
<tr>
<td>(2) Income of spouse</td>
<td>do</td>
<td>do</td>
<td>Excluded</td>
<td>do</td>
<td>§ 3.262(b).</td>
</tr>
<tr>
<td>(3) Earnings of members of family under legal age.</td>
<td>do</td>
<td>Excluded</td>
<td>do</td>
<td>Excluded</td>
<td>§ 3.250(b)(2). § 3.252(e)(3).</td>
</tr>
<tr>
<td>(4) Earned income of child-claimant</td>
<td></td>
<td>Excluded</td>
<td>do</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(5) Gifts, including contributions from adult members of family:</td>
<td></td>
<td>Excluded</td>
<td>do</td>
<td>Excluded</td>
<td>§ 3.262(k).</td>
</tr>
<tr>
<td>Property</td>
<td>do</td>
<td>Included</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(c).</td>
</tr>
<tr>
<td>Money</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>Excluded</td>
<td></td>
</tr>
<tr>
<td>(6) Value of maintenance by relative, friend, or organization.</td>
<td></td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(c).</td>
</tr>
<tr>
<td>(7) Rental value of property owned by and resided in by claimant.</td>
<td></td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td></td>
</tr>
<tr>
<td>(8) Charitable donations</td>
<td></td>
<td>Excluded</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(d).</td>
</tr>
<tr>
<td>(9) Family allowance authorized by service personnel.</td>
<td></td>
<td>Included</td>
<td>Excluded</td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>(10) Reasonable value of allowances to person in service in addition to base pay.</td>
<td>do</td>
<td>do</td>
<td>Excluded</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(11) Mustering out pay</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(12) Six-months' death gratuity</td>
<td>do</td>
<td>Excluded</td>
<td>Excluded</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.</td>
<td></td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td></td>
</tr>
</tbody>
</table>
Table 3.261

<table>
<thead>
<tr>
<th>Income</th>
<th>Dependency (parents)</th>
<th>Income</th>
<th>Dependency (parents)</th>
<th>Income</th>
<th>Pension; old-law (veterans, surviving spouses and children)</th>
<th>Income</th>
<th>Pension; section 306 (veterans, surviving spouses and children)</th>
<th>See—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(14) Retired Serviceman’s Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):</td>
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</tr>
<tr>
<td>(15) Annuity under § 653, Pub. L. 100–456</td>
<td>Included</td>
<td>Included</td>
<td>Excluded</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Excluded</td>
<td>Included</td>
</tr>
<tr>
<td>(16) Railroad Retirement benefits</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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</tr>
<tr>
<td>(17) Contributions by a public or private employer to a:</td>
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<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>(18) Statutory burial allowance</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>(19) Retirement pay received direct from service department</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>(20) Servicemembers’ group life insurance</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>(21) Compensation (civilian) for injury or death</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
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</tr>
<tr>
<td>(22) Contributions by a public or private employer to a:</td>
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<td>Included</td>
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<td>Included</td>
</tr>
</tbody>
</table>

VerDate 25<Jun>98 11:37 Aug 04, 1998 Jkt 179138 PO 00000 Frm 00191 Fmt 8010 Sfmt 8010 Y:\SGML\179138T.XXX 179138t PsN: 179138T
<table>
<thead>
<tr>
<th>Income</th>
<th>Dependency (parents)</th>
<th>Dependency and indemnity compensation (parents)</th>
<th>Pension; old-law (veterans, surviving spouses and children)</th>
<th>Pension; section 306 (veterans, surviving spouses and children)</th>
<th>See—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(23) Overtime pay; Government employees</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>§ 3.262(j).</td>
</tr>
<tr>
<td>(24) Commercial life insurance; disability, accident, or health insurance, less payments of medical or hospital expenses resulting from the accident or disease for which payments are made.</td>
<td>Included (as received).</td>
<td>Included (as received).</td>
<td>Included (special provision).</td>
<td>Included (as received).</td>
<td></td>
</tr>
<tr>
<td>(25) Commercial annuities or endowments</td>
<td>do</td>
<td>Included (special provision).</td>
<td>Included</td>
<td></td>
<td>§ 3.262(j).</td>
</tr>
<tr>
<td>(26) Dividends from commercial insurance</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(t)</td>
</tr>
<tr>
<td>(27) Insurance under Merchant Marine Act of 1936, as amended.</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(28) Reimbursement for casualty loss (Pub. L. 100-687)</td>
<td>Included</td>
<td>Excluded</td>
<td>Excluded</td>
<td></td>
<td>§ 3.262(t)</td>
</tr>
<tr>
<td>(29) Bequests, devises and inheritances:</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(k).</td>
</tr>
<tr>
<td>Other fire Insurance</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(k)(1).</td>
</tr>
<tr>
<td>(30) Profit from sale of property</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(k)(2).</td>
</tr>
<tr>
<td>(31) Jury duty or obligatory civic duties</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(32) Relocation payments (Pub. L. 90-448; Pub. L. 90-495)</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(c).</td>
</tr>
<tr>
<td>(33) The following programs administered by the ACTION Agency:</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(q)(1).</td>
</tr>
<tr>
<td>Foster Grandparent Program and Older Americans Community Service Pro-</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(q)(2).</td>
</tr>
<tr>
<td>grams payments (Pub. L. 93-29; 87 Stat. 55).</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (FLS), 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).</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>(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).</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>§ 3.262(q)(2).</td>
</tr>
<tr>
<td>(35) Agent Orange settlement payments (Pub. L. 101-201).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(s)</td>
</tr>
<tr>
<td>(36) Restitution to individuals of Japanese ancestry (Pub. L. 100-383).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(u)</td>
</tr>
<tr>
<td>(37) Income received by American Indian beneficiaries from Trust or Restricted lands (Pub. L. 103-66).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(v)</td>
</tr>
<tr>
<td>(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(w)</td>
</tr>
<tr>
<td>(39) Cash, stock, land or other interests received from a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(x)</td>
</tr>
<tr>
<td>(40) Monetary allowance under 38 U.S.C. 1805 for children suffering from spina bifida who are children of Vietnam Veterans (38 U.S.C. 1805(d)).</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>Excluded</td>
<td>§ 3.262(y)</td>
</tr>
</tbody>
</table>
§ 3.262

(b) Deduction of amounts paid by claimant.

<table>
<thead>
<tr>
<th>Deduction</th>
<th>Dependency (parents)</th>
<th>Dependency and indemnity compensation</th>
<th>Pension; old-law (veterans, surviving spouses, and children)</th>
<th>Pension; section 306 (veterans, surviving spouses, and children)</th>
<th>See</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Unusual medical expenses ..........</td>
<td>Not authorized.</td>
<td>Authorized ...</td>
<td>Not authorized.</td>
<td>Authorized ...</td>
<td>§§ 3.262(b)(1) and (1).</td>
</tr>
<tr>
<td>(2) Veteran: just debts, expenses of last illness and burial.</td>
<td>Authorized ...</td>
<td>Authorized, except debts.</td>
<td>Not authorized.</td>
<td>Authorized ...</td>
<td>§ 3.262(n).</td>
</tr>
</tbody>
</table>

(c) Corpus of estate.

<table>
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<tr>
<th>Dependency (parents)</th>
<th>Dependency and indemnity compensation</th>
<th>Pension; old-law (veterans, widows, and children)</th>
<th>Pension; section 306 (veterans, surviving spouses, and children)</th>
<th>See</th>
</tr>
</thead>
<tbody>
<tr>
<td>Considered conditionally ......</td>
<td>Not considered.</td>
<td>Not considered.</td>
<td>Considered ...</td>
<td>§ 3.263.</td>
</tr>
</tbody>
</table>

§ 3.262 Evaluation of income.

(a) Total income. All income from sources such as wages, salaries, earnings, bonuses from employers, income from a business or profession or from investments or rents as well as the fair value of personal services, goods or room and board received in lieu thereof will be included.

(1) Salary is not determined by “takehome” pay, but includes deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws.

(2) The gross income from a business or profession may be reduced by the necessary operating expenses, such as cost of goods sold, or expenditures for rent, taxes, and upkeep. Depreciation is not a deductible expense. The cost of repairs or replacement may be deducted. The value of an increase in stock inventory of a business is not considered income.

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

(b) Income of spouse. Income of the spouse will be determined under the rules applicable to income of the claimant.

(1) Parents. Where the mother and father, or remarried parent and spouse are living together, the total combined income will be considered in determining dependency, or in determining the rate of dependency and indemnity compensation payable to the parent. This rule is equally applicable where both parents have remarried and each is living with his or her spouse. If the remarriage of a parent has been terminated, or the parent is separated from
his or her spouse, income of the spouse will be excluded.

(2) Veterans. The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95-588 as increased from time to time under section 306(a)(3) of Pub. L. 95-588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95-588, the actual amount of the exclusion will be published in the "Notices" section of the Federal Register. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements.

(Authority: 38 U.S.C. 1521(f); sec. 306(a)(2)(B) of Pub. L. 95-588)

(c) Maintenance. The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the claimant 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 to the claimant 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 claimant's income, except as provided in paragraph (l) of this section in claims for dependency and indemnity compensation.

(d) Charitable donations. Charitable donations from public or private relief or welfare organizations will not be considered income except in claims for pension under laws in effect on June 30, 1960. In the latter cases, additional charitable allowances received by a claimant for members of his or her family may not be divided per capita in determining the amount of the claimant's income.

(e) Retirement benefits; general. Retirement benefits, including an annuity or endowment, paid under a Federal, State, municipal, or private business or industrial plan are considered income as limited by this paragraph. Where the payments received consist of part principal and part interest, interest will not be counted separately.

(1) Protected pension. Except as provided in this paragraph (e)(1), effective January 1, 1965, in determining income for pension purposes under laws in effect on June 30, 1960, 10 percent of the retirement payments received by a veteran, surviving spouse, or child will be excluded. The remaining 90 percent will be considered income as received. Where the retirement benefit is based on the claimant's own employment, payments will not be considered income until the amount of the claimant's personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply.

(2) Pension; Pub. L. 86-211. Except as provided in this subparagraph, effective January 1, 1965, in determining income for pension purposes, under Pub. L. 86-211 (73 Stat. 432), 10 percent of the retirement payments received by a veteran, the veteran's spouse, surviving spouse, or child will be excluded. The remaining 90 percent will be considered income as received. Where a person was receiving or entitled to receive pension and retirement benefits based on his or her own employment on December 31, 1964, the retirement payments will not be considered income until the amount of the claimant personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply.

(3) Compensation. In determining dependency of a parent for compensation purposes, all payments will be considered income as received.

(4) Dependency and indemnity compensation. Except as provided in this subparagraph, effective January 1, 1967,
in determining income for dependency and indemnity compensation purposes, 10 percent of the retirement payments received by a deceased veteran's parent or by the parent's spouse will be excluded. The remaining 90 percent will be considered income as received.

Where a parent was receiving or entitled to receive dependency and indemnity compensation and retirement benefits based on his or her own employment on December 31, 1966, the retirement payments will not be considered income until the amount of the claimant's personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply.

(Authority: 38 U.S.C. 1315(g), 1503(a)(6))

(f) Social security benefits. Old age and survivor's insurance and disability insurance under title II of the Social Security Act will be considered income as a retirement benefit under the rules contained in paragraph (e) of this section. Benefits received under non-contributory programs, such as old age assistance, aid to dependent children, and supplemental security income are subject to the rules contained in paragraph (d) of this section applicable to charitable donations. The lumpsum death payment under title II of the Social Security Act will be considered as income except in claims for dependency and indemnity compensation and for pension under Pub. L. 86-211 (73 Stat. 432).

(g) Railroad retirement benefits—(1) Parents, surviving spouses and children. Retirement benefits received from the Railroad Retirement Board will be considered as income under the rules contained in paragraph (e) of this section. (See paragraph (h) of this section as to waivers.)

(2) Veterans. Effective July 1, 1959, retirement benefits received from the Railroad Retirement Board were excluded from consideration as income in determining eligibility for disability pension. (45 U.S.C. 228s-1) This exclusion continues to be applicable to claims under laws in effect on June 30, 1960. For purposes of section 306 pension, such retirement benefits will be considered as income under the rules contained in paragraph (e) of this section.

(h) Retirement benefits waived. Except as provided in this paragraph, retirement benefits (pension or retirement payments) which have been waived will be included as income. For the purpose of determining dependency of a parent, or eligibility of a parent for dependency and indemnity compensation or eligibility of a veteran, surviving spouse, or child for pension under laws in effect on June 30, 1960, retirement benefits from the following sources which have been waived pursuant to Federal statute will not be considered as income:

(1) Civil Service Retirement and Disability Fund;

(2) Railroad Retirement Board (see paragraph (g)(2) of this section);

(3) District of Columbia, firemen, policemen, or public school teachers;

(4) Former lighthouse service.

(i) Compensation (civilian) for injury or death. (1) Compensation paid by the Bureau of Employees' Compensation, Department of Labor (of the United States), or by Social Security Administration, or by Railroad Retirement Board, or pursuant to any workmen's compensation or employer's liability statute, or damages collected because of personal injury or death, less medical, legal, or other expenses incident to the injury or death, or the collection or recovery of such money will be considered income as received, except as provided in paragraph (i)(2) of this section. The criteria of paragraph (i)(1) of this section are for application as to all medical expenditures after such award or settlement.

(Authority: Pub. L. 92-198, 85 Stat. 663)

(2) For pension, effective October 7, 1966, and for dependency and indemnity compensation effective January 1, 1967, if payments based on permanent and total disability or death are received from the Bureau of Employees' Compensation, Social Security Administration or Railroad Retirement Board, or pursuant to any workmen's compensation or employer's liability statute, there will be excluded 10 percent of the payments received after deduction of medical, legal, and other expenses as authorized by paragraph (i)(1) of this
section. The 10 percent exclusion does not apply to damages collected incident to a tort suit under other than an employer’s liability law of the United States or a political subdivision of the United States, or to determinations of dependency for compensation purposes.

(j) Commercial insurance—(1) Annuity or endowment insurance. For pension, effective January 1, 1965, or for dependency and indemnity compensation, effective January 1, 1967, the provisions of paragraph (e) of this section apply. In such cases, 10 percent of the payments received will be excluded. In dependency and indemnity compensation claims, where the parent is receiving or entitled to receive dependency and indemnity compensation on December 31, 1966, and is also receiving or entitled to receive annuity payments on that date, or endowment insurance matures on or before that date, no part of the payments received will be considered income until the full amount of the consideration has been received, after which 10 percent of the amount received will be excluded. For compensation, the full amount of each payment is considered income as received.

(2) Life insurance; general. In determining dependency, or eligibility for dependency and indemnity compensation, or for section 306 pension the full amount of payments is considered income as received. For section 306 pension, effective October 7, 1966, and for dependency and indemnity compensation, effective January 1, 1967, 10 percent of the payments received will be excluded. For compensation, after deduction of such expenses, the full amount of payments is considered income as received.

(k) Property—(1) Ownership. The terms of the recorded deed or other evidence of title will constitute evidence of ownership of real or personal property. This includes property acquired through purchase, bequest or inheritance except that, effective January 1, 1971, amounts in joint accounts in banks and similar institutions acquired by reason of the death of another joint owner 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, Pub. L. 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 property owned prior to the date of entitlement will be considered in proportion to his right according to the rules of ownership.

(4) Sale of property. Except as provided in paragraphs (k)(4) and (5) of this section, net profit from the sale of property owned prior to 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 (i)(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.

(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
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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 inden-
minity 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 as-
cending 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 obliga-
tion 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 un-
reimbursed medical expenses of the
spouse’s relatives in the ascending as
well as descending class who are mem-
bers or constructive members of the
household and whom the parent’s
spouse has a moral or legal obliga-
tion 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 vet-
eran where there is no surviving
spouse, amounts equal to amounts paid
by the surviving spouse or child for the
veteran’s just debts, the expenses of the
spouse’s last illness to the extent such expenses are not reim-
bursed by the Department of Veterans
Affairs. The term “just debts” does not in-
clude any debt that is secured by real
or personal property.

2508)

(n) Final expenses of veteran or parent’s
spouse; pension. In claims for pension
under section 306, there will be ex-
cluded, 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 her as spouse or sur-
ving spouse of the deceased veteran
for the last illness and burial of a child
of such veteran.

2508)

(o) Final expenses of veteran or parent’s
spouse; dependency and indemnity com-
pensation. In claims for dependency and
indemnity compensation there will be
excluded from the income of a parent,
as provided in paragraph (p) of this sec-
tion, 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 bur-
ial to the extent that such expenses are
not reimbursed under 38 U.S.C. ch. 23 or
51. The term “just debts” does not in-
clude 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 pay-
ments are made. Payments made by a
veteran, the 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 vet-
eran, spouse or child died may be de-
ducted 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) Agent Orange settlement payments. In claims for pension and parents' dependency and indemnity income, there shall be excluded from computation of income payments received by any person in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381), (January 1, 1969)

(Authority: Pub. L. 101-201, 103 Stat. 1795)

(t) 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. 13736)

(u) Restitution to individuals of Japanese ancestry. Effective August 10, 1988, for the purposes of old law pension, section 306 pension, parents' death compensation, and parents' dependency and indemnity compensation, there shall be excluded from income computation any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(v) Income received by American Indian beneficiaries from trust or restricted lands. There shall be excluded from income computation payments of up to $2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994)

(Authority: Sec. 13736, Pub. L. 103-66; 107 Stat. 663)

(w) Radiation Exposure Compensation Act. For the purposes of parents' dependency and indemnity compensation, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990.
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(Authority: 42 U.S.C. 2210 note)

(x) Alaska Native Claims Settlement Act. There shall be excluded from income computation any cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994)

(y) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran. There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

Effective August 10, 1988, for the purposes of section 306 pension and parents’ death compensation, there shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(g) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran. There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))
§ 3.270 Applicability of various dependency, income and estate regulations.

(a) Sections 3.250 to 3.270. 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.

(b) Sections 3.271 to 3.300. These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.

§ 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.

(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.

(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 computed separately.
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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)

(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)

(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, 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)

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


§ 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) 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. 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.

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

(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.

(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)

(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.
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. Any such expenses paid subsequent to death but prior to date of entitlement are not deductible.

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

(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 U.S.C.) 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) Domestic Volunteer Service Act Programs. Payments received under a Domestic Volunteer Service Act (DVSA) Program (including Volunteers In Service to America (VISTA), University Year for ACTION (UYA), Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), Senior Companion Program) shall be excluded as provided in paragraphs (k)(1) and (2) of this section:

(1) All DVSA payments received before December 13, 1979, shall be excluded from determining entitlement to improved pension.

(Authority: 42 U.S.C. 5044(g) (1973))

(2) DVSA payments received after December 12, 1979, shall be excluded from determining entitlement to improved pension unless the Director of the ACTION Agency has determined that the value of all DVSA payments, adjusted to reflect the number of hours served by the volunteer, equals or exceeds the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State where the volunteer served, whichever is the greater.

(Authority: 42 U.S.C. 5044(g) (1973))
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))

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))

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. 633)


Restitution to individuals of Japanese ancestry. Any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988) (Authority: Sec. 106, Pub. L. 100–383; 102 Stat. 905)

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))

Income received by American Indians beneficiaries from trust or restricted lands. Income of up to $2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 C.F.R. 151.2. (January 1, 1994) (Authority: Sec. 13736, Pub. L. 103–66; 107 Stat. 633)


Alaska Native Claims Settlement Act. Any receipt by an individual of cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994) (Authority: Sec. 506, Pub. L. 103–446)

Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from
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spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))


§ 3.274 Relationship of net worth to pension entitlement.

(a) Veteran. Pension shall be denied or discontinued when the corpus of the estate of the veteran, and of the veteran’s spouse, are such that under all the circumstances, including consideration of the annual income of the veteran, the veteran’s spouse, and the veteran’s children, it is reasonable that some part of the corpus of such estates be consumed for the veteran’s maintenance.

(Authority: 38 U.S.C. 1522(a))

(b) Increased pension payable to a veteran for a child. Increased pension payable to a veteran on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances including consideration of the veteran’s and spouse’s income and the income of the veteran’s child or children, it is reasonable that some part of the corpus of such child’s estate be consumed for the child’s maintenance.

(Authority: 38 U.S.C. 1522(b))
(c) Surviving spouse. Pension payable to a surviving spouse shall be denied or discontinued when the corpus of the estate of the surviving spouse is such that under all the circumstances, including consideration of the surviving spouse’s income and the income of any child for whom the surviving spouse is receiving pension, it is reasonable that some part of the corpus of the surviving spouse’s estate be consumed for the surviving spouse’s maintenance.

(Authority: 38 U.S.C. 1543(a)(1))

(d) Increased pension payable to a surviving spouse for a child. Increased pension payable to a surviving spouse on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the surviving spouse and child and the income of any other child for whom the surviving spouse is receiving increased pension, it is reasonable that some part of the corpus of the child’s estate be consumed for the maintenance of the child.

(Authority: 38 U.S.C. 1543(a)(2))

(e) Child. Pension payable to a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income, the income of any person with whom the child is residing who is legally responsible for such child’s support, and the corpus of estate of such person, it is reasonable that some part of the corpus of such estates be consumed for the child’s maintenance.

(Authority: 38 U.S.C. 1543(b))

§ 3.275 Criteria for evaluating net worth.

(a) General. The following rules are for application in determining the corpus of estate or net worth of a veteran, surviving spouse or child under § 3.274.

(b) Definition. The terms 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 § 3.271(d).

(d) Evaluation. In determining whether some part of the claimant’s estate (or combined estates under § 3.274(a) and (e)) should be consumed for the claimant’s maintenance, consideration will be given to the amount of the claimant’s income together with the following: Whether the property can be readily converted into cash at no substantial sacrifice; life expectancy; number of dependents who meet the definition of member of the family (the definition contained in § 3.250(b)(2) is applicable to the improved pension program); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.272(g) for the claimant and the claimant’s dependents.

(e) Educational expenses. There shall be excluded from the corpus of estate or net worth of a child reasonable amounts for actual or prospective educational or vocational expenses. The amount so excluded shall not be such as to provide for education or training beyond age 23.

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

(f) Agent Orange settlement payments. There shall be excluded from the corpus of the estate or net worth of a claimant any payment 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.). (January 1, 1989)

(Authority: Pub. L. 101–201, 103 Stat. 1795)

(g) Restitution to individuals of Japanese ancestry. There shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100–383; 102 Stat. 905)
§ 3.276 Certain transfers or waivers disregarded.

(a) Waiver of receipt of income. Potential income, not excludable under §3.272 and whose receipt has been waived by an individual, shall be included as countable income of that individual for Department of Veterans Affairs pension purposes.

(b) Transfer of assets. For pension purposes, a gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor’s estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller’s estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor’s household will not be recognized as reducing the corpus of the grantor’s estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property.

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

§ 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 for 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 in writing 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 shall 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.

(Authority: 38 U.S.C. 2210 note)
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)

[44 FR 45936, Aug. 6, 1979, as amended at 60 FR 51922, Oct. 4, 1995]

RATINGS AND EVALUATIONS; BASIC ENTITLEMENT CONSIDERATIONS

§ 3.301 Line of duty and misconduct.

(a) Line of duty. Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.

(Authority: 38 U.S.C. 105)

(b) Willful misconduct. Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 1521)

(c) Specific applications; willful misconduct. For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1 (m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

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

(1) Veneereal disease. The residuals of veneereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of veneereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of veneereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of occurrence of veneereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as willful misconduct or as not in line of duty will not govern.

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§ 21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 503)

(3) Drug usage. The isolated and infrequent use of drugs by itself will not be considered willful misconduct; however, the progressive and frequent use of drugs to the point of addiction will be considered willful misconduct. Where drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death, such disability or death will be considered the result of
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the person’s willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs will not be considered of willful misconduct origin. Where drugs are used for therapeutic purposes or where use of drugs or addiction thereto, results from a service-connected disability, it will not be considered of misconduct origin.

(Authority: 38 U.S.C. 105, 1110, 1121, 1131, 1301, and 1521(a))

(d) Line of duty; abuse of alcohol or drugs. An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed. For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))


§ 3.303 Principles relating to service connection.

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a
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veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word “Chronic.” When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of extraordinary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis, will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

(d) Postservice initial diagnosis of disease. Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs
§ 3.304 Direct service connection; wartime and peacetime.

(a) General. The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) Presumption of soundness. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto. Only such conditions as are recorded in examination reports are to be considered as noted.

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to inception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record.

(c) Development. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.

(e) Prisoners of war. Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of
The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

(f) Post-traumatic stress disorder. Service connection for post-traumatic stress disorder requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed inservice stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed inservice stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor. If consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.

(c) Campaigns and expeditions. In considering claims of veterans who engaged in combat during campaigns or expeditions satisfactory lay or other evidence of incurrence or aggravation in such combat of an injury or disease, if consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.

§ 3.305 Direct service connection; peacetime service before January 1, 1947.

(a) General. The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service other than in a period of war before January 1, 1947.

(b) Presumption of soundness. A peacetime veteran who has had active, continuous service of 6 months or more will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities or disorders noted at the time thereof, or where evidence or medical judgment, as distinguished from medical fact and principles, establishes that an injury or disease preexisted service. Any evidence acceptable as competent to indicate the time of existence or inception of the condition may be considered. Determinations based on medical judgment will take cognizance of the time of inception or manifestation of disease or injury following entrance into service, as shown by proper service authorities in service records, entries or reports. Such records will be accorded reasonable weight in consideration of other evidence and sound medical reasoning. Opinions may be solicited from Department of Veterans Affairs medical authorities when considered necessary.

(c) Campaigns and expeditions. In considering claims of veterans who engaged in combat during campaigns or expeditions satisfactory lay or other evidence of incurrence or aggravation in such combat of an injury or disease, if consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.

§ 3.306 Aggravation of preservice disability.

(a) General. A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(b) Wartime service; peacetime service after December 31, 1946. Clear and unmistakable evidence (obvious or manifest) is required to rebut the presumption of aggravation where the preservice disability underwent an increase in severity during service. This includes medical facts and principles
which may be considered to determine whether the increase is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service.

(1) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including postoperative scars, absent or poorly functioning parts or organs, will not be considered service connected unless the disease or injury is otherwise aggravated by service.

(2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability.

(Authority: 38 U.S.C. 1154)

(c) Peacetime service prior to December 7, 1941. The specific finding requirement that an increase in disability is due to the natural progress of the condition will be met when the available evidence of a nature generally acceptable as competent shows that the increase in severity of a disease or injury or acceleration in progress was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. Consideration will be given to the circumstances, conditions, and hardships of service.


§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) General. A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in §3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in §3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in §3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected.

(Authority: 38 U.S.C. 1112)

(5) Diseases specific as to former prisoners of war. The diseases listed in §3.309(c) shall have become manifest to
a degree of 10 percent or more at any time after discharge or release from active service.

(Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to certain herbicide agents. (i) For the purposes of this section, the term “herbicide agent” means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

(Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975 and has a disease listed at §3.309(e) shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. “Service in the Republic of Vietnam” includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116(a)(3))

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in §3.303(b) will be considered. The diseases listed in §3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except: (1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic microorganism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease.

(Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions. No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified.
§ 3.308 Presumptive service connection; peacetime service before January 1, 1947.

(a) Chronic disease. There is no provision for presumptive service connection for chronic disease as distinguished from tropical diseases referred to in paragraph (b) of this section based on peacetime service before January 1, 1947.

(b) Tropical disease. In claims based on peacetime service before January 1, 1947, a veteran of 6 months or more service who contracts a tropical disease listed in §3.309 or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease or as a preventative, will be considered to have incurred such disability in service when it is shown to exist to the degree of 10 percent or more within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period commenced during active service unless shown by clear and unmistakable evidence not to have been of service origin. The requirement of 6 months or more service means active, continuous service, during one or more enlistment periods.

(Authority: 38 U.S.C. 1133)

[39 FR 34530, Sept. 26, 1974]

§ 3.309 Disease subject to presumptive service connection.

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.
Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen’s disease.
Hodgkin’s disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget’s disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud’s disease.
Sarcoidosis.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger’s disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology. In short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data. (b) Tropical diseases. The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under § 3.307 or § 3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.
Amebiasis.
Blackwater fever.
Cholera.
Dracontiasis.
Dysentery.
Filariasis.
Leishmaniasis, including kala-azar.
Loiasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.
Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.
(c) Diseases specific as to former prisoners of war. If a veteran is: (1) A former prisoner of war, and (2) as such was interned or detained for not less than 30 days, the following diseases shall be service-connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.
Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthisis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.
Dysthymic disorder (or depressive neurosis).
Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.
Post-traumatic osteoarthritis.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.
NOTE: For purposes of this section, the term beriberi heart disease includes ischemic heart disease in a former prisoner of war who had experienced localized edema during captivity.
(Authority: 38 U.S.C. 1112)
(d) Diseases specific to radiation-exposed veterans. (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as
defined in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of §3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:

(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
(xiv) Cancer of the salivary gland.
(xv) Cancer of the urinary tract.

NOTE: For the purposes of this section, the term "urinary tract" means the kidneys, renal pelvis, ureters, urinary bladder, and urethra.

(3) For purposes of this section:

(i) The term radiation-exposed veteran means either a veteran who while serving on active duty, or an individual who while a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.

(ii) The term radiation-risk activity means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan or service on active duty in Japan immediately following such internment during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) The term atmospheric detonation includes underwater nuclear detonations.

(iv) The term onsite participation means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951, through July 1, 1952, August 7, 1956, through August 7, 1957, or November 1, 1958, through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) For tests conducted by the United States, the term operational period means:

(A) For Operation TRINITY the period July 16, 1945 through August 6, 1945.

(B) For Operation CROSSROADS the period July 1, 1946 through August 31, 1946.

(C) For Operation SANDSTONE the period April 15, 1948 through May 20, 1948.

(D) For Operation RANGER the period January 27, 1951 through February 6, 1951.

(E) For Operation GREENHOUSE the period April 8, 1951 through June 20, 1951.

(F) For Operation BUSTER-JANGLE the period October 22, 1951 through December 20, 1951.

(G) For Operation TUMBLER-SNAPPER the period April 1, 1952 through June 20, 1952.

(H) For Operation IVY the period November 1, 1952 through December 31, 1952.
(I) For Operation UPHOT-KNOT-HOLE the period March 17, 1953 through June 20, 1953.

(j) For Operation CASTLE the period March 1, 1954 through June 10, 1955.

(k) For Operation TEAPOT the period February 18, 1955 through May 14, 1955.

(l) For Operation WIGWAM the period May 28, 1955 through October 22, 1957.

(o) For Operation HARDTACK II the period September 19, 1958 through October 31, 1958.

(r) For Operation DOMINIC I the period April 25, 1962 through December 31, 1962.

(s) For Operation DOMINIC II/PLOW-SHARE the period July 6, 1962 through August 15, 1962.

(vi) The term "occupation of Hiroshima or Nagasaki, J apan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, J apan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the J apanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, J apan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(4)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 1110, 1112, 1131)

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

Chloracne or other acneform disease consistent with chloracne
Hodgkin's disease
Multiple myeloma
Non-Hodgkin's lymphoma
Acute and subacute peripheral neuropathy
Porphyria cutanea tarda
Prostate cancer
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

NOTE 1: The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma
Dermatofibrosarcoma protuberans
Malignant fibrous histiocytoma
Liposarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating angiolymphoid hyperplasia with eosinophilia (systemic)
Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma

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Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing’s sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

NOTE 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

(Authority: 38 U.S.C. 501(a) and 1116)

§ 3.310 Proximate results, secondary conditions.

(a) General. Disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) Cardiovascular disease. Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations.

(Authority: 38 U.S.C. 501, 1110-1131)
[44 FR 50340, Aug. 28, 1979]

§ 3.311 Claims based on exposure to ionizing radiation.

(a) Determinations of exposure and dose—(1) Dose assessment. In all claims in which is it established that a radiogenic disease first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in §3.307 or §3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

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

(2) Request for dose information. Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:
(i) Atmospheric nuclear weapons test participation claims. In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.
(ii) Hiroshima and Nagasaki occupation claims. In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.
(iii) Other exposure claims. In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran’s exposure to radiation. These records normally include but may not be limited to the veteran’s Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran’s radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) Referral to independent expert. When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:
(i) The difference between the claimant’s estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a “credible source” if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) Exposure. In cases described in paragraph (a)(2)(i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran’s presence at the site will be conceded.

(ii) Neither the veteran nor the veteran’s survivors may be required to produce evidence substantiating exposure if the information in the veteran’s service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) Initial review of claims. (1) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September 1945 until July 1946, or other activities as claimed;

(ii) The veteran subsequently developed a radiogenic disease; and

(iii) Such disease first became manifest within the period specified in paragraph (b)(5) of this section; before its adjudication the claim will be referred to the Under Secretary for Benefits for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances.

(2) For purposes of this section the term “radiogenic disease” means a disease that may be induced by ionizing radiation and shall include the following:

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

(ii) Thyroid cancer;

(iii) Breast cancer;

(iv) Lung cancer;

(v) Bone cancer;

(vi) Liver cancer;

(vii) Skin cancer;

(viii) Esophageal cancer;

(ix) Stomach cancer;

(x) Colon cancer;

(xi) Pancreatic cancer;

(xii) Kidney cancer;

(xiii) Urinary bladder cancer;

(xiv) Salivary gland cancer;

(xv) Multiple myeloma;

(xvi) Posterior subcapsular cataracts;

(xvii) Non-malignant thyroid nodular disease;

(xviii) Ovarian cancer;

(xix) Parathyroid adenoma;

(xx) Tumors of the brain and central nervous system;

(xxi) Cancer of the rectum; and

(xxii) Lymphomas other than Hodgkin’s disease.

(Authority: 38 U.S.C. 503)

(3) For purposes of paragraphs (a)(1) and (b)(1) of this section, “radiogenic disease” shall not include polycythemia vera.

(4) If a claim is based on a disease other than one of those listed in paragraphs (b)(2) or (b)(3) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

(5) For the purposes of paragraph (b)(1) of this section:

(i) Bone cancer must become manifest within 30 years after exposure;

(ii) Leukemia may become manifest at any time after exposure;

(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and

(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(Authority: 38 U.S.C. 503; Pub. L. 98-542)

(c) Review by Under Secretary for Benefits. (1) When a claim is forwarded for review pursuant to paragraph (b)(1) of
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this section, the Under Secretary for Benefits shall consider the claim with reference to the factors specified in paragraph (e) of this section and may request an advisory medical opinion from the Under Secretary for Health.

(i) If after such consideration the Under Secretary for Benefits is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran’s disease resulted from exposure to radiation in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing. The Under Secretary for Benefits shall forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (e) of this section.

(ii) If the Under Secretary for Benefits determines there is no reasonable possibility that the veteran’s disease resulted from radiation exposure in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing, setting forth the rationale for this conclusion.

(2) If the Under Secretary for Benefits, after considering any opinion of the Under Secretary for Health, is unable to conclude whether it is at least as likely as not, or that there is no reasonable possibility, the veteran’s disease resulted from radiation exposure in service, the Under Secretary for Benefits shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, “sound scientific evidence” means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and “sound medical evidence” means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) Referral to outside consultants. (1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Under Secretary for Health from outside VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:

(i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;

(ii) The circumstances, including date, of the veteran’s exposure;

(iii) The veteran’s age, gender, and pertinent family history;

(iv) The veteran’s history of exposure to known carcinogens, occupationally or otherwise;

(v) Evidence of any other effects radiation exposure may have had on the veteran; and

(vi) Any other information relevant to determination of causation of the veteran’s disease.

The Under Secretary for Benefits shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is either likely, unlikely, or approximately as likely as not the veteran’s disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant’s conclusion, including the consultant’s evaluation under the applicable factors specified in paragraph (e) of this section. The Under Secretary for Benefits shall review the consultant’s response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) Factors for consideration. Factors to be considered in determining whether a veteran’s disease resulted from exposure to ionizing radiation in service include:

(1) The probable dose, in terms of dose type, rate and duration as a factor
in inducing the disease, taking into account any known limitations in the do-
simetry devices employed in its measurement or the methodologies em-
ployed in its estimation;

(2) The relative sensitivity of the in-
volved tissue to induction, by ionizing
radiation, of the specific pathology;

(3) The veteran's gender and perti-
nent family history;

(4) The veteran’s age at time of expo-
sure;

(5) The time-lapse between exposure
and onset of the disease; and

(6) The extent to which exposure to
radiation, or other carcinogens, outside
of service may have contributed to de-
velopment of the disease.

(f) Adjudication of claim. The deter-
nmination of service connection will be
made under the generally applicable
provisions of this part, giving due con-
sideration to all evidence of record, in-
cluding any opinion provided by the
Under Secretary for Health or an out-
side consultant, and to the evaluations
published pursuant to §1.17 of this
Title. With regard to any issue material
to consideration of a claim, the provi-
sions of §3.102 of this title apply.

(g) Willful misconduct and supervening
cause. In no case will service connec-
tion be established if the disease is due
to the veteran’s own willful mis-
conduct, or if there is affirmative evi-
dence to establish that a supervening,
nonservice-related condition or event is
more likely the cause of the disease.

Authority: Pub. L. 98-542

§ 3.312 Cause of death.

(a) General. The death of a veteran
will be considered as having been due
to a service-connected disability when
the evidence establishes that such dis-
ability was either the principal or a
contributory cause of death. The issue
involved will be determined by exercise
of sound judgment, without recourse to
speculation, after a careful analysis
has been made of all the facts and cir-
cumstances surrounding the death of
the veteran, including, particularly, autopsies.

(b) Principal cause of death. The serv-
ice-connected disability will be consid-
ered as the principal (primary) cause of
death when such disability, singly or
jointly with some other condition, was
the immediate or underlying cause of
death or was etiologically related thereto.

(c) Contributory cause of death. (1)
Contributory cause of death is inher-
ently one not related to the principal
cause. In determining whether the
service-connected disability contrib-
uted to death, it must be shown that it
contributed substantially or materi-
ally; that it combined to cause death;
that it aided or lent assistance to the
production of death. It is not sufficient
to show that it casually shared in pro-
ducing death, but rather it must be
shown that there was a causal connec-
tion.

(2) Generally, minor service-con-
nected disabilities, particularly those
of a static nature or not materially af-
fecting a vital organ, would not be held
to have contributed to death primarily
due to unrelated disability. In the same
category there would be included serv-
ce-connected disease or injuries of any
evaluation (even though evaluated as
100 percent disabling) but of a quies-
cent or static nature involving mus-
cular or skeletal functions and not ma-
terially affecting other vital body func-
tions.

(3) Service-connected diseases or in-
juries involving active processes affect-
ing vital organs should receive careful
consideration as a contributory cause
of death, the primary cause being unre-
lated, from the viewpoint of whether
there were resulting debilitating ef-
facts and general impairment of health
to an extent that would render the per-
son materially less capable of resisting
the effects of other disease or injury
primarily causing death. Where the
service-connected condition affects
vital organs as distinguished from mus-
cular or skeletal functions and is eval-
uated as 100 percent disabling, debili-
tation may be assumed.

(4) There are primary causes of death
which by their very nature are so over-
whelming that eventual death can be
anticipated irrespective of coexisting

--End---
§ 3.313

Crime-related and non-service-connected death.

Conditions, but, even in such cases, there is for consideration whether there may be a reasonable basis for holding that a service-connected condition was of such severity as to have a material influence in accelerating death. In this situation, however, it would not generally be reasonable to hold that a service-connected condition accelerated death unless such condition affected a vital organ and was of itself of a progressive or debilitating nature.


Cross references: Reasonable doubt. See §3.102. Service connection for mental unsoundness in suicide. See §3.302.

§ 3.313 Claims based on service in Vietnam.

(a) Service in Vietnam. Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) Service connection based on service in Vietnam. Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin’s lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

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

[55 FR 43124, Oct. 26, 1990]

§ 3.314 Basic pension determinations.

(a) Prior to the Mexican border period. While pensions are granted based on certain service prior to the Mexican border period, the only rating factors in claims therefor are:

(1) Claims based on service of less than 90 days in the Spanish-American War require a rating determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations.

(Authority: 38 U.S.C. 1512)

(2) Veterans entitled to pension on the basis of service in the Spanish-American War may be entitled to an increased rate of pension if rated as being in need of regular aid and attendance. Veterans who have elected pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in §3.351(d).

(Authority: 38 U.S.C. 1502 (b), (c), 512)

(b) Mexican border period and later war periods. Non-service-connected disability and death pension may be paid based on service in the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Rating determinations in such claims will be required in the following situations:

(1) Claims based on service of less than 90 days may require a determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations (38 U.S.C. 1521(g)(2)) unless, in the case of death pension, the veteran was, at the time of death, receiving (or entitled to receive) compensation or retirement pay based upon a wartime service-connected disability.

(Authority: 38 U.S.C. 1541(a) and 1542(a))

(2) Determinations of permanent total disability for pension purposes will be based on non-service-connected disability or combined non-service-connected and service-connected disabilities not the result of willful misconduct. However, for pension under
§ 3.315 Basic eligibility determinations; dependents, loans, education.

(a) Child over 18 years. A child of a veteran may be considered a "child" after age 18 for purposes of benefits under title 38, United States Code (except ch. 19 and sec. 8502(b) of ch. 85), if found by a rating determination to have become, prior to age 18, permanently incapable of self-support.

(Authority: 38 U.S.C. 101(4)(B))

(b) Loans. If a veteran of World War II, the Korean conflict or the Vietnam era had less than 90 days of service, or if a veteran who served after July 25, 1947, and prior to June 27, 1950, or after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975, has less than 181 days of service on active duty as defined in §§ 36.4301 and 36.4501, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurring under §3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under §3.306(b) while determination based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under §3.306 (a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (See also the minimum service requirements of §3.12a.)

(Authority: 38 U.S.C. 3702, 3707)

(c) Veterans' educational assistance. (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 5303A apply to him or her, and the veteran would be eligible for such benefits only if—

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 31; or

(ii) The veteran applies for benefits under 38 U.S.C. chapter 30 and—

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service...
§ 3.316 Claims based on chronic effects of exposure to mustard gas and Lewisite.

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:

(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.

(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.

(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.

(b) Service connection will not be established under this section if the claimed condition is due to the veteran’s own willful misconduct (See §3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See §3.303).

[59 FR 42499, Aug. 18, 1994]

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a)(1) Except as provided in paragraph (c) of this section, VA shall pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of chronic disability resulting from an illness or combination of illnesses manifested by one or more signs or symptoms such as those listed in paragraph (b) of this section, provided that such disability:
(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more not later than December 31, 2001; and
(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2) For purposes of this section, “objective indications of chronic disability” include both “signs,” in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(3) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest.

(4) A chronic disability resulting from an undiagnosed illness referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.

(5) A disability referred to in this section shall be considered service connected for purposes of all laws of the United States.

(b) For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness include, but are not limited to:

(1) Fatigue
(2) Signs or symptoms involving skin
(3) Headache
(4) Muscle pain
(5) Joint pain
(6) Neurologic signs or symptoms
(7) Neuropsychological signs or symptoms
(8) Signs or symptoms involving the respiratory system (upper or lower)
(9) Sleep disturbances
(10) Gastrointestinal signs or symptoms
(11) Cardiovascular signs or symptoms
(12) Abnormal weight loss
(13) Menstrual disorders.

(c) Compensation shall not be paid under this section:

(1) If there is affirmative evidence that an undiagnosed illness was not incurred during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; or
(2) If there is affirmative evidence that an undiagnosed illness was caused by a supervening condition or event that occurred between the veteran’s most recent departure from active duty in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or
(3) If there is affirmative evidence that the illness is the result of the veteran’s own willful misconduct or the abuse of alcohol or drugs.

(d) For purposes of this section:

(1) The term “Persian Gulf veteran” means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

(Authority: 38 U.S.C. 1117)

§ 3.321 General rating considerations.

(a) Use of rating schedule. The 1945 Schedule for Rating Disabilities will be

§ 3.322 Rating of disabilities aggravated by service.

(a) Aggravation of preservice disability. In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree of disability existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into active service, or whether it is determined upon the evidence of record to have existed at that time. It is necessary to deduct from the present evaluation the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule except that if the disability is total (100 percent) no deduction will be made. If the degree of disability at the time of entrance into service is not ascertainable in terms of the schedule, no deduction will be made.

(b) Aggravation of service-connected disability. Where a disease or injury incurred in peacetime service is aggravated during service in a period of war, or conversely, where a disease or injury incurred in service during a period of war is aggravated during peacetime service, the entire disability flowing from the disease or injury will be service connected based on the war service.

[26 FR 1583, Feb. 24, 1961]
§ 3.323 Combined ratings.
(a) Compensation—(1) Same type of service. When there are two or more service-connected compensable disabilities a combined evaluation will be made following the tables and rules prescribed in the 1945 Schedule for Rating Disabilities.
(2) Wartime and peacetime service. Evaluation of wartime and peacetime service-connected compensable disabilities will be combined to provide for the payment of wartime rates of compensation. (38 U.S.C. 1157) Effective July 1, 1973, it is immaterial whether the disabilities are wartime or peacetime service-connected since all disabilities are compensable under 38 U.S.C. 1114 and 1115 on and after that date.
(b) Pension—(1) Nonservice-connected disabilities. Evaluation of two or more nonservice-connected disabilities not the result of the veteran's own willful misconduct will be combined as provided in paragraph (a)(1) of this section.
(2) Service-connected and nonservice-connected disabilities. Evaluations for service-connected disabilities may be combined with evaluations for disabilities not shown to be service connected and not the result of the veteran's own willful misconduct.


§ 3.324 Multiple noncompensable service-connected disabilities.
Whenever a veteran is suffering from two or more separate permanent service-connected disabilities of such character as clearly to interfere with normal employability, even though none of the disabilities may be of compensable degree under the 1945 Schedule for Rating Disabilities the rating agency is authorized to apply a 10-percent rating, but not in combination with any other rating.

[40 FR 56435, Dec. 3, 1975]

§ 3.325 [Reserved]

§ 3.326 Examinations.
For purposes of this section, the term examination includes periods of hospital observation when required by VA.
(a) Where there is a well-grounded claim for disability compensation or pension but medical evidence accompanying the claim is not adequate for rating purposes, a Department of Veterans Affairs examination will be authorized. This paragraph applies to original and reopened claims as well as claims for increase submitted by a veteran, surviving spouse, parent, or child. Individuals for whom an examination has been scheduled are required to report for the examination.
(b) Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination. However, monetary benefits to a former prisoner of war will not be denied unless the claimant has been offered a complete physical examination conducted at a Department of Veterans Affairs hospital or outpatient clinic.
(c) Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination.

(Authority: 38 U.S.C. 5107(a))

[60 FR 52864, Oct. 11, 1995]

CROSS REFERENCE: Failure to report for VA examination. See §3.655.

§ 3.327 Reexaminations.
(a) General. Reexaminations, including periods of hospital observation, will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability. Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect. Individuals for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. Paragraphs (b) and (c) of this section provide general guidelines for
§ 3.328 Independent medical opinions.

(a) General. When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are not employees of VA. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) Requests. A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her duly appointed representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Adjudication Officer of the office having jurisdiction over the claim, and those requests which in the judgment of the Adjudication Officer merit consideration shall be referred to the Compensation and Pension Service for approval.

(c) Approval. Approval shall be granted only upon a determination by the Compensation and Pension Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation and Pension Service shall obtain the opinion. A determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary case of the individual. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.


CROSS REFERENCE: Failure to report for VA examination. See §3.655.

§ 3.328 Independent medical opinions.

(requesting reexaminations, but shall not be construed as limiting VA's authority to request reexaminations, or periods of hospital observation, at any time in order to ensure that a disability is accurately rated.

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

(b) Compensation cases—(1) Scheduling reexaminations. Assignment of a prestabilization rating requires reexamination within the second 6 months period following separation from service. Following initial Department of Veterans Affairs examination, or any scheduled future or other examination, reexamination, if in order, will be scheduled within not less than 2 years nor more than 5 years within the judgment of the rating board, unless another time period is elsewhere specified.

(2) No periodic future examinations will be requested. In service-connected cases, no periodic reexamination will be scheduled: (i) When the disability is established as static;

(ii) When the findings and symptoms are shown by examinations scheduled in paragraph (b)(2)(i) of this section or other examinations and hospital reports to have persisted without material improvement for a period of 5 years or more;

(iii) Where the disability from disease is permanent in character and of such nature that there is no likelihood of improvement;

(iv) In cases of veterans over 55 years of age, except under unusual circumstances;

(v) When the rating is a prescribed minimum rating; or

(vi) Where a combined disability evaluation would not be affected if the future examination should result in reduced evaluation for one or more conditions.

(c) Pension cases. In nonservice-connected cases in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not generally be requested. In other cases further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.


CROSS REFERENCE: Failure to report for VA examination. See §3.655.
issue by the agency of original jurisdiction.

(d) Notification. The Compensation and Pension Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall be subject to the special procedures set forth in §1.577 of this chapter.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

§ 3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) Total disability ratings—(1) General. Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) Schedule for rating disabilities. Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the requirements of paragraph 17, page 5 of the schedule are met.

(3) Ratings of total disability on history. In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made, provided:

(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;

(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself or herself in a substantially gainful occupation.

(b) Permanent total disability. Permanent total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is
§ 3.341 Total disability ratings for compensation purposes.

(a) General. Subject to the limitation in paragraph (b) of this section, total disability compensation ratings may be assigned under the provisions of §3.340. However, if the total rating is based on a disability or combination of disabilities for which the Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age.

(Authority: 38 U.S.C. 1155)

(b) Incarcerated veterans. A total rating for compensation purposes based on individual unemployability which would first become effective while a veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony, shall not be assigned during such period of incarceration. However, where a rating for individual unemployability exists prior to incarceration for a felony, or prior to October 7, 1980, and routine review is required the case will be reconsidered to determine if continued eligibility for such rating exists.

(Authority: 38 U.S.C. 5313(c))

(c) Program for vocational rehabilitation. Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning after January 31, 1985, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be offered to determine whether the achievement of a vocational goal by the veteran is reasonably feasible.

(Authority: 38 U.S.C. 1163)

§ 3.342 Permanent and total disability ratings for pension purposes.

(a) General. Permanent total disability ratings for pension purposes are authorized for disabling conditions not the result of the veteran’s own willful misconduct whether or not they are service connected.

(Authority: 38 U.S.C. 1502(a))

(b) Criteria. In addition to the criteria for determining total disability and permanency of total disability contained in §3.340, the following special considerations apply in pension cases:

(1) Permanent total disability pension ratings will be authorized for congenital, developmental, hereditary or familial conditions, provided the other requirements for entitlement are met.

(2) The permanence of total disability will be established as of the earliest date consistent with the evidence in the case. Active pulmonary tuberculosis not otherwise established as permanently and totally disabling will be presumed so after 6 months’ hospitalization without improvement. The same principle may be applied with other types of disabilities requiring hospitalization for indefinite periods. The need for hospitalization for periods shorter or longer than 6 months may be a proper basis for determining permanence. Where, in application of this principle, it is necessary to employ a waiting period to determine permanence of totality of disability and a report received at the end of such period shows the veteran’s condition is unimproved, permanence may be established as of the date of entrance into the hospital. Similarly, when active pulmonary tuberculosis is improved after...
§ 3.343 Continuance of total disability ratings.

(a) General. Total disability ratings, when warranted by the severity of the condition and not granted purely because of hospital, surgical, or home treatment, or individual unemployability, will not be reduced, in the absence of clear error, without examination showing material improvement in physical or mental condition. Examination reports showing material improvement must be evaluated in conjunction with all the facts of record, and consideration must be given particularly to whether the veteran attained improvement under the ordinary conditions of life, i.e., while working or actively seeking work or whether the symptoms have been brought under control by prolonged rest, or generally, by following a regimen which precludes work, and, if the latter, reduction from total disability ratings will not be considered pending reexamination after a period of employment (3 to 6 months).

(b) Tuberculosis; compensation. In service-connected cases, evaluations for active or inactive tuberculosis will be governed by the Schedule for Rating Disabilities (part 4 of this chapter). Where in the opinion of the rating board the veteran at the expiration of the period during which a total rating

6 months' hospitalization but still diagnosed as active after 12 months' hospitalization permanence will also be established as of the date of entrance into the hospital. In other cases the rating will be effective the date the evidence establishes permanence.

(3) Special consideration must be given the question of permanence in the case of veterans under 40 years of age. For such veterans, permanence of total disability requires a finding that the end result of treatment and adjustment to residual handicaps (rehabilitation) will be permanent disability of the required degree precluding more than marginal employment. Severe diseases and injuries, including multiple fractures or the amputation of a single extremity, should not be taken to establish permanent and total disability until it is shown that the veteran after treatment and convalescence, has been unable to secure or follow employment because of the disability and through no fault of the veteran.

(4) The following shall not be considered as evidence of employability:

(i) Employment as a member-employer or similar employment obtained only in competition with disabled persons.

(ii) Participation in, or the receipt of a distribution of funds as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 1718.

(Authority: 38 U.S.C. 1718(1))

(5) The authority granted the Secretary under 38 U.S.C. 1502(a)(2) to classify as permanent and total those diseases and disorders, the nature and extent of which, in the Secretary judgment, will justify such determination, will be exercised under § 3.321(b).

(c) Temporary program of vocational rehabilitation training for certain pension recipients. (1) When a veteran under age 45 is awarded disability pension during the period beginning on February 1, 1965, and ending on December 31, 1995, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as provided in § 21.6050, to determine that veteran's potential for rehabilitation.

(2) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(4) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(Authority: 38 U.S.C. 1524(c))

§ 3.344 Stabilization of disability evaluations.

(a) Examination reports indicating improvement. Rating agencies will handle cases affected by change of medical findings or diagnosis, so as to produce the greatest degree of stability of disability evaluations consistent with the laws and Department of Veterans Affairs regulations governing disability compensation and pension. It is essential that the entire record of examinations and the medical-industrial history be reviewed to ascertain whether the recent examination is full and complete, including all special examinations indicated as a result of general examination and the entire case history. This applies to treatment of intercurrent diseases and exacerbations, including hospital reports, bedside examinations, examinations by designated physicians, and examinations in the absence of, or without taking full advantage of, laboratory facilities and the cooperation of specialists in related lines. Examinations less full and complete than those on which payments were authorized or continued will not be used as a basis of reduction. Ratings on account of diseases subject to temporary or episodic improvement, e.g., manic depressive or other psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease, bronchial asthma, gastric or duodenal ulcer, many skin diseases, etc., will not be reduced on any one examination, except in those instances where all the evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated. Ratings on account of diseases which become comparatively symptom free (findings absent) after prolonged rest, e.g., residuals of phlebitis, arteriosclerotic heart disease, etc., will not be reduced on examinations reflecting the results of bed rest. Moreover, though material improvement in the physical or mental condition is clearly reflected the rating agency will consider whether the evidence makes it reasonably certain that the improvement will be maintained under the ordinary conditions of life. When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis,
psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in prior diagnosis or possibly a disease entity independent of the service-connected disability. When the new diagnosis reflects mental deficiency or personality disorder only, the possibility of only temporary remission of a super-imposed psychiatric disease will be borne in mind.

(b) Doubtful cases. If doubt remains, after according due consideration to all the evidence developed by the several items discussed in paragraph (a) of this section, the rating agency will continue the rating in effect, citing the former diagnosis with the new diagnosis in parentheses, and following the appropriate code there will be added the reference “Rating continued pending reexamination —— months from this date, § 3.344.” The rating agency will determine on the basis of the facts in each individual case whether 18, 24 or 30 months will be allowed to elapse before the reexamination will be made.

(c) Disabilities which are likely to improve. The provisions of paragraphs (a) and (b) of this section apply to ratings which have continued for long periods at the same level (5 years or more). They do not apply to disabilities which have not become stabilized and are likely to improve. Reexaminations disclosing improvement, physical or mental, in these disabilities will warrant reduction in rating.

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 1114. 

(a) Ratings under 38 U.S.C. 1114(k). Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. 1114(l) when authorized in conjunction with any of the provisions of 38 U.S.C. 1114 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 1114 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed the monthly rate set forth in 38 U.S.C. 1114(o). The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 1115, or the special allowance for aid and attendance provided by 38 U.S.C. 1114(r).

(i) Creative organ. (i) Loss of a creative organ will be shown by acquired absence of one or both testicles (other than undescended testicles) or ovaries or other creative organ. Loss of use of one testicle will be established when examination by a board finds that:

(a) The diameters of the affected testicle are reduced to one-third of the corresponding diameters of the paired normal testicle, or
(b) The diameters of the affected testicle are reduced to one-half or less of the corresponding normal testicle and there is alteration of consistency so that the affected testicle is considerably harder or softer than the corresponding normal testicle; or
(c) If neither of the conditions (a) or (b) is met, when a biopsy, recommended by a board including a genitourologist and accepted by the veteran, establishes the absence of spermatozoa.

(ii) When loss or loss of use of a creative organ resulting from wounds or other trauma sustained in service, or resulted from operations in service for
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the relief of other conditions, the cre- active organ becoming incidentally in- volved, the benefit may be granted.

(iii) Loss or loss of use traceable to an elective operation performed subse- quent to service, will not establish en- titlement to the benefit. If, however, the operation after discharge was re- quired for the correction of a specific injury caused by a preceding operation in service, it will support authorization of the benefit. When the existence of disability is established meeting the above requirements for nonfunctioning testicle due to operation after service, resulting in loss of use, the benefit may be granted even though the operation is one of election. An operation is not considered to be one of election where it is advised on sound medical judgment for the relief of a pathological condition or to prevent possible future pathological consequences.

(iv) Atrophy resulting from mumps followed by orchitis in service is service connected. Since atrophy is usually perceptible within 1 to 6 months after infection subsides, an examination more than 6 months after the subside- nce of orchitis demonstrating a nor- mal genitourinary system will be con- sidered in determining rebuttal of serv- ice incurrence of atrophy later demon- strated. Mumps not followed by orchitis in service will not suffice as the antecedent cause of subsequent at- rophy for the purpose of authorizing the benefit.

(2) Foot and hand. (i) Loss of use of a hand or a foot will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appli- ance. The determination will be made on the basis of the actual remaining function, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance, propulsion, etc., in the case of the foot, could be accom- plished equally well by an amputation stump with prosthesis; for example:

(a) Extremely unfavorable complete ankylosis of the knee, or complete an- kylosis of two major joints of an ex- tremity, or shortening of the lower ex- tremity of 3½ inches or more, will con- stitute loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent footdrop, accompanied by characteristic organic changes including trophic and circulatory disturb- ances and other concomitants confirm- atory of complete paralysis of this nerve, will be taken as loss of use of the foot.

(3) Both buttocks. (i) Loss of use of both buttocks shall be deemed to exist when there is severe damage by disease or injury to muscle group XVII, bilat- eral, (diagnostic code 5317) and addi- tional disability making it impossible for the disabled person, without assist- ance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural sta- bility (the pelvis upon head of femur). The assistance may be done by the person’s own hands or arms, and, in the matter of postural stability, by a spe- cial appliance.

(Authority: 38 U.S.C. 1114(k))

(ii) Special monthly compensation for loss or loss of use of both lower ex- tremities (38 U.S.C. 1114(l) through (n)) will not preclude additional compensa- tion under 38 U.S.C. 1114(k) for loss of use of both buttocks where appropriate tests clearly substantiate that there is such additional loss.

(4) Eye. Loss of use or blindness of one eye, having only light perception, will be held to exist when there is in- ability to recognize test letters at 1 foot and when further examination of the eye reveals that perception of ob- jects, hand movements, or counting fingers cannot be accomplished at 3 feet. Lesser extents of vision, particu- larly perception of objects, hand move- ments, or counting fingers at distances less than 3 feet is considered of neg- ligible utility.

(5) Deafness. Deafness of both ears, having absence of air and bone conduc- tion will be held to exist where exam- ination in a Department of Veterans Affairs authorized audiology clinic under current testing criteria shows bi- lateral hearing loss is equal to or greater than the minimum bilateral hearing loss required for a maximum
rating evaluation under the rating schedule.

(Authority: Pub. L. 88-20)

(6) Aphonia. Complete organic aphonia will be held to exist where there is a disability of the organs of speech which constantly precludes communication by speech.

(Authority: Pub. L. 88-22)

(b) Ratings under 38 U.S.C. 1114(l). The special monthly compensation provided by 38 U.S.C. 1114(l) is payable for anatomical loss or loss of use of both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance.

(1) Extremities. The criteria for loss and loss of use of an extremity contained in paragraph (a)(2) of this section are applicable.

(2) Eyes, bilateral. 5/200 visual acuity or less bilaterally qualifies for entitlement under 38 U.S.C. 1114(l). However, evaluation of 5/200 based on acuity in excess of that degree but less than 10/200 (§ 4.83 of this chapter), does not qualify. Concentric contraction of the field of vision beyond 5 degrees in both eyes is the equivalent of 5/200 visual acuity.

(3) Need for aid and attendance. The criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance are contained in §3.352(a).

(4) Permanently bedridden. The criteria for rating are contained in §3.352(a). Where possible, determinations should be on the basis of permanently bedridden rather than for need of aid and attendance (except where 38 U.S.C. 1114(r) is involved) to avoid reduction during hospitalization where aid and attendance is provided in kind.

(c) Ratings under 38 U.S.C. 1114(m). (1) The special monthly compensation provided by 38 U.S.C. 1114(m) is payable for any of the following conditions:

(i) Anatomical loss or loss of use of both hands;

(ii) Anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place;

(iii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place;

(iv) Blindness in both eyes having only light perception;

(v) Blindness in both eyes leaving the veteran so helpless as to be in need of regular aid and attendance.

(2) Natural elbow or knee action. In determining whether there is natural elbow or knee action with prosthesis in place, consideration will be based on whether use of the proper prosthetic appliance requires natural use of the joint, or whether necessary motion is otherwise controlled, so that the muscles affecting joint motion, if not already atrophied, will become so. If there is no movement in the joint, as in ankylosis or complete paralysis, use of prosthesis is not to be expected, and the determination will be as though there were one in place.

(3) Eyes, bilateral. With visual acuity 5/200 or less or the vision field reduced to 5 degree concentric contraction in both eyes, entitlement on account of need for regular aid and attendance will be determined on the facts in the individual case.

(d) Ratings under 38 U.S.C. 1114(n). The special monthly compensation provided by 38 U.S.C. 1114(n) is payable for any of the conditions which follow: Amputation is a prerequisite except for loss of use of both arms and blindness without light perception in both eyes. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level, the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

(1) Anatomical loss or loss of use of both arms at a level, or with complications, preventing natural elbow action with prosthesis in place;

(2) Anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance;

(3) Anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance with anatomical
loss of one leg so near the hip as to prevent use of a prosthetic appliance;

(4) Anatomical loss of both eyes or blindness without light perception in both eyes.

(e) Ratings under 38 U.S.C. 1114 (o). (1) The special monthly compensation provided by 38 U.S.C. 1114(o) is payable for any of the following conditions:

(i) Anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance;

(ii) Conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 1114(l) through (n);

(iii) Bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 5/200 or less.

(iv) Service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less.

(2) Paraplegia. Paralysis of both lower extremities together with loss of anal and bladder sphincter control will entitle to the maximum rate under 38 U.S.C. 1114(o), through the combination of loss of use of both legs and helplessness. The requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.

(3) Combinations. Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement.

(4) Helplessness. The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(f) Intermediate or next higher rate. An intermediate rate authorized by this paragraph shall be established at the arithmetic mean, rounded to the nearest dollar, between the two rates concerned.

(Authority: 38 U.S.C. 1114 (p))

(1) Extremities. (i) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one leg at a level, or with complications preventing natural knee action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).

(ii) Anatomical loss or loss of use of one foot with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(m).

(iii) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).

(iv) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance
(v) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(vi) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one hand, shall entitle to the rate between 38 U.S.C. 1114 (l) and (m).

(vii) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114 (l) and (m).

(viii) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one hand shall entitle to the rate between 38 U.S.C. 1114 (l) and (m).

(ix) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114 (m) and (n).

(x) Anatomical loss or loss of use of one hand with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114 (m) and (n).

(xi) Anatomical loss or loss of use of one hand with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(n).

(xii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114 (n) and (o).

(2) Eyes, bilateral, and blindness in connection with deafness and/or loss of use of a hand or foot.

(i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate between 38 U.S.C. 1114(l) and (m).

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate equal to 38 U.S.C. 1114 (m).

(iii) Blindness of one eye having only light perception and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate between 38 U.S.C. 1114 (m) and (n).

(iv) Blindness in both eyes with visual acuity of 5/200 or less, or blindness in both eyes rated under subparagraph (2) (i) or (ii) of this paragraph, when accompanied by service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate of if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(v) Blindness in both eyes having only light perception or less, or rated under subparagraph (2)(ii) of this paragraph, when accompanied by bilateral deafness (and the hearing impairment in either one or both ears is service-connected) rated at 10 or 20 percent disabling, will afford entitlement to the next higher intermediate rate, or if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(Authority: Sec. 112, Pub. L. 98±223)

(vi) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m) or (n), or rated under subparagraphs (2)(i), (ii) or (iii) of this paragraph, when accompanied by bilateral deafness rated at no less than 30 percent, and the hearing impairment in one or both ears is service-connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114, or if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o).
(Authority: 38 U.S.C. 1114(p))

(vii) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m), or (n), or under the intermediate or next higher rate provisions of this subparagraph, when accompanied by:

(A) Service-connected loss or loss of use of one hand, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(B) Service-connected loss or loss of use of one foot which by itself or in combination with another compensable disability would be ratable at 50 percent or more, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(C) Service-connected loss or loss of use of one foot which is ratable at less than 50 percent and which is the only compensable disability other than bilateral blindness, will afford entitlement to the next higher intermediate rate or, if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(3) Additional independent 50 percent disabilities. In addition to the statutory rates payable under 38 U.S.C. 1114 (l) through (n) and the intermediate or next higher rate provisions outlined above, additional single permanent disability or combinations of permanent disabilities independently ratable at 50 percent or more will afford entitlement to the next higher intermediate rate or if already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o).

(Authority: 38 U.S.C. 1114(p))

(i) Where the multiple loss or loss of use entitlement to a statutory or intermediate rate between 38 U.S.C. 1114 (l) and (o) is caused by the same etiological disease or injury, that disease or injury may not serve as the basis for the independent 50 percent or 100 percent unless it is so rated without regard to the loss or loss of use.

(ii) The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(4) Additional independent 100 percent ratings. In addition to the statutory rates payable under 38 U.S.C. 1114 (l) through (n) and the intermediate or next higher rate provisions outlined above additional single permanent disability independently ratable at 100 percent must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. 1114 (l) through (n) or the intermediate rate provisions outlined above.

(i) For a veteran who was receiving or entitled to receive compensation for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(ii) The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(5) Three extremities. Anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities shall entitle a veteran to the next higher rate without regard to whether that rate is a statutory rate or an intermediate rate. The maximum monthly payment under this provision may not exceed the amount stated in 38 U.S.C. 1114(p).

(g) Inactive tuberculosis (complete arrest). The rating criteria for determining inactivity of tuberculosis are set out in §3.375.
tuberculosis on August 19, 1968, the minimum monthly rate is $67. This minimum special monthly compensation is not to be combined with or added to any other disability compensation.

(2) For a veteran who was not receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the special monthly compensation authorized by paragraph (g)(1) of this section is not payable.

(h) Special aid and attendance benefit: 38 U.S.C. 1114(r) Ð

(1) Maximum compensation cases. A veteran receiving the maximum rate under 38 U.S.C. 1114(o) or (p) who is in need of regular aid and attendance or a higher level of care is entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See §3.552(b)(2) as to continuance following admission for hospitalization.) Determination of this need is subject to the criteria of §3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the maximum rate under 38 U.S.C. 1114(o) or (p), or was based on an independent factual determination.

(2) Entitlement to compensation at the intermediate rate between 38 U.S.C. 1114(n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k). A veteran receiving compensation at the intermediate rate between 38 U.S.C. 1114(n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k) who establishes a factual need for regular aid and attendance or a higher level of care, is also entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See §3.552(b)(2) as to continuance following admission for hospitalization.) Determination of the factual need for aid and attendance is subject to the criteria of §3.352.

(3) Amount of the allowance. The amount of the additional allowance payable to a veteran in need of regular aid and attendance is specified in 38 U.S.C. 1114(r)(1). The amount of the additional allowance payable to a veteran in need of a higher level of care is specified in 38 U.S.C. 1114(r)(2). The higher level aid and attendance allowance authorized by 38 U.S.C. 1114(r)(2) is payable in lieu of the regular aid and attendance allowance authorized by 38 U.S.C. 1114(r)(1).

(i) Total plus 60 percent, or housebound; 38 U.S.C. 1114(s). The special monthly compensation provided by 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent and,

(1) Has additional service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability and involving different anatomical segments or bodily systems, or

(2) Is permanently housebound by reason of service-connected disability or disabilities. This requirement is met when the veteran is substantially confined as a direct result of service-connected disabilities to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.

§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.

(a) General. This section sets forth criteria for determining whether:

(1) Increased pension is payable to a veteran by reason of need for aid and attendance or by reason of being housebound.

(Authority: 38 U.S.C. 1521(d), (e))

(2) Increased compensation is payable to a veteran by reason of the veteran's spouse being in need of aid and attendance.

(Authority: 38 U.S.C. 1115(1)(E))

(3) Increased dependency and indemnity compensation is payable to a surviving spouse or parent by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1311(c), 1315(h))

(4) Increased dependency and indemnity compensation is payable to a surviving spouse who is not in need of aid and attendance but is housebound.

(Authority: 38 U.S.C. 1311(d))

(5) Increased pension is payable to a surviving spouse by reason of need for aid and attendance, or if not in need of aid and attendance, by reason of being housebound.

(Authority: 38 U.S.C. 1541(d), (e))

(6) Increased death compensation is payable to a surviving spouse by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1122)

(b) Aid and attendance; need. Need for aid and attendance means helplessness or being so nearly helpless as to require the regular aid and attendance of another person. The criteria set forth in paragraph (c) of this section will be applied in determining whether such need exists.

(c) Aid and attendance; criteria. The veteran, spouse, surviving spouse or parent will be considered in need of regular aid and attendance if he or she:

(1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or

(2) Is a patient in a nursing home because of mental or physical incapacity; or

(3) Establishes a factual need for aid and attendance under the criteria set forth in §3.352(a).

(Authority: 38 U.S.C. 1502(b))

(d) Housebound, or permanent and total plus 60 percent; disability pension. The rate of pension payable to a veteran who is entitled to pension under 38 U.S.C. 1521 and who is not in need of regular aid and attendance shall be as prescribed in 38 U.S.C. 1521(e) if, in addition to having a single permanent disability rated 100 percent disabling under the Schedule for Rating Disabilities (not including ratings based upon unemployability under §4.17 of this chapter) the veteran:

(1) Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or

(2) Is “permanently housebound” by reason of disability or disabilities. This requirement is met when the veteran is substantially confined to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.

(Authority: 38 U.S.C. 1502(c), 1521(e))

(e) Housebound; dependency and indemnity compensation. The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 1311(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 1311(d) if the surviving spouse is permanently housebound by reason of disability. The “permanently housebound” requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse’s lifetime.

(Authority: 38 U.S.C. 1311(d))

(f) Housebound; improved pension; death. The annual rate of death pension payable to a surviving spouse who does not qualify for an annual rate of death pension payable under §3.23(a)(6) based on need for aid and attendance shall be as set forth in §3.23(a)(7) if the surviving spouse is permanently housebound by reason of disability. The “permanently housebound” requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse’s lifetime.
§ 3.352 Criteria for determining need for aid and attendance and “permanently bedridden.”

(a) Basic criteria for regular aid and attendance and permanently bedridden. The following will be accorded consideration in determining the need for regular aid and attendance (§ 3.351(c)(3): inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. “Bedridden” will be a proper basis for the determination. For the purpose of this paragraph “bedridden” will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations that the veteran is so helpless, as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant’s condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.

(b) Basic criteria for the higher level aid and attendance allowance. (1) A veteran is entitled to the higher level aid and attendance allowance authorized by §3.350(h) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

(i) The veteran is entitled to the compensation authorized under 38 U.S.C. 1114(o), or the maximum rate of compensation authorized under 38 U.S.C. 1114(p).

(ii) The veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(iii) The veteran needs a “higher level of care” (as defined in paragraph (b)(2) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

(2) Need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran’s home by a person who is licensed to provide such services or who provides such services under the supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a State or political subdivision thereof.

(3) The term “under the regular supervision of a licensed health-care professional”, as used in paragraph (b)(2) of this section, means that an unlicensed person performing personal
§ 3.353 Determinations of incompetency and competency.

(a) Definition of mental incompetency. A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) Authority. (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 ($3.557(b)), and, subject to §13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent the Adjudication Officer will inform the Veterans Services Officer of jurisdiction of that fact. The Veterans Services Officer will develop information as to the beneficiary's social, economic and industrial adjustment and appoint (or recommend appointment of) a fiduciary as provided in §13.55 of this chapter, select a method of disbursing payment as provided in §13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in §13.57 of this chapter. The Adjudication Officer will authorize disbursement of the benefit in the manner selected by the Veterans Services Officer.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Services Officer develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in §3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

(c) Medical opinion. Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Considerations of medical opinions will be in accordance with the principles in paragraph (a) of this section. Determinations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency.

(d) Presumption in favor of competency. Where reasonable doubt arises regarding a beneficiary's mental capacity to
(a) Definition of insanity. An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.

(b) Insanity causing discharge. When a rating agency is concerned with determining whether a veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. § 5303(b)), it will base its decision on all the evidence procurable relating to the period involved, and apply the definition in paragraph (a) of this section.

§ 3.356

§ 3.356 Conditions which determine permanent incapacity for self-support.

(a) Basic determinations. A child must be shown to be permanently incapable of self-support by reason of mental or physical defect at the date of attaining the age of 18 years.

(b) Rating criteria. Rating determinations will be made solely on the basis of whether the child is permanently incapable of self-support through his own efforts by reason of physical or mental
defects. The question of permanent incapacity for self-support is one of fact for determination by the rating agency on competent evidence of record in the individual case. Rating criteria applicable to disabled veterans are not controlling. Principal factors for consideration are:

1. The fact that a claimant is earning his or her own support is prima facie evidence that he or she is not incapable of self-support. Incapacity for self-support will not be considered to exist when the child by his or her own efforts is provided with sufficient income for his or her reasonable support.

2. A child shown by proper evidence to have been permanently incapable of self-support prior to the date of attaining the age of 18 years, may be so held at a later date even though there may have been a short intervening period or periods when his or her condition was such that he or she was employed, provided the cause of incapacity is the same as that upon which the original determination was made and there were no intervening diseases or injuries that could be considered as major factors. Employment which was only casual, intermittent, tryout, unsuccessful, or terminated after a short period by reason of disability, should not be considered as rebutting permanent incapability of self-support otherwise established.

3. It should be borne in mind that employment of a child prior to or subsequent to the delimiting age may or may not be a normal situation, depending on the educational progress of the child, the economic situation of the family, indulgent attitude of parents, and the like. In those cases where the extent and nature of disability raises some doubt as to whether they would render the average person incapable of self-support, factors other than employment are for consideration. In such cases there should be considered whether the daily activities of the child in the home and community are equivalent to the activities of employment of any nature within the physical or mental capacity of the child which would provide sufficient income for reasonable support. Lack of employment of the child either prior to the delimiting age or thereafter should not be considered as a major factor in the determination to be made, unless it is shown that it was due to physical or mental defect and not to mere disinclination to work or indulgence of relatives or friends.

4. The capacity of a child for self-support is not determinable upon employment afforded solely upon sympathetic or charitable considerations and which involved no actual or substantial rendition of services.


CROSS REFERENCE: Basic pension and eligibility determinations. See §3.314.

§ 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of “less than ten percent.” Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.

[58 FR 52018, Oct. 6, 1993]

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§3.800).

(a) General. Where it is determined that there is additional disability resulting from a disease or injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, compensation will be payable for such additional disability.

(Authority: 38 U.S.C. 1151)

(b) Additional disability. In determining that additional disability exists, the following considerations will govern:

1. The veteran’s physical condition immediately prior to the disease or injury on which the claim for compensation is based will be compared with the subsequent physical condition resulting from the disease or injury, each
body part involved being considered separately.

(i) As applied to examinations, the physical condition prior to the disease or injury will be the condition at time of beginning the physical examination as a result of which the disease or injury was sustained.

(ii) As applied to medical or surgical treatment, the physical condition prior to the disease or injury will be the condition which the specific medical or surgical treatment was designed to relieve.

(2) Compensation will not be payable under 38 U.S.C. 1151 for the continuance or natural progress of disease or injuries for which the training, or hospitalization, etc., was authorized.

(c) Cause. In determining whether such additional disability resulted from a disease or an injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, the following considerations will govern:

(1) It will be necessary to show that the additional disability is actually the result of such disease or injury or an aggravation of an existing disease or injury and not merely coincidental therewith.

(2) The mere fact that aggravation occurred will not suffice to make the additional disability compensable in the absence of proof that it resulted from disease or injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment, or examination.

(3) Compensation is not payable for the necessary consequences of medical or surgical treatment or examination properly administered with the express or implied consent of the veteran, or, in appropriate cases, the veteran's representative. "Necessary consequences" are those which are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered.

(4) When the proximate cause of the injury suffered was the veteran's willful misconduct or failure to follow instructions, it will bar him (or her) from receipt of compensation hereunder except in the case of incompetent veterans.

(5) Compensation for disability resulting from the pursuit of vocational rehabilitation is not payable unless there is established a direct (proximate) causal connection between the injury or aggravation of an existing injury and some essential activity or function which is within the scope of the vocational rehabilitation course, not necessarily limited to activities or functions specifically designated by the Department of Veterans Affairs in the individual case, since ordinarily it is not to be expected that each and every different function and act of a veteran pursuant to his or her course of training will be particularly specified in the outline of the course or training program. For example, a disability resulting from the use of an item of mechanical or other equipment is within the purview of the statute if training in its use is implicit within the prescribed program or course outlined or if its use is implicit in the performance of some task or operation the trainee must learn to perform, although such use may not be especially mentioned in the training program. In determining whether the element of direct or proximate causation is present, it remains necessary for a distinction to be made between an injury arising out of an act performed in pursuance of the course of training, that is, a required "learning activity", and one arising out of an activity which is incidental to, related to, or coexistent with the pursuit of the program of training. For a case to fall within the statute there must have been sustained an injury which, but for the performance of a "learning activity" in the prescribed course of training, would not have been sustained. A meticulous examination into all the circumstances is required, including a consideration of the time and place of the incident producing the injury.
§ 3.359 Determination of service connection for former members of the Armed Forces of Czechoslovakia or Poland.

Rating boards will determine whether or not the condition for which treatment is claimed by former members of the Armed Forces of Czechoslovakia or Poland under 38 U.S.C. 109(c) is service connected. This determination will be made using the same criteria that applies to determinations of service connection based on service in the Armed Forces of the United States.

[43 FR 4424, Feb. 2, 1978]

§ 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition.

(a) General. The health-care and related benefits authorized by chapter 17 of title 38 U.S.C. shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty.

(b) Discharge categorization. With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in § 3.12(c) applies.

(c) Eligibility criteria. In making determinations of health-care eligibility the same criteria will be used as is now applicable to determinations of service incurrence and in line of duty when there is no character of discharge bar.

[43 FR 15154, Apr. 11, 1978]

RATING CONSIDERATIONS RELATIVE TO SPECIFIC DISEASES

§ 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(a) Active disease. X-ray evidence alone may be adequate for grant of direct service connection for pulmonary tuberculosis. When under consideration, all available service department films and subsequent films will be secured and read by specialists at designated stations who should have a current examination report and X-ray. Resulting interpretations of service films will be accorded the same consideration for service-connection purposes as if clinically established, however, a compensable rating will not be assigned prior to establishment of an active condition by approved methods.

(b) Inactive disease. Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

(c) Primary lesions. Healed primary type tuberculosis shown at the time of
entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.


§ 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) Pulmonary tuberculosis. (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by §3.307(a)(3) will be taken as establishing service connection for active pulmonary tuberculosis subsequently diagnosed by approved methods but service connection and evaluation may be assigned only from the date of such diagnosis or other evidence of clinical activity.

(2) A notation of inactive tuberculosis of the reinfection type at induction or enlistment definitely prevents the grant of service connection under §3.307 for active tuberculosis, regardless of the fact that it was shown within the appropriate presumptive period.

(b) Pleurisy with effusion without obvious cause. Pleurisy with effusion with evidence of diagnostic studies ruling out obvious nontuberculous causes will qualify as active tuberculosis. The requirements for presumptive service connection will be the same as those for tuberculous pleurisy.

(c) Tuberculous pleurisy and endobronchial tuberculosis. Tuberculous pleurisy and endobronchial tuberculosis fall within the category of pulmonary tuberculosis for the purpose of service connection on a presumptive basis. Either will be held incurred in service when initially manifested within 36 months after the veteran’s separation from service as determined under §3.307(a)(2).

(d) Miliary tuberculosis. Service connection for miliary tuberculosis involving the lungs is to be determined in the same manner as for other active pulmonary tuberculosis.


§ 3.372 Initial grant following inactivity of tuberculosis.

When service connection is granted initially on an original or reopened claim for pulmonary or nonpulmonary tuberculosis and there is satisfactory evidence that the condition was active previously but is now inactive (arrested), it will be presumed that the disease continued to be active for 1 year after the last date of established activity, provided there is no evidence to establish activity or inactivity in the intervening period. For a veteran entitled to receive compensation on August 19, 1968, the beginning date of graduated ratings will commence at the end of the 1-year period. For a veteran who was not receiving or entitled to receive compensation on August 19, 1968, ratings will be assigned in accordance with the Schedule for Rating Disabilities (part 4 of this chapter). This section is not applicable to running award cases.

[33 FR 16275, Nov. 6, 1968]

§ 3.373 [Reserved]

§ 3.374 Effect of diagnosis of active tuberculosis.

(a) Service diagnosis. Service department diagnosis of active pulmonary tuberculosis will be accepted unless a board of medical examiners, Clinic Director or Chief, Outpatient Service certifies, after considering all the evidence, including the favoring or opposing tuberculosis and activity, that such diagnosis was incorrect. Doubtful cases may be referred to the Chief Medical Director in Central Office.

(b) Department of Veterans Affairs diagnosis. Diagnosis of active pulmonary tuberculosis by the medical authorities of the Department of Veterans Affairs as the result of examination, observation, or treatment will be accepted for rating purposes. Reference to the Clinic Director or Chief, Outpatient Service, will be in order in questionable cases and, if necessary, to the Chief Medical Director in Central Office.

(c) Private physician’s diagnosis. Diagnosis of active pulmonary tuberculosis by private physicians on the basis of their examination, observation or treatment will not be accepted to show the disease was initially manifested
§ 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) Pulmonary tuberculosis. A veteran shown to have had pulmonary tuberculosis will be held to have reached a condition of “complete arrest” when a diagnosis of inactive is made.

(b) Nonpulmonary disease. Determination of complete arrest of nonpulmonary tuberculosis requires absence of evidence of activity for 6 months. If there are two or more foci of such tuberculosis, one of which is active, the condition will not be considered to be inactive until the tuberculous process has reached arrest in its entirety.

(c) Arrest following surgery. Where there has been surgical excision of the lesion or organ, the date of complete arrest will be the date of discharge from the hospital, or 6 months from the date of excision, whichever is later.


§ 3.376—3.377 [Reserved]

§ 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless (a) the medical evidence does not support a finding of complete arrest (§3.375), or (b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran’s employment is limited to short hours as recommended by the medical authorities (not more than 4 hours a day for a 5-day week). Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under §3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.


§ 3.379 Anterior poliomyelitis.

If the first manifestations of acute anterior poliomyelitis present themselves in a veteran within 35 days of termination of active military service, it is probable that the infection occurred during service. If they first appear after this period, it is probable that the infection was incurred after service.

[26 FR 1592, Feb. 24, 1961]

§ 3.380 Diseases of allergic etiology.

Diseases of allergic etiology, including bronchial asthma and urticaria, may not be disposed of routinely for compensation purposes as constitutional or developmental abnormalities. Service connection must be determined on the evidence as to existence prior to enlistment and, if so existent, a comparative study must be made of its severity at enlistment and subsequently. Increase in the degree of disability during service may not be disposed of routinely as natural progress nor as due to the inherent nature of the disease. Seasonal and other acute allergic manifestations subsiding on the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals. The determination as to service incurrence or aggravation must be on the whole evidentiary showing.


§ 3.381 Determination of service connection for dental disabilities.

(a) General. Service connection for dental conditions will not be considered as having been established when
the evidence clearly shows that the disabilities existed or were recorded at the time of enlistment, subject to the provisions of paragraph (b) of this section or originated subsequent to discharge from causes not related to service. Each missing or defective tooth and each disease of the investing tissues will be considered separately, and service connection will be granted for disease or injury of individual teeth and of the investing tissues, shown by the evidence to have been incurred in or aggravated by service.

(b) Treatment in service. The furnishing of treatment or prosthesis for noncompensable dental conditions during service will not be considered per se as aggravation of a dental condition shown to have existed prior to entrance into active service. Teeth noted at entry into active service as carious restorable will not be held as service connected, either direct or by aggravation, notwithstanding enlargement of the original cavity or development of additional cavitation on the same or another surface; nor on the basis of the insertion of a filling during service, unless new caries develop after expiration of a reasonable time after the original cavity has been filled, amelioration rather than worsening or aggravation ensuing in such cases. Service connection by aggravation will be conceded in such teeth, carious restorable at entry into service, whether or not filled, but which necessitate extraction after the expiration of a reasonable time after entry into active service. A filling recorded at induction followed by a reasonable period of service and extraction or replacement because of new caries will entitle the veteran to a finding of direct service connection for the new condition. Likewise, aggravation is allowed where pyorrhea is noted at enlistment but after reasonable service necessitates extraction of a tooth or teeth during service. Conversely, service connection by aggravation will not be conceded if the tooth at enlistment was classified as defective but was not restorable.

(c) Associated diseases. Effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their relationship to other associated service-connected diseases or injuries will be observed in the adjudication of claims based upon dental conditions where a determination to that effect is properly in order.

(d) Presumption of soundness. The statutory presumptions as to soundness of condition at time of entrance into active service will not be applicable, in cases of dental conditions not disabling to a compensable degree.

(e) Combat, trauma, prisoner-of-war status. As to each noncompensable service-connected dental condition, a determination will be made as to whether it was due to combat wound or other service trauma. Where service connection is granted for noncompensable dental conditions, it will be determined whether the veteran involved was a prisoner of war, but not which of such conditions are attributable to the prisoner-of-war experience.

(Authority: 38 U.S.C. 1712(b)(3))

[26 FR 1592, Feb. 24, 1961]

§ 3.382 Evidence to establish service connection for dental disabilities.

(a) Requirements. Service connection for dental disabilities will be established by service records, documentary evidence in the form of reports of examinations (dental or physical), duly certified statements of dentists or physicians, or certified statements of fact from two or more disinterested parties. The disability must be shown to have been incurred in or aggravated by service as provided in this section. Statements certified by dentists or physicians must give the claimant’s full name, the date he or she was first examined or treated, the date of subsequent treatments, if any, and contain a complete and detailed statement of the symptoms observed and diagnosis made. The name or number of all defective or missing teeth noted and the character and extent of any pathological condition of the investing tissues observed should be included. If exact dates cannot be given, an approximate date may be used. Certified statements from disinterested parties must show the circumstances under which knowledge of the claimant’s disability was obtained and as far as possible describe the symptoms and location of the disability observed.
§ 3.383 Special consideration for paired organs and extremities.

(a) Entitlement criteria. Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct.

(1) Blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Total deafness in one ear as a result of service-connected disability and total deafness in the other ear as a result of nonservice-connected disability.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

(b) Effect of judgment or settlement. (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not
be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph apply only to awards of increased compensation made on or after October 28, 1986.

(c) Social security and workers' compensation. Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) Veteran's duty to report. Any person entitled to increased compensation under this section shall promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the impaired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority: 38 U.S.C. 5120(a))

§ 3.384 [Reserved]

§ 3.385 Disability due to impaired hearing.

For the purposes of applying the laws administered by VA, impaired hearing shall be considered to be a disability when the auditory threshold in any of the frequencies 500, 1000, 2000, 3000, 4000 Hertz is 40 decibels or greater; or when the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz are 26 decibels or greater; or when speech recognition scores using the Maryland CNC Test are less than 94 percent.

[59 FR 60560, Nov. 25, 1994]

Effective Dates

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later.

(Authority: 38 U.S.C. 5101(a))

(a) Unless specifically provided. On basis of facts found.

(b) Disability benefits—(1) Disability pension (§ 3.3(c)). An award of disability pension may not be effective prior to the date entitlement arose.

(i) Claims received prior to October 1, 1984. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) Claims received on or after October 1, 1984. (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be
applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of §3.342(a) do not apply.

(2) Disability compensation—(i) Direct service connection (§3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) Presumptive service connection (§§3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(c) Death benefits—(1) Death in service (38 U.S.C. 5110(j), Pub. L. 87-825) (§§3.4(c), 3.5(b)). First day of the month in which the veteran’s death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received on or after October 1, 1984, first day of the month in which the veteran’s death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim.

(Authority: 38 U.S.C. 5110(d))

(4) Dependency and indemnity compensation—(i) Deaths prior to January 1, 1957 (§ 3.702). Date of receipt of election.

(ii) Child (38 U.S.C. 5110(e), Pub. L. 87-835). First day of the month in which the veteran’s death occurred if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(iii) Deaths on or after May 1, 1957 (in-service waiver cases) (§§3.5(b)(3) and 3.702). Date of receipt of election. (See §3.114(a)).

(d) [Reserved]

(e) Apportionment (§§3.450 through 3.461, 3.551, 3.557). On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which:

(1) Claim is received for apportionment of a veteran’s award, except that where payments to him (her) have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) Notice is received that a child included in the surviving spouse’s award is not in the surviving spouse’s custody, except that where payments to the surviving spouse have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

(f) Federal employees’ compensation cases (§3.708). Date authorized by applicable law, subject to any payments made by the Office of Workers’ Compensation Programs under the Federal Employees’ Compensation Act over the same period of time.
(g) Correction of military records (38 U.S.C. 5110(i); Pub. L. 87–825). Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:

1. Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;
2. Date of receipt of claim if claim was disallowed; or
3. One year prior to date of reopening of disallowed claim.

(h) Difference of opinion (§3.105). (1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Department of Veterans Affairs initiative, the date from which benefits would have been payable if the former decision had been favorable.

2. As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.

3. As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.

(4) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.

(i) Disability or death due to hospitalization, etc. (38 U.S.C. 5110(c), (d); Pub. L. 87–825. §3.800–(1) Disability. Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

(2) Death. First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.

(j) Election of Department of Veterans Affairs benefits (§3.700 series). (1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

(2) July 1, 1960, as to pension payable under Pub. L. 86–211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time.

(3) January 1, 1965, as to pension payable under Pub. L. 86–211 (73 Stat. 432) as amended by Pub. L. 88–664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election if filed prior to May 1, 1965.

(4) January 1, 1965, as to pension payable under Pub. L. 86–211 (73 Stat. 432) as amended by Pub. L. 88–664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965.

(5) January 1, 1969, as to pension payable under Pub. L. 86–211 (73 Stat. 432), as amended by Pub. L. 90–275 (82 Stat. 64), if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969.

(6) August 1, 1972, as to pension payable under Pub. L. (73 Stat. 432) as amended by Pub. L. 92–328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.

(k) Error (§3.105). Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.

(l) Foreign residence. (See §3.653).

(m) Forfeiture (§§3.901, 3.902). Day following date of last payment on award to payee who forfeited.
§ 3.400

(n) Guardian. Day following date of last payment to prior payee or fiduciary.

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

(o) Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-71, 88 Stat. 395; §§ 3.109, 3.156, 3.157)—(1) General. Except as provided in paragraph (o)(2) of this section and § 3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) Disability compensation. Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.

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

(q) New and material evidence (§ 3.156)—(1) Other than service department records—(i) Received within appeal period or prior to appellate decision. The effective date will be as though the former decision had not been rendered. See §§ 20.1103, 20.1104 and 20.1304(b)(1) of this chapter.

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

(2) Service department records. To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. See paragraph (g) of this section as to correction of military records.

(r) Reopened claims. (§§ 3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in § 20.1304(b)(1) of this chapter.

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

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

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

(u) Void, annulled or terminated marriage of a child (38 U.S.C. 5110(a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; § 3.55)—(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

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

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

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

(v) Termination of remarriage of surviving spouse (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 3010(i) effective January 1, 1971; § 3.55)—(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is the later.

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

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

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

(w) Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 5110(m), effective January 1, 1971; §§ 3.50(b)(2) and 3.55).

Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of § 3.55(a), as applicable, are met.

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

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

(2) Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202). (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:
   (ii) Date entitlement arose.
   (iii) One year prior to date of receipt of reopened claim.

[26 FR 1593, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.400, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 3.401 Veterans.

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

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

(Authority: 38 U.S.C. 501; 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary.

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

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

(Authority: 38 U.S.C. 501; 5110(b)(1), (2))

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

(1) Date of claim. This term means the following, listed in their order of applicability:
   (i) Date of veteran’s marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event; otherwise.
   (ii) Date notice is received of the dependent’s existence, if evidence is received within 1 year of the Department of Veterans Affairs request.
   (iii) Date dependency arises.
   (iv) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action.

(Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran’s award. (Other increases, see §3.400(o). For school attendance see § 3.667.)

(Authority: 38 U.S.C. 5110(f), (n))

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

(d) Institutional awards (§ 3.852)—(1) Chief officer of non-Department of Veterans Affairs hospital or institution. From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

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

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

(e) Retirement pay (§3.750)—(1) Election. Date of entitlement if timely
§ 3.402 Surviving spouse.

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

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

(b) Legal surviving spouse entitled. See § 3.367.

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

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

[45 FR 34887, May 23, 1980]

§ 3.403 Children.

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

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

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

(3) Posthumous child. Date of child's birth if proof of birth is received within 1 year of that date, or if notice of the expected or actual birth meeting the requirements of an informal claim, is received within 1 year after the veteran's death; otherwise, date of claim. (Authority: 38 U.S.C. 5110(n))

(4) School attendance. (See § 3.667.)

(5) Adopted child. Date of adoption either interlocutory or final or date of adoptive placement agreement, but not earlier than the date from which benefits are otherwise payable. (Authority: 38 U.S.C. 1805)

(b) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§ 3.814). An award of the monetary allowance under 38 U.S.C. 1805 to a child...
suffering from spina bifida who is the child of a Vietnam veteran will be either date of birth if claim is received within one year of that date, or, date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104-204, 110 Stat. 2926)

§ 3.404 Parents.

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

(Authority: 38 U.S.C. 501; 5110(d))

[45 FR 34887, May 23, 1980]

§ 3.450 General.

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

(i) On behalf of his or her spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned.

(Authority: 38 U.S.C. 5307)

(b) Except as provided in § 3.458(e), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty with the air, military, or naval services of the United States.

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children.

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

(f) Prior to release of any amounts the relationship of the claimant and the dependency of a parent will be fully developed, and the necessary evidence secured.

(g) The provisions of § 3.460 are applicable where the surviving spouse is entitled to a higher rate of pension under the circumstances described in that section.


§ 3.451 Special apportionments.

Without regard to any other provision regarding apportionment where hardship is shown to exist, pension,
compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, except as to those cases covered by §3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as:

Amount of Department of Veterans Affairs benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.

(Authority: 38 U.S.C. 5503(b)(2))

(3) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under §3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in §3.454(b).

(Authority: 38 U.S.C. 5503(a))

(d) Where additional compensation is payable on behalf of a parent and the veteran or his or her guardian neglects or refuses to contribute such an amount to the support of the parent the additional compensation will be paid to the parent upon receipt of a claim.


§ 3.452 Veterans compensation or service pension or retirement pay.

Rates of apportionment of disability compensation, service pension or retirement pay will be determined under §3.451.

[26 FR 7266, Aug. 11, 1961]

§ 3.453 Veterans compensation or service pension or retirement pay.

Rates of apportionment of disability compensation, service pension or retirement pay will be determined under §3.451.

[26 FR 7266, Aug. 11, 1961]

§ 3.454 Veterans disability pension.

Apportionment of disability pension will be as follows:

(a) Where a veteran with spouse, or child is incompetent and without legal fiduciary and is maintained in an institution by the United States or any political subdivision thereof, $25 monthly will be paid as an institutional award to the Director of a Department of Veterans Affairs medical center or chief officer of a non-Department of Veterans Affairs institution for the use of the veteran, and the balance will be paid to the dependent or dependents. If the veteran has no spouse, or child but has a dependent parent, apportionment will be in accordance with §3.451.

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(b)(1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 1521(b), as in effect on December 31, 1978, is reduced to $50 monthly under §3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $50 and the total amount of pension payable on December 31, 1978.

(Authority: 38 U.S.C. 5503(a))

(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $60 monthly under §3.551(d) or (e)(2), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $50 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 5503(a))

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $90 monthly under §3.551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 5503(a))

(c) Where section 306 pension for an incompetent veteran is subject both to reduction under §3.551(c), and to discontinuance under §3.557(b) because of hospitalization by the U.S. Government or any political subdivision, the rate authorized for a parent or parents will not exceed $50 monthly if reduction is under §3.551(d) or (e)(2), or $90 monthly if reduction is under §3.551(e)(1).

(Authority: 38 U.S.C. 5503(a), (b))

§ 3.458 Veteran's benefits not apportionable.

Veteran's benefits will not be apportioned:

(a) Where the total benefit payable to the disabled person does not permit payment of a reasonable amount to any apportionee.

(b) Where the spouse of the disabled person has been found guilty of conjugal infidelity by a court having proper jurisdiction.

(c) For purported or legal spouse of the veteran if it has been determined that he or she has lived with another person and held herself or himself out openly to the public to be the spouse of such other person, except where such relationship was entered into in good faith with a reasonable basis (for example trickery on the part of the veteran) for the spouse believing that the marriage to the veteran was legally terminated. No apportionment to the spouse will thereafter be made unless there has been a reconciliation and later estrangement.

(d) Where the child of the disabled person has been legally adopted by another person, except the additional compensation payable for the child.

(e) Where a child enters the active military, air, or naval service, any additional amount will be paid to the veteran unless such child is included in an existing apportionment to an estranged spouse. No adjustment in the apportioned award will be made based on the child's entry into service.

(f)(1) For the spouse, child, father or mother of a disabled veteran, where forfeiture was declared prior to September 2, 1959, if the dependent is determined by the Department of Veterans Affairs to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies.
§ 3.459 Death compensation.

(a) Death compensation will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse.

(b) The surviving spouse may not be paid less than $65 monthly plus the amount of an aid and attendance allowance where applicable.

§ 3.460 Death pension.

Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where the surviving spouse's rate is in excess of $70 monthly because of having been the spouse of the veteran during service or because of need for regular aid and attendance, the additional amount will be added to the surviving spouse's share.

(a) Civil, Indian and Spanish-American wars. Where pension is payable under 38 U.S.C. 1532, 1534, or 1536 apportionment will be based on the facts in the individual case in accordance with § 3.451.

(b) Section 306 and old-law death pension. Appointment of benefits provided under these pension programs will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451.

(c) Improved death pension. Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451.

(Authority: 38 U.S.C. 5307)

§ 3.461 Dependency and indemnity compensation.

(a) Conditions under which apportionment may be made. The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) Rates payable. (1) The share for each of the children under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation.

(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not
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in excess of the total dependency and indemnity compensation.


REDUCTIONS AND DISCONTINUANCES

§ 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in §3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 5112(b))

(a) Except as otherwise provided (38 U.S.C. 5112(a)). In accordance with the facts found.

(b) Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)). (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.

(2) Except as provided in paragraph (r) of this section, and §3.501(e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) Annual income. See §3.660.

(d) Apportionment (§§3.450 series; §3.556). (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under §3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) Federal employees' compensation (§3.708). The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective. If children on rolls and surviving spouse has primary title, award to children discontinued same date as surviving spouse's award.

(Authority: 5 U.S.C. 8116)

(f) Contested claims §3.402(b) and §subpart F of part 20 of this chapter.

(g) Death (38 U.S.C. 5112 (a), (b)—(1) Payee (includes apportionee). Last day of month before death.

(2) Dependent of payee (includes apportionee):

(i) Death prior to October 1, 1962: last day of the calendar year in which death occurred.

(ii) Death on or after October 1, 1962: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

(3) Veteran receiving retirement pay. Date of death.


(i) Election of Department of Veterans Affairs benefits (§3.700 series). Day preceding beginning date of award under other law.

(j) Foreign residence (38 U.S.C. 5308(a)).

See §3.653.

(k) Fraud (38 U.S.C. 6103(a), (d); §§3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) Guardian, marriage or divorce of (§3.856). Date of last payment (pending receipt of information as to change of name).

(m) Incompetency (§3.855). Date of last payment.

(n) Marriage (or remarriage) (38 U.S.C. 101(3), 5112 (b)—(1) Payee (includes apportionee). Last day of month before marriage.

(2) Dependent of payee (includes apportionee):

(i) Marriage prior to October 1, 1962: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1962: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

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(3) Conduct of surviving spouse. Last day of month before inception of relationship.

(Authority: 38 U.S.C. 101(4), 501)

(o) Penal institutions. See § 3.666.

(p) Philippines (38 U.S.C. 107(a)(3); § 3.8). Date of last payment when recognition of service withdrawn.

(q) Renouncement (38 U.S.C. 101(4)). Last day of the month in which the renouncement is received.

(r) Service connection (38 U.S.C. 5112(b)(6); § 3.105). Last day of month following 60 days after notice to payee.

(s) Reasonable acts or subversive activities (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) Reasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§ 3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See § 3.114.

(v) Failure to furnish evidence of continued eligibility. See § 3.652(a) and (b).

(w) Failure to furnish Social Security number. Last day of the month during which the 60 day period following the date of VA request expires.

(x) Radiation Exposure Compensation Act of 1990 (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) Reasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§ 3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See § 3.114.

(v) Failure to furnish evidence of continued eligibility. See § 3.652(a) and (b).

(w) Failure to furnish Social Security number. Last day of the month during which the 60 day period following the date of VA request expires.

(x) Radiation Exposure Compensation Act of 1990 (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) Reasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§ 3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See § 3.114.

(v) Failure to furnish evidence of continued eligibility. See § 3.652(a) and (b).

(w) Failure to furnish Social Security number. Last day of the month during which the 60 day period following the date of VA request expires.

(x) Radiation Exposure Compensation Act of 1990 (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) Reasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§ 3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See § 3.114.
(2) Compensation. Last day of month following 60 days after notice to payee.

(h) Examination; failure to report. See §3.655.

(i) Hospitalization. (1) Section 3.551(b). Last day of the sixth calendar month following admission if veteran without dependents.

(2) Section 3.551(c). (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under §3.551(c)(1), the last day of the month of such readmission.

(3) Section 3.552(b) Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of §3.552(b)(1) and (2) or §3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) Section 3.551(d) (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under §3.551(d)(1) or (2), the last day of the month of such readmission.

(5) Section 3.551(e) (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under §3.551(e)(1), the last day of the month of such readmission.

(6) Section 3.551(h). (i) 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

(ii) If the veteran 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. 5503)

(7) Section 3.557. Incompetent veteran, admitted for hospital, institutional or domiciliary care, without dependents, whose estate equals or exceeds $1,500: Last day of the month of admission or the last day of the month in which the veteran’s estate equal or exceeds $1,500, whichever is later. If the veteran was hospitalized for observation and examination, the date treatment began will be considered the date of admission.

(Authority: 38 U.S.C. 5112(c))

(j) Institutional award and/or to Personal Funds of Patients (§3.852). Date of last payment, when veteran is discharged from hospital, fiduciary appointed, or veteran rated competent.

(k) Lump-sum readjustment pay. See §3.700(a)(2).

(l) Retirement pay (38 U.S.C. 5112(b)(3); Pub. L. 87-825; §3.750). Day before effective date of retirement pay.

(m) Temporary increase (38 U.S.C. 5112(b)(8); §4.29 of this chapter). Last day of month in which hospitalization or treatment terminated, whichever is earlier, where temporary increase in compensation was authorized because of hospitalization for treatment.

(n) Section 3.853. Incompetents; estate over $25,000. Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds $25,000: Last day of the
§ 3.502

first month in which the veteran’s estate exceeds $25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)


§ 3.502 Surviving spouses.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

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

(a) Additional allowance of dependency and indemnity compensation for children (38 U.S.C. 5112(b) § 3.5(e)(3).

(1) If marriage occurred prior to October 1, 1982, the day preceding child’s 18th birthday or last day of calendar year in which child’s marriage occurred (see §3.500(n) (2) and (3)), whichever is earlier.

(2) If marriage occurred on or after October 1, 1982, the day preceding child’s 18th birthday or last day of the month in which marriage occurred (see §3.500(n) (2) and (3)) whichever is earlier.

(b) Pay grade; dependency and indemnity compensation (38 U.S.C. 1311(a), 5112(b)(10); Pub. L. 91-96, 83 Stat. 144). Date of last payment when rate is reduced because of new certification of pay grade.

(c) Legal surviving spouse entitled. Date of last payment on award to another person as surviving spouse. See §3.657.

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

(d) Marriage. See §3.500(n).

(e) Aid and attendance (§3.351(a)). (1) Date of last payment, if need for aid and attendance has ceased.

(2) If hospitalized at Department of Veterans Affairs expense as a veteran, the date specified in §3.552(b) (1) or (3).

(f) 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 surviving spouse 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. 5503)


§ 3.503 Children.

(a) The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

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

(1) Age 18 (or 23) (38 U.S.C. 5112(a); §3.57). Day before 18th (or 23d) birthday.

(2) Enters service. Date of last payment of apportioned disability benefits for child not in custody of estranged spouse. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his (her) estranged spouse, his (her) surviving spouse, or to the fiduciary of a child not in the surviving spouse’s custody.

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

(3) Permanently incapable of selfsupport (38 U.S.C. 5112(a), (b)(6); Pub. L. 87-825; §§3.57, 3.950)—(i) Pension. Date of last payment.

(ii) Compensation or dependency and indemnity compensation. Last day of month following 60 days after notice to payee.

(4) Marriage. See §3.500(n).

(5) School attendance. See §3.667.
§ 3.551 Reduction because of hospitalization.

(a) General. Pension is subject to reduction as specified below when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in §3.552 and for discontinuance of awards for incompetent veterans in §3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§3.551 through 3.559 mean:

(1) Hospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense.

(2) Institutional, domiciliary or nursing home care in a Department of Veterans Affairs institution or domiciliary or at Department of Veterans Affairs expense.

(b) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§3.814). The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

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


§ 3.552 Hospitalization Adjustments

§ 3.551 Reduction because of hospitalization.

(a) General. Pension is subject to reduction as specified below when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in §3.552 and for discontinuance of awards for incompetent veterans in §3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§3.551 through 3.559 mean:

(1) Hospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense.

(2) Institutional, domiciliary or nursing home care in a Department of Veterans Affairs institution or domiciliary or at Department of Veterans Affairs expense.

(b) Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§3.814). The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

(Authority: 38 U.S.C. 501)
a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

(c) Section 306 pension. (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished hospital, nursing home or domiciliary care by the Department of Veterans Affairs, no pension in excess of $50 monthly shall be paid to or for the veteran for any period after the second full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 5503(a))

(2) No pension in excess of $50 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (c) (1) of this section.

(Authority: 38 U.S.C. 5503(a))

(3) Where section 306 pension is being paid to a married veteran at a rate for a veteran without dependents all or any part of the monthly amount of pension withheld in excess of $50 may be apportioned for a spouse as provided in §3.454(b).

(Authority: 38 U.S.C. 5503(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in §3.454(b).

(Authority: 38 U.S.C. 5503(a))

(5) The provisions of paragraphs (d) (1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child’s estate be consumed for the child’s maintenance under 38 U.S.C. 1522(b).

(6) For the purpose of paragraphs (d) (1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) Improved pension after January 31, 1990. (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 5503(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.
(2) No pension in excess of $90 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in §3.454(b).

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e), (1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 1522(b).

(f) Computation of period. For purposes of computing periods of hospitalization in paragraph (c) of this section, authorized absences of 96 hours or less will be included as periods of hospitalization, and those of over 96 hours excluded. Also, for purposes of that paragraph, periods of treatment or care of 60 total days will be considered two calendar months of hospitalization and periods of 90 total days considered three calendar months, exclusive of authorized absences in excess of 96 hours.

(g) Proof of dependents. The veteran will be considered to have neither spouse, child nor dependent parent in the absence of satisfactory proof. Statements contained in the claims folder concerning the existence of such dependents will be considered a prima facie showing. If the necessary evidence is not received: (1) Within 60 days after the date of request where the award is subject to reduction under paragraph (b) of this section, or (2) prior to the effective date of reduction under paragraph (c) of this section, the veteran's award will be reduced on the basis of no dependents. The full rate may be authorized from the date of reduction if the necessary evidence is received within 1 year after the date of request.

(h) Hospitalization. (1) General. The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

(i) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing hospital or nursing home care during the additional period is to provide the veteran with a prescribed 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; and
§ 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) and §3.557.

(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

(ii) The veteran is admitted to a Department of Veterans Affairs hospital or nursing home after October 16, 1981.

(2) Continued hospitalization for rehabilitation. The reduction required by paragraph (d) or (e) of this section shall not be made for periods after the expiration of the additional period provided by paragraph (h)(1) of this section under the following conditions:

(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 care 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 veterans and surviving spouses receiving Medicaid-covered nursing home care. Effective November 5, 1990, and terminating on September 30, 1998, if a veteran having neither spouse nor child, or a surviving spouse having no child, is receiving Medicaid-covered nursing home care, no pension or death pension in excess of $90 per month shall be paid to or for the veteran, or the surviving spouse for any period after the month in which the Medicaid payments begin. A veteran or surviving spouse is not liable for any pension paid in excess of the $90 per month by reason of the Secretaries inability or failure to reduce payments, unless that inability or failure is the result of willful concealment by the veteran or surviving spouse of information necessary to make that reduction.

(Authority: 38 U.S.C. 5503)
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) 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.

(Authority: 38 U.S.C. 5503(e))

(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.

(d) Where entitlement by reason of need for regular aid and attendance is the basis of the monthly rate under 38 U.S.C. 1114(1) the award will be reduced to the rate payable under 38 U.S.C. 1114(s).

(e) Where a veteran in receipt of old-law pension, the aid and attendance allowance shall be reduced to the housebound rate of $61 monthly (or $76.25 if the veteran was age 78 or older on December 31, 1978). Where a veteran is in receipt of improved pension, the applicable aid and attendance rate shall be reduced to the otherwise applicable rate under 38 U.S.C. 1521(e). No reduction shall be made, however, for any case involving the disabilities specified in paragraph (a)(2) of this section.

(f) Where entitlement to the rate in 38 U.S.C. 1114(o) is based in part on need for regular aid and attendance reduction because of being hospitalized will be to the rate payable for the other conditions shown.

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 1114 (l), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation at the rate under 38 U.S.C. 1114(o) because of entitlement to another rate under section 1114(l) on account of need for aid and attendance, the compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 1114(l) and in addition there is need for regular aid and attendance for another disability, the award during hospitalization will be at the rate under 38 U.S.C. 1114(m) since the disability requiring aid and attendance is 100 percent disabling.

(Authority: 38 U.S.C. 1114(p))

(h) If, because of blindness, a veteran requires regular aid and attendance, but has better vision than "light perception only," the award under 38 U.S.C. 1114(m) will be reduced while hospitalized to the rate payable under 38 U.S.C. 1114(1).

(i) If the disability meets the aid and attendance requirements of 38 U.S.C. 1114(l) and the intermediate or next higher rate was assigned for disability independently ratable at 50 percent or
100 percent, the award based on such entitlement will be reduced because of hospitalization to the amount payable under 38 U.S.C. 1114(s).

(j) The section 306 pension aid and attendance allowance authorized by §3.252(f) is subject to reduction for hospitalization under the provisions of this section in the same manner as the regular section 306 pension aid and attendance allowance. The amount payable shall not be reduced to less than the housebound rate of $61 monthly (or $76.25 monthly if the veteran was age 78 or older on December 31, 1978).

(k)(1) This paragraph is applicable to hospitalized veterans who were not entitled to the aid and attendance allowance prior to hospital admission but who establish entitlement to it on or after the date of hospital admission.

(2) If the effective date of entitlement to the aid and attendance allowance is on or after the date of admission to hospitalization, the aid and attendance allowance shall not be paid until the date of discharge or release from hospitalization, unless the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section. If the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section, the aid and attendance allowance shall be paid during hospitalization.

(3) If the aid and attendance allowance is not payable to a veteran under paragraph (k)(2) of this section, the veteran shall receive the appropriate reduced rate under paragraphs (d) through (j) of this section while hospitalized.


§§ 3.553—3.555 [Reserved]

§ 3.556 Adjustment on discharge or release.

(a) Temporary Absence—30 days. (1) Where a competent veteran whose award was reduced under §3.551(b) is placed on non-bed care status or other authorized absence of 30 days or more the full monthly rate, excluding any allowance for regular aid and attendance, will be restored effective the date of reduction. The full monthly rate for an incompetent veteran, or for a competent veteran whose pension was reduced under §3.551(c), will be restored effective the date of discharge from the hospital unless it is determined that apportionment for a spouse should be continued. In all instances, any allowance for regular aid and attendance will be restored effective the date of discharge from the hospital.

(2) Upon the veteran's return to the hospital, an award which is subject to reduction under §3.551 (b) or (c) will again be reduced effective the date of the veteran's return to the hospital. In all instances, any allowance for regular aid and attendance will be discontinued, if in order, effective the date of the veteran's return to the hospital.

(b) Temporary absence—less than 30 days. A temporary absence of less than 30 days, including the day of departure, will not require adjustment of the award. This applies to any approved absence. Any allowance for regular aid and attendance for such periods will be authorized after the veteran has been discharged from the hospital.

(c) Adjustment based on need. Where an award of pension was reduced under §3.551(c), the full rate covering absences of less than 30 days may be restored, subject to prior payments, prior to discharge from hospitalization at the request of the Director of the hospital, center or domiciliary, where this action is necessary to meet the veteran's financial needs, if the veteran has been hospitalized for more than 6 months and the periods of absence exceed a total of 30 days.

(d) Irregular discharge. When a competent veteran is given an irregular discharge, the full rate will be restored effective the date of release from the hospital. Payment of any amount withheld under §3.551(b) will not be authorized until the expiration of 6 months after termination of hospitalization unless the prior release is changed to a regular release. However, amounts not paid under paragraph (c) of this section covering absence of less than 30 days where the award was reduced under §3.551(c) will be authorized immediately.
(e) Regular discharge. When a veteran, either competent or incompetent, is given a regular discharge or release, the full rate, including any allowance for regular aid and attendance will be restored effective the date of release from the hospital, subject to prior payments. The award will be based on the most recent rating and, where the award was reduced under § 3.551(b), will include, in the case of a competent veteran, any amounts withheld because of hospitalization. The amount withheld for an incompetent veteran will not be authorized until the expiration of 6 months following a rating of competency by VA. Any institutional award will be discontinued effective date of last payment, as provided in § 3.503(i). Where an apportionment made under § 3.551(c) is not continued, the apportionment will be discontinued effective the day preceding the date of the veteran’s release from the hospital, or, if adjusted, effective the date of the veteran’s release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment.

(f) Types of discharges. A discharge is considered regular if it is granted because of having received maximum hospital benefits. A discharge for disciplinary reasons or because of the patient’s refusal to accept, neglect of or obstruction of treatment; refusal to accept transfer, or failure to return from authorized absence, is considered irregular.

§ 3.557 Incompetents; estate over $1,500 and institutionalized.

(a) Where a veteran having neither spouse, child, nor dependent, is being hospitalized by VA and is rated incompetent by VA, the pension of such veteran will be subject to reductions as provided in § 3.551.

(b) Effective December 1, 1959, where a veteran:
(1) Is rated incompetent by VA, and
(2) Has neither spouse nor child, and
(3) Is hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge, and
(4) Has an estate, derived from any source, which equals or exceeds $1,500, further payments of pension, compensation or emergency officer’s retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to $500. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission.

(c) For veterans subject to paragraph (b) of this section, the value of the veteran’s estate shall be computed under the provisions of § 13.109 of this title.

(d) Payment of pension, compensation or emergency officers’ retirement pay to a veteran subject to the provisions of paragraph (b) of this section will be discontinued the last day of the month of admission or the last day of the month in which the veteran’s estate equals or exceeds $1,500, whichever is later. All or any part of the benefit not paid to the veteran may be apportioned for his or her dependent parents on the basis of need as determined by the Veterans Services Officer. If the veteran is not hospitalized by the Department of Veterans Affairs there may be paid out of any remaining amounts so much of the pension, compensation or emergency officers’ retirement pay as equals the amount charged the veteran for his or her current care and maintenance in the institution in which the treatment or care is furnished, but not more than the amount determined to be the proper charge.

(e)(1) When the discontinuance of payments under this section results or would result in financial hardship for the veteran, discontinuance may be waived to avoid or reduce such hardship. Waiver of discontinuance under
§ 3.558  
this paragraph may be granted more than once in any calendar year but may not exceed a total of 60 days in any calendar year.

(2) The veteran, or any person or organization acting on the veteran's behalf, is authorized to request such waiver.

(3) For purposes of this paragraph, financial hardship shall be held to exist for any month in which a veteran's liabilities during that month exceed the sum of the veteran's income and liquid assets during that month.

(4) Waivers under this paragraph are not to be granted as an administrative expediency or where liquid assets are readily available to meet current expenses.

(Authority: 38 U.S.C. 5503)


§ 3.559  
Resumption—$1,500 cases where estate includes chose in action.

(a) Where payments have been discontinued because of hospitalization and there exists only a claim against a defunct bank, or other institution, or the entire estate is the subject of litigation, or consists of investments of undetermined value, and there is no income to provide for clothing and other needs, and comforts for the veteran, the Veterans Services Officer may consider the guardian's statement setting forth the facts and estimating what the said claim or chose in action would sell for in the open market. If the Veterans Services Officer is satisfied that the value of the estate does not exceed $500, he or she will prepare a certificate to that effect. Upon receipt of this certificate by the adjudication division, payments will otherwise in order be authorized effective the first day of the month in which award action is taken.

(b) When the claim is settled or litigation terminated the Veterans Services Officer will again review the case and, if the estate is then $1,500 or more, will forward an appropriate certificate to the adjudication division.

(c) Special cases which do not come within this section or where money is urgently needed should be reported to the Office of the Under Secretary for Benefits.

(Authority: 38 U.S.C. 5503)

ADJUSTMENTS AND RESUMPTIONS

§ 3.650 Rate for additional dependent.
(a) Running awards. Except as provided in paragraph (c) of this section where a claim is filed by an additional dependent who has apparent entitlement which, if established, would require reduction of pension, compensation or dependency and indemnity compensation being paid to another dependent, payments to the person or persons on the rolls will be reduced as follows:
(1) Where benefits would be payable from a date prior to the date of filing claim, the reduction will be effective from the date of potential entitlement of the additional dependent.
(2) Where benefits would be payable from the date of filing claim, the reduction will be effective the date of receipt of the claim by the additional dependent, or date of last payment, whichever is later.
If entitlement of the additional dependent is not established, benefits previously being paid will be resumed, if otherwise in order, commencing the day following the effective date of reduction.
(b) New awards. If the additional dependent is found to be entitled, the full rate payable will be authorized effective the date of entitlement.
(c) Retroactive DIC award to a school child—
(1) General. If DIC (dependency and indemnity compensation) is being currently paid to a veteran’s child or children under 38 U.S.C. 1313(a), and DIC is retroactively awarded to an additional child of the veteran based on school attendance, the full rate payable to the additional child shall be awarded the first of the month following the month in which the award to the additional child is approved. The rate payable under the current award shall be reduced effective the date the full rate is awarded to the additional child. The rate payable to the additional child for periods prior to the date the full rate is awarded shall be the difference between the rate payable for all the children and the rate that was payable before the additional child established entitlement.
(2) Applicability. The provisions of paragraph (c)(1) of this section are applicable only when the following conditions are met:
(i) The additional child was receiving DIC under 38 U.S.C. 1313(a) prior to attaining age 18, and
(ii) DIC for the additional child was discontinued on or after attainment of age 18, and
(iii) After DIC has been discontinued, the additional child reestablishes entitlement to DIC under 38 U.S.C. 1313(a) based on attendance at an approved school and the effective date of entitlement is prior to the date the Department of Veterans Affairs receives the additional child’s claim to reestablish entitlement.
(Authority: 38 U.S.C. 1313(b))
(3) Effective date. This paragraph is applicable to DIC paid after September 30, 1981. If DIC is retroactively awarded for a period prior to October 1, 1981, payment for the period prior to October 1, 1981 shall be made under paragraph (a) of this section and payment for the period after September 30, 1981 shall be made under this paragraph.
[29 FR 9564, July 15, 1964, as amended at 47 FR 24551, June 7, 1982]

§ 3.651 Change in status of dependents.
Except as otherwise provided:
(a) A payee who becomes entitled to pension, compensation, or dependency and indemnity compensation or to a greater rate because payment of that benefit to another payee has been reduced or discontinued will be awarded the benefit or increased benefit without the filing of a new claim.
(b) The commencement or adjustment will be effective the day following the reduction or discontinuance of the award to the other payee if the necessary evidence is received in the Department of Veterans Affairs within 1 year from the date of request therefor; otherwise from the date of receipt of a new claim.
(c) The rate for the persons entitled will be the rate that would have been payable if they had been the only original persons entitled.

§ 3.652 Periodic certification of continued eligibility.
Except as otherwise provided:
(a) Individuals to whom benefits are being paid are required to certify, when
requested, that any or all of the eligibility factors which established entitlement to the benefit being paid continue to exist. The beneficiary will be advised at the time of the request that the certification must be furnished within 60 days from the date of the request therefor and that failure to do so will result in the reduction or termination of benefits.

(1) If the certification is not received within 60 days from the date of the request, the eligibility factor(s) for which certification was requested will be considered to have ceased to exist as of the end of the month in which it was last shown by the evidence of record to have existed. For purposes of this paragraph, the effective date of reduction or termination of benefits will be in accordance with §§ 3.500 through 3.504 as in effect on the date the eligibility factor(s) is considered to have ceased to exist. The claimant will be advised of the proposed reduction or termination of benefits and the date the proposed action will be effective. An additional 60 days from the date of notice of the proposed action will be provided for the claimant to respond.

(2) If the certification is not received within the additional 60 day period, the proposed reduction or termination of benefits will be put into effect.

(b) When the required certification is received, benefits will be adjusted, if necessary, in accordance with the facts found.

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

[52 FR 43063, Nov. 9, 1987]

CROSS REFERENCES: Employment Questionnaire, failure to return. See §3.503(f). Income and Net Worth Questionnaires. See §3.661.

§ 3.653 Foreign residence.

(a) General. Pension, compensation, or dependency and indemnity compensation is not payable to an alien who is located in the territory of or under the control of an enemy of the United States or of its allies. The benefit may, however, be paid to the dependents of such alien, but not in excess of the amount which would be payable to the dependent if the alien were dead.

(Authority: 38 U.S.C. 5308)

(b) Retroactive payments. Any amount not paid to an alien under this section, together with any amounts placed to the alien’s credit in the special deposit account in the Treasury or covered into the Treasury as miscellaneous receipts under 31 U.S.C. 123-128 will be paid to him or her on the filing of a new claim. Such claim should be supported with evidence that the alien has not been guilty of mutiny, treason, sabotage or rendering assistance to an enemy, as provided in §3.902(a).

(Authority: 38 U.S.C. 5309)

(c) Treasury Department list. This paragraph is applicable to claims for benefits for aliens residing in countries identified on the list established by the Secretary of the Treasury as countries to which checks could not be delivered with reasonable assurance that the payee would actually receive and be able to negotiate a check for full value.

(1) Evidence requests. Requests for evidence to establish either basic or continued entitlement will not be made where such evidence would be obtained from a country on the Treasury Department list unless the claimant requests that checks be sent to him or her in care of a U.S. Foreign Service post in a country which is not on the list.

(2) Awards. Payments for a claimant residing in a country included in the Treasury Department list will not be authorized unless the claimant requests that checks be sent to him or her in care of a U.S. Foreign Service post in a country which is not on the list.

(3) Retroactive payments. Where award action is authorized under paragraph (c)(2) of this section, or a new claim has been filed after a country has been removed from the Treasury Department list, all benefits to which the payee is otherwise entitled will be paid as provided in paragraph (b) of this section. There is no time limit for filing claim.

(d) Germany and Japan. Where payments were discontinued before July 1, 1954, because the payee was a citizen or subject of Germany or Japan, no payments will be made for any period prior to the date of filing a new claim.
§ 3.654 Active service pay.

(a) General. Pension, compensation, or retirement pay will be discontinued under the circumstances stated in §3.700(a)(1) for any period for which the veteran received active service pay. For the purposes of this section, active service pay means pay received for active duty, active duty for training or inactive duty training.

(b) Active duty. (1) Where the veteran returns to active duty status, the award will be discontinued effective the day preceding reentrance into active duty status. If the exact date is not known, payments will be discontinued effective date of last payment and as of the correct date when the date of reentrance has been ascertained from the service department.

(2) Payments, if otherwise in order, will be resumed effective the day following release from active duty if claim for recommencement of payments is received within 1 year from the date of such release: otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim. Prior determinations of service connection will not be disturbed except as provided in §3.105. Compensation will be authorized based on the degree of disability found to exist at the time the award is resumed. Disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. If a disability is incurred or aggravated in the second period of service, compensation for that disability cannot be paid unless a claim therefor is filed.

(c) Training duty. Prospective adjustment of awards may be made where the veteran waives his or her Department of Veterans Affairs benefit covering anticipated receipt of active service pay because of expected periods of active duty for training or inactive duty training. Where readjustment is in order because service pay was not received for expected training duty, retroactive payments may be authorized if a claim for readjustment is received within 1 year after the end of the fiscal year for which payments were waived.

§ 3.655 Failure to report for Department of Veterans Affairs examination.

(a) General. When entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination or reexamination and a claimant, without good cause, fails to report for such examination, or reexamination, action shall be taken in accordance with paragraph (b) or (c) of this section as appropriate. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc. For purposes of this section, the terms examination and reexamination include periods of hospital observation when required by VA.

(b) Original or reopened claim, or claim for increase. When a claimant fails to report for an examination scheduled in conjunction with an original compensation claim, the claim shall be rated based on the evidence of record. When the examination was scheduled in conjunction with any other original claim, a reopened claim for a benefit which was previously disallowed, or a claim for increase, the claim shall be denied.

(c) Running award. (1) When a claimant fails to report for a reexamination and the issue is continuing entitlement, VA shall issue a pretermination notice advising the payee that payment for the disability or disabilities for which the reexamination was scheduled will be discontinued or, if a minimum evaluation is established in part 4 of this title or there is an evaluation protected under §3.951(b) of this part, reduced to the lower evaluation. Such notice shall also include the prospective date of discontinuance or reduction, the reason therefor and a statement of the claimant’s procedural and appellate rights. The claimant shall be allowed 60 days to indicate his or her willingness to report for a reexamination or to present evidence that payment for the disability or disabilities

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§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Department of Veterans Affairs, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) Dependency and indemnity compensation.

(2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.

(b) Where a veteran's whereabouts become known to the Department of Veterans Affairs after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found.

(c) Awards to dependents will not be continued under this section in any case where the facts are such as to bring into effect the presumption of death under § 3.212.

(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Department of Veterans Affairs, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be effective the day following the date of last payment to the

Cross references:

Procedural due process and appellate rights. See § 3.103.
Examinations See § 3.326.
Reexaminations See § 3.327.
Resumption of rating when veteran subsequently reports for VA examination.

(Authority: 38 U.S.C. 1158)

§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Department of Veterans Affairs, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) Dependency and indemnity compensation.

(2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.

(b) Where a veteran's whereabouts become known to the Department of Veterans Affairs after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found.

(c) Awards to dependents will not be continued under this section in any case where the facts are such as to bring into effect the presumption of death under § 3.212.

(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Department of Veterans Affairs, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be effective the day following the date of last payment to the
veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:

1. The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.

2. The amount of pension payable to the veteran at the time of disappearance.

(Authority: 38 U.S.C. 1507)


§ 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made covering a period for which death compensation or benefits under the Federal Employee’s Compensation Act, based on military service, have been paid to the same payee based on the same death, the award of dependency and indemnity compensation will be made...
subject to an offset of payments of death compensation or benefits under the Federal Employees' Compensation Act over the same period.

(b) When an award of dependency and indemnity compensation is made covering a period for which death benefits have been paid to the same payee based on the death of another spouse the award will be made subject to an offset of payments of death pension or compensation, or dependency and indemnity compensation over the same period in the case of the other spouse.

(Authority: 38 U.S.C. 103(d)(2), 5304(b)(3))

[41 FR 17387, Apr. 26, 1976]

§ 3.659 Two parents in same parental line.

The provisions of this section are applicable for periods commencing on or after January 1, 1957 in cases involving payments of death compensation or dependency and indemnity compensation, and in addition, for periods commencing on or after June 9, 1960, in cases involving payments of death pension based on death on or after that date.

(a) If death pension, compensation or dependency and indemnity compensation is payable based on the service of one parent, an award of such benefits to or on account of a child will be made subject to any payments of these benefits made to or on account of that child over the same period of time based on the service of another parent in the same parental line.

(b) Any reduction or discontinuance of an award to the child or to a surviving spouse will be effective the day preceding the commencing date of death pension, compensation, or dependency and indemnity compensation or, under the circumstances described in §3.707, the commencing date of dependents' educational assistance under 38 U.S.C. ch. 35, to or on account of the child based on the service of another parent in the same parental line. Any increase to a surviving spouse or another child will be effective the commencing date of the award to the child.

in which the increase occurred or dependency ceased. Except as noted in this subparagraph for section 306 or old-law pension, where the dependency of another person ceased on or after October 1, 1982, due to marriage, annulment, divorce or death, the reduction or discontinuance shall be effective the last day of the month in which dependency ceased.

(Authority: 38 U.S.C. 5112(b))

(3) Overpayments. Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived. Where dependency and indemnity compensation was being paid to two parents living together, an overpayment will be established on the award to each parent.

(b) Award or increase; income. Where pension or dependency and indemnity compensation was not paid for a particular 12-month annualization period because the claim was disallowed, an award was deferred under §3.260(b) or §3.271(f), payments were discontinued or made at a lower rate because of anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a 12-month annualization period as provided in this paragraph. In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(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 because of anticipated income, 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 notice constituting an informal claim 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 §3.661 as to increase due to termination of payments to another payee. Also see §3.667 as to increase based on school attendance.)

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


§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).

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(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)

§§ 3.662—3.664 [Reserved]

§ 3.665 Penal institutions—compensation.

(a) General. Any person specified in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony shall not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration. A person whose benefits are subject to this reduction shall be informed of the rights of the person's dependents to an apportionment while the person is incarcerated, and the conditions under which payments to the person may be resumed upon release from incarceration. In addition, the person’s dependents shall also be notified of their right to an apportionment if the Department of Veterans Affairs is aware of their existence and can obtain their addresses.

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

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

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

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

(i) The person was incarcerated on October 1, 1980, and
(ii) An award of compensation or DIC is approved after September 30, 1980.

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

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

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

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

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

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

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

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

(i) Resumption upon release—(1) No apportionment or family reunited. If there was no apportionment at the time of release from incarceration, or if the released person is reunited with all dependents for whom an apportionment was granted, the released person’s award shall be resumed the date of release from incarceration if the Department of Veterans Affairs receives notice of release within 1 year following release; otherwise the award shall be resumed the date of receipt of notice of release. If there was an apportionment award during incarceration, it shall be discontinued date of last payment to the apportionee upon receipt of notice of release of the incarcerated person. Payment to the released person shall then be resumed at the full rate from date of last payment to the apportionee. Payment to the released person from date of release to date of last payment to the apportionee shall be made at the rate which is the difference between the released person’s full rate and the sum of (i) the rate that was payable to the apportionee.
and (ii) the rate payable during incarceration.

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

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

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

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

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

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

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

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

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

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

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

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

(m) Conviction overturned on appeal. If a conviction is overturned on appeal, any compensation or DIC withheld under this section as a result of incarceration for such conviction (less the
§ 3.666 Penal institutions—pension.

Where any individual to or for whom pension is being paid under a public or private law administered by the Department of Veterans Affairs is imprisoned in a Federal, State or local penal institution as the result of conviction of a felony or misdemeanor, such pension payments will be discontinued effective on the 61st day of imprisonment following conviction. The payee will be informed of his or her rights and the rights of dependents to payments while he or she is imprisoned as well as the conditions under which payments to him or to her may be resumed on his or her release from imprisonment. Payments of pension authorized under this section will continue until notice is received in the Department of Veterans Affairs that the imprisonment has terminated.

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

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

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

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

(4) From the day following the date of discontinuance of payments to the veteran, subject to payments made to the veteran over the same period if evidence of income is received within 1 year after date of request; otherwise payments may not be made for any period prior to the date of receipt of an informal claim.

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

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

(a) General. (1) Pension or compensation may be paid from a child’s 18th birthday based upon school attendance if the child was at that time pursuing a course of instruction at an approved school and a claim for such benefits is filed within 1 year from the child’s 18th birthday.

(2) Pension or compensation based upon a course which was begun after a child’s 18th birthday may be paid from the commencement of the course if a claim is filed within 1 year from that date.

(3) An initial award of DIC (dependency and indemnity compensation) to a child in the child’s own right is payable from the first day of the month in which the child attains age 18 if the child was pursuing a course of instruction at an approved school on the child’s 18th birthday, and if a claim for benefits is filed within 1 year from the child’s 18th birthday.

(b) Vacation periods. A child is considered to be in school during a vacation or other holiday period if he or she was attending school at the end of the preceding school term and resumes attendance, either in the same or a different approved school, at the beginning of the next term. If an award has been made covering a vacation period, and the child fails to commence or resume school attendance, benefits will be terminated the date of last payment or the last day of the month preceding the date of failure to pursue the course, whichever is the earlier.

(c) Ending dates. Except as provided in paragraph (b) of this section, benefits may be authorized through the last day of the month in which a course was or will be completed.

(d) Transfers to other schools. Where benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same school or a course in a different school, payments previously made will not be disturbed if the course is approved.

(e) Accrued benefits only. When a claim for accrued benefits is filed by or on behalf of a veteran’s child over 18 but under 23 years of age, who was pursuing a course of instruction at the time of the payee’s death and payment of accrued benefits only is involved, evidence of school attendance need not be confirmed by the school. When the payee’s death occurred during a school vacation period, the requirements will be considered to have been met if the child was carried on the school rolls on
the last day of the regular school term immediately preceding the date of the payee's death.

(Authority: 38 U.S.C. 5112(b)(7))

(f) Nonduplication. Pension, compensation or dependency and indemnity compensation may not be authorized:

(1) After a child has elected to receive educational assistance under 38 U.S.C., chapter 35 (see §3.707 and §21.3023 of this chapter); or

(2) Based on an educational program in a school where the child is wholly supported at the expense of the Federal Government, such as a service academy.

§ 3.700 General.

Not more than one award of pension, compensation, or emergency officers', regular or reserve retirement pay will be made concurrently to any person based on his or her own service except as provided in §3.803 relating to naval pension and §3.750(c) relating to waiver of retirement pay. Not more than one award of pension, compensation, or dependency and indemnity compensation may be made concurrently to a dependent on account of more than one period of service of a veteran.

(Authority: 38 U.S.C. 5304(a))

(a) Veterans—(1) Active service pay. (i) Pension, compensation, or retirement pay on account of his or her own service will not be paid to any person for any period for which he or she receives active service pay.

(Authority: 38 U.S.C. 5304(c))

(ii) Time spent by members of the ROTC in drills as part of their activities as members of the corps is not active service.
(iii) Reservists may waive their pension, compensation, or retirement pay for periods of field training, instruction, other duty or drills. A waiver may include prospective periods and contain a right of recoupment for the days for which the reservists did not receive payment for duty by reason of failure to report for duty.

(2) Lump-sum readjustment pay. (i) Where entitlement to disability compensation was established prior to September 15, 1981, a veteran who has received a lump-sum readjustment payment under former 10 U.S.C. 687 (as in effect on September 14, 1981) may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received as readjustment payment.

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

(ii) Readjustment pay authorized under former 10 U.S.C. 3814(a) is not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981.

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

(iii) Where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment, subject to recoupment of the total amount of the readjustment payment.

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

(iv) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated by service prior to the date of separation pay may receive the purpose of offsetting readjustment pay based on a prior period of service.

(Authority: 10 U.S.C. 1174(h)(2))

(3) Severance pay. Where the disability or disabilities found to be service-connected are the same as those upon which disability severance pay is granted, an award of compensation will be made subject to recoupment of the disability severance pay. Prior to the initial determination of the degree of disability recoupment will be at the full monthly compensation rate payable for the disability or disabilities for which severance pay was granted.

(Authority: 38 U.S.C. 1521(i))

(4) Improved pension. If a veteran is entitled to improved pension on the basis of the veteran's own service and is also entitled to pension under any pension program currently or previously in effect on the basis of any other person's service, the Department of Veterans Affairs shall pay the veteran only the greater benefit.

(Authority: 38 U.S.C. 1212(c))

(5) Separation pay. (i) A veteran who has received separation pay may receive disability compensation for disability incurred in or aggravated by service prior to the date of separation pay subject to recoupment of the total amount received as separation pay.

(ii) The receipt of separation pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation
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§ 3.701

Elections of pension or compensation.

(a) General. Except as otherwise provided, a person entitled to receive pension or compensation under more than one law or section of a law administered by the Department of Veterans Affairs may elect to receive whichever benefit, regardless of whether it is the greater or lesser benefit, even though the election reduces the benefits payable to his or her dependents. Such person may at any time elect or reelect the other benefit. An election by a veteran controls the rights of all dependents in that case. An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse. The election of improved pension by a surviving spouse, however, shall not prejudice the rights of any child receiving an apportionment on December 31, 1978. Termination of a marriage or marital relationship which had been the reason for terminating an award of section 306 or old-law pension does not restore to the surviving spouse the right to receive section 306 or old-law pension. The claimant's entitlement, if otherwise established, is under the current provisions of 38 U.S.C. 1541. (Authority: 38 U.S.C. 504)

(b) Form of election. A statement which meets the requirements of an informal claim may be accepted as an election.

(c) Change from one law to another. Except as otherwise provided, where payments of pension or compensation are being made to a person under one

Payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting separation pay based on a prior period of service.

(Authority: 10 U.S.C. 1174)

(b) Dependents—(1) Surviving spouse. Subject to the provisions of paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse because of the death of an veteran, or receipt of pension or compensation because of his or her own service, shall not bar the payment to the surviving spouse of pension, compensation, or dependency and indemnity compensation because of the death or disability of any other veteran; however, other than insurance, concurrent benefits under laws administered by the Department of Veterans Affairs may not be authorized to a surviving spouse by reason of the death of more than one veteran to whom the surviving spouse has been married. The surviving spouse may elect to receive benefits based on the death of one such spouse and the election places the right to benefits based on the deaths of other spouses in suspense. The suspension may be lifted at any time by another election based on the death of another spouse. Benefits payable in the elected case will be subject to prior payments for the same period based on the death of the other spouse where, under the provisions of §3.400(c), there is entitlement in the elected case prior to date of receipt of the election.

(Authority: 38 U.S.C. 5304)

(2) Children. Except as provided in §3.703 and paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a child on account of the death of a veteran or the receipt by the child of pension or compensation on account of his or her own service will not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other veteran.

(3) Parents. The receipt of compensation or dependency and indemnity compensation by a parent on account of the death of a veteran or receipt by him or her of pension or compensation on account of his or her own service, will not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.

(Authority: 38 U.S.C. 5304(b))
law, the right to receive benefits under another law being in suspension, and a higher rate of pension or compensation becomes payable under the other law, benefits at the higher rate will not be paid for any date prior to the date of receipt of an election.


§ 3.702 Dependency and indemnity compensation.

(a) Right to elect. A person who is eligible for death compensation and who has entitlement to dependency and indemnity compensation pursuant to the provisions of §3.5(b)(2) or (3) may receive dependency and indemnity compensation upon the filing of a claim. The claim of such a person for service-connected death benefits shall be considered a claim for dependency and indemnity compensation subject to confirmation by the claimant. The effective date of payment is controlled by the provisions of §3.400(c)(4).

(b) Effect on child’s entitlement. Where a surviving spouse is entitled to death compensation, the amount of which is based in part on the existence of a child who has attained the age of 18 years, and elects to receive dependency and indemnity compensation, the independent award of dependency and indemnity compensation to which the child is entitled will be awarded to or for the child without separate election by or for the child. Should such a surviving spouse not elect to receive dependency and indemnity compensation, the independent dependency and indemnity compensation to which a child who has attained 18 years of age is entitled, may be awarded upon application by or for the child. The effective date of award in these situations will be in accordance with §3.400(c)(4)(ii).

(c) Limitation. A claim for dependency and indemnity compensation may not be filed or withdrawn after the death of the surviving spouse, child, or parent.

(d) Finality of election.

(1) Except as noted in paragraph (d)(2), an election to receive dependency and indemnity compensation is final and the claimant may not thereafter receive pension or compensation in that case. An election is final when the payee (or the payee’s fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

(2) Notwithstanding the provisions of paragraph (d)(1), effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(e) Surviving spouse becomes entitled. A surviving spouse who becomes eligible to receive death compensation by reason of liberalizing provisions of any law may receive death compensation or elect dependency and indemnity compensation even though dependency and indemnity compensation has been paid to a child or children of the veteran.

(f) Death pension rate. (1) Effective October 1, 1961, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable to such surviving spouse if the veteran’s death had not been service connected, dependency and indemnity compensation shall be paid to such surviving spouse in an amount equal to the pension rate for any month (or part thereof) in which this rate is greater.

(2) Effective June 22, 1966, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable for the children if the veteran’s death had not been service connected and the surviving spouse were not entitled to such pension, dependency and indemnity compensation shall be paid to the surviving spouse in an amount equal to the monthly rate of death pension which would be payable to the children for any month (or part thereof) in which this rate is greater.

(Authority: 38 U.S.C. 1312(b))

§ 3.703 Two parents in same parental line.

(a) General. Death compensation or dependency and indemnity compensation is not payable for a child if dependency and indemnity compensation is paid to or for a child or to the surviving spouse on account of the child by reason of the death of another parent in the same parental line where both parents died before June 9, 1960. Where the death of one such parent occurred on or after June 9, 1960, gratuitous benefits may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line.

(b) Election. The child or his or her fiduciary may elect to receive benefits based on the service of either veteran. An election of pension, compensation or dependency and indemnity compensation based on the death of one parent places the right to such benefits based on the death of another parent in suspension. The suspension may be lifted at any time by making another election.

(c) Other payees. Where a child has elected to receive pension, compensation, dependency and indemnity compensation or dependents’ educational assistance under 38 U.S.C. chapter 35 based on the death of a veteran, he (or she) will be excluded from consideration in determining the eligibility or rate payable for any other child in the case of another deceased veteran in the same parental line. See § 3.659(b).

§ 3.704 Elections within class of dependents.

(a) Children. Where children are eligible to receive monthly benefits under more than one law in the same case, the election of benefits under one law by or on behalf of one child will not serve to increase the rate allowable for any other child under another law in that case. The rate payable for each child will not exceed the amount which would be paid if all children were receiving benefits under the same law.

(b) Parents. If there are two parents eligible for dependency and indemnity compensation and only one parent files claim for this benefit, the rate of dependency and indemnity compensation for that parent will not exceed the amount which would be paid to him or her if both parents had filed claim for dependency and indemnity compensation. The rate of death compensation for the other parent will not exceed the amount which would be paid if both parents were receiving this benefit.

§ 3.705—3.706 [Reserved]

§ 3.707 Dependents’ educational assistance.

(a) Child. The conditions applicable to the bar to payment of pension, compensation or dependency and indemnity compensation for a child concurrently with educational assistance allowance under 38 U.S.C. chapter 35 are set forth in § 21.3023 of this chapter.

(b) Spouse or surviving spouse. There is no bar to the payment of pension, compensation or dependency and indemnity compensation to a spouse concurrently with educational assistance allowance under 38 U.S.C. chapter 35.

§ 3.708 Federal Employees’ Compensation.

(a) Military service—(1) Initial election. Where a person is entitled to compensation from the Office of Workers’ Compensation Programs, under the Federal Employees’ Compensation Act...
§ 3.710  Civil service annuitants.

Department of Veterans Affairs benefits may be paid concurrently with civil service retirement benefits. However, payments will be considered income as provided in § 3.262 (e) and (h).

[29 FR 15208, Nov. 11, 1964]

§ 3.711  Improved pension elections.

Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 1521, 1541, or 1542 as in effect on January 1, 1979. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee’s fiduciary) negotiates one check for this benefit and there is no right to reelection. Any veteran eligible to make an election under this section who is married to a veteran...
who is also eligible to make such an election may not receive improved pension unless the veteran’s spouse also elects to receive improved pension.

(Authority: Sec. 306(a)(1) of Pub. L. 95-588, 92 Stat. 2497)

[46 FR 11661, Feb. 10, 1981]

§ 3.712 Improved pension elections; surviving spouses of Spanish-American War veterans.

(a) General. A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 1536 may elect to receive improved pension under 38 U.S.C. 1541. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee’s fiduciary) negotiates one check for this benefit and there is no right of reelection.

(b) Aid and attendance. A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 1536 (a) and (b) and 1544 or the monthly rate authorized by 38 U.S.C. 1541 and 544, as 38 U.S.C. 1541 and 1544 were in effect on December 31, 1978, based on the surviving spouse’s current income and net worth. Pension under 38 U.S.C. 1541 and 1544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse’s net worth is a bar to payment under § 3.252(b) or if the surviving spouse’s income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change.

(Authority: 38 U.S.C. 1536)

[44 FR 45944, Aug. 6, 1979]

§ 3.713 Effective dates of improved pension elections.

(a) General. Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) Persons entitled to pension on December 31, 1978. The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary’s advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period.

(Authority: Sec. 306(d) of Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45943, Aug. 6, 1979]

§ 3.714 Improved pension elections—public assistance beneficiaries.

(a) Definitions. The following definitions are applicable to this section.

(1) Pensioner. This means a person who was entitled to section 306 or old-law pension, or a dependent of such a person for the purposes of chapter 15 of title 38, United States Code as in effect on December 31, 1978.

(2) Public assistance. This means payments under the following titles of the Social Security Act:

(i) Title I (Grants to States for Old Age Assistance and Medical Assistance to the Aged).

(ii) Title X (Grants to States for Aid to the Blind).

(iii) Title XIV (Grants to States for Aid to the Permanently and Totally Disabled).

(iv) Part A of title IV (Aid to Families with Dependent Children).

(v) Title XVI (Supplemental Security Income for the Aged, Blind and Disabled).

(3) Medicaid. This means a State plan for medical assistance under title XIX of the Social Security Act.

(4) Informed election. The term “informed election” means an election of improved pension (or a reaffirmation of a previous election of improved pension) after the Department of Veterans Affairs has complied with the requirements of paragraph (e) of this section.

(b) General. In some States only a person in receipt of public assistance is eligible for Medicaid. When this is the case the following applies effective January 1, 1979:
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(1) A pensioner may not be required to elect improved pension to receive, or to continue to receive, public assistance; or

(2) A pensioner may not be denied (or suffer a reduction in the amount of) public assistance by reason of failure or refusal to elect improved pension.

(c) Public assistance deemed to continue. Public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) payable to a pensioner may have been terminated because the pensioner’s income increased as a result of electing improved pension. In this instance public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) shall be deemed to have remained payable to a pensioner for each month after December 1978 when the following conditions are met:

(1) The pensioner was in receipt of pension for the month of December 1978; and

(2) The pensioner was in receipt of public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) prior to June 17, 1980, and for the month of December 1978; and

(3) The pensioner’s public assistance payments (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) were discontinued because of an increase in income resulting from an election of improved pension.

(d) End of the deemed period of entitlement to public assistance. The deemed period of entitlement to public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) ends the first calendar month that begins more than 10 days after a pensioner makes an informed election of improved pension. (If the pensioner is unable to make an informed election the informed election may be made by a member of the pensioner’s family.) A pensioner who fails to disaffirm a previously made election of improved pension within the time limits set forth in paragraph (e) of this section shall be deemed to have reaffirmed the previous election. This will also end the deemed period of entitlement to public assistance.

(e) Notice of right to make informed election or disaffirm election previously made. The Department of Veterans Affairs shall send a written notice to each pensioner to whom paragraph (b) of this section applies and who is eligible to elect or who has elected improved pension. The notice shall be in clear and understandable language. It shall include the following:

(1) A description of the consequences to the pensioner (and the pensioner’s family if applicable) of losing Medicaid eligibility because of an increase in income resulting from electing improved pension; and

(2) A description of the provisions of paragraph (b) of this section; and

(3) In the case of a pensioner who has previously elected improved pension, a form for the purpose of enabling the pensioner to disaffirm the previous election of improved pensions; and

(f) The following provisions of Pub. L. 96-272, sec. 310(b)(2)(B):

(i) That a pensioner has 90 days from the date the notice is mailed to the pensioner to disaffirm a previous election by completing the disaffirmation form and mailing it to the Department of Veterans Affairs.

(ii) That a pensioner who disaffirms a previous election shall receive, beginning the calendar month after the calendar month in which the Department of Veterans Affairs receives the disaffirmation, the amount of pension payable if improved pension had not been elected.

(iii) That a pensioner who disaffirms a previous election may again elect improved pension but without a right to disaffirm the subsequent election.

(iv) That a pensioner who disaffirms an election of improved pension shall not be indebted to the United States for the period in which the pensioner received improved pension.

(Authority: Pub. L. 96-272, sec. 310; 94 Stat. 500)

(f) Notification to the Department of Health and Human Services. The Department of Veterans Affairs shall promptly furnish the Department of Health and Human Services the following information:

(1) The name and identifying information of each pensioner who disaffirms his or her election of improved pension.

(2) The name and identifying information of each pensioner who fails to
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disaffirm and election of improved pension within the 90-day period described in paragraph (e)(4)(i) of this section.

(3) The name and identifying information of each pensioner who after disaffirming his or her election of improved pension, subsequently reelected improved pension.

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

46 FR 11661, Feb. 10, 1981


Payment to any individual under the provisions of the Radiation Exposure Compensation Act of 1990 (Pub. L. 101-426 as amended by Public Law 101-510) based upon disability or death resulting from a specific disease shall bar payment, or further payment, of compensation or dependency and indemnity compensation to or on behalf of that individual based upon disability or death resulting from the same disease.

(Authority: 42 U.S.C. 2210 note)

58 FR 25564, Apr. 27, 1993

CROSS REFERENCE: See § 3.500(x) for effective date of discontinuance.

§ 3.750 Retirement pay.

(a) General. Except as provided in paragraphs (c) and (d) of this section and § 3.751, any person entitled to receive retirement pay based on service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration; or the National Oceanic and Atmospheric Administration may not receive such pay concurrently with benefits payable under laws administered by the Department of Veterans Affairs. The term “retirement pay” includes retired pay and retainer pay.

(b) Election. A veteran entitled to retirement pay or compensation may elect which of the benefits he or she desires to receive. An election of retirement pay does not bar him or her from making a subsequent election of the other benefit to which he or she is entitled. An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as “timely filed” for the purpose of § 3.401(e)(1). If the veteran is incompetent the 1-year period will begin on the date notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and the effect thereof.

(c) Waiver. A person specified in paragraph (a) of this section may receive compensation upon filing with the service department concerned a waiver of so much of his (or her) retirement pay as is equal in amount to the compensation to which he (or she) is entitled. In the absence of a specific statement to the contrary, the filing of an application for compensation by a veteran entitled to retirement pay constitutes such a waiver.

(Authority: 38 U.S.C. 5305)


CROSS REFERENCE: Concurrent benefits and elections; general. See § 3.700.

§ 3.751 Statutory awards; retired service personnel.

Retired Regular and Reserve officers and enlisted personnel are not entitled to statutory awards of disability compensation from the Department of Veterans Affairs in addition to their retirement pay. However, under § 3.750(c), eligible persons may waive an amount...
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equal to the basic disability compensation and any statutory award otherwise payable by the Department of Veterans Affairs.

[41 FR 53797, Dec. 9, 1976]

§ 3.752 [Reserved]

§ 3.753 Public Health Service.

Disability compensation may be paid concurrently with retirement pay to an officer of the commissioned corps of the Public Health Service, who was receiving disability compensation on December 31, 1956, as follows:

(a) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes prior to such date.

(b) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes between July 29, 1952, and December 31, 1956.

(c) An officer who incurred a disability between July 29, 1945, and July 3, 1952, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.

[26 FR 1604, Feb. 24, 1961]

§ 3.754 Emergency officers’ retirement pay.

A retired emergency officer of World War I has basic eligibility to retirement pay by the Department of Veterans Affairs under Pub. L. 87-875 (sec. 11(b), Pub. L. 85-857) from date of filing application therefor after October 24, 1962, if the following requirements are met:

(a) Emergency officers’ retirement pay would have been granted under Pub. L. 506, 70th Congress (Act of May 24, 1928) if application therefor had been filed before May 25, 1929.

(b) Such retirement pay would have continued to be payable under section 10 of Pub. L. 2, 73rd Congress, or under section 1 of Pub. L. 743, 76th Congress.

(c) The monthly rate of retirement pay at any time between May 24, 1928 and May 24, 1929, inclusive, would have been lower than the monthly rate of disability compensation payable to the retired emergency officer.

[28 FR 72, Jan. 3, 1963]

CROSS REFERENCE: Emergency officers’ retirement pay. See §3.953(b).
(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.

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(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.
§ 3.803 Naval pension.
(a) Payment of naval pension will be authorized on the basis of a certification by the Secretary of the Navy.
(Authority: 10 U.S.C. 6160)
(b) Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with Department of Veterans Affairs pension or compensation; however, naval pension allowance under 10 U.S.C. 6110 may not exceed one-fourth of the rate of disability pension or compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.
(c) New awards of naval pension may not be made concurrently with Department of Veterans Affairs pension or compensation.
(Authority: 38 U.S.C. 5304(a))
(d) Naval pension remaining unpaid at the date of the veteran’s death is not payable by the Department of Veterans Affairs as an accrued benefit.

§ 3.804 Special allowance under 38 U.S.C. 1312.
(a) The provisions of this section are applicable to the payment of a special allowance by the Department of Veterans Affairs to the surviving dependents of a veteran who served after September 15, 1940, and who died on or after January 1, 1957, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.
(b) The special allowance is not payable: (1) Where the veteran’s death resulted from Department of Veterans Affairs hospitalization, treatment, examination, or training;
(2) Where the veteran’s death was due to service rendered with the Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the Philippine Scouts under section 14, Pub. L. 190, 79th Congress;
(c) A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is payable or where a specific inquiry concerning entitlement to the special allowance is received.
(d) Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifications from the Social Security Administration.
(e)(1) The special allowance will be payable only if the death occurred: (i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or
(ii) As the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty, under conditions other than dishonorable.
(2) Where the veteran died after separation from service: (i) Discharge from service must have been under conditions other than dishonorable as outlined in §3.12.
(ii) Line of duty and service connection will be determined as outlined in §3.1(k) and (m) and the §3.300 series.
[26 FR 1605, Feb. 24, 1961]

§ 3.805 Loan guaranty for surviving spouses; certification.
A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed on or after January 1, 1959, if:
(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time on or after January 1, 1941; and
(b) The veteran died in service; or
(c) The veteran died after separation from service and such separation was under conditions other than dishonorable provided the veteran’s death was the result of injury or disease incurred in or aggravated by service in line of
duty rendered on or after September 16, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The surviving spouse meets the requirements of the term "surviving spouse" as outlined in §3.50; and

(e) The veteran's surviving spouse is unmarried; and

(f) The applicant is not an eligible veteran.


CROSS REFERENCES: Wife, widow or spouse. See §3.50(b). Terminated marital relationships. See §3.55.

§ 3.806 Death gratuity; certification.

(a) Where a veteran dies on or after January 1, 1957, and during the 120-day period which begins on the day following the date of his or her discharge or release from active duty, active duty for training, or inactive training duty, the Department of Veterans Affairs will certify that fact to the Secretary concerned if the Department of Veterans Affairs determines on the basis of a claim filed with it that:

(1) Death resulted from:

(i) Disease or injury incurred or aggravated while on such active duty or active duty for training; or

(ii) Injury incurred or aggravated while on such inactive duty training; and

(2) The deceased person was discharged or released from such service under conditions other than dishonorable.

(b) In all cases, other than listed in paragraph (a) of this section, the certification will be furnished at the request of the Secretary concerned.

(c) For the purposes of this section, line of duty is not a factor. The standards, criteria, and procedures for determining incurrence or aggravation of a disease or injury under paragraph (a) of this section are those applicable under disability and death compensation laws administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1323)

[26 FR 1605, Feb. 24, 1961, as amended at 40 FR 54245, Nov. 21, 1975]

§ 3.807 Dependents' educational assistance; certification.

For the purposes of dependents' educational assistance under 38 U.S.C. chapter 35 (see §21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) General. Basic eligibility exists if the veteran:

(1) Was discharged from service under conditions other than dishonorable, or died in service; and

(2) Has a permanent total service-connected disability; or

(3) A permanent total service-connected disability was in existence at the date of the veteran's death; or

(4) Died as a result of a service-connected disability; or (if a service-person)

(5) Is on active duty as a member of the Armed Forces and now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power.

(b) Service. Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89-358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in §3.8(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 3505)

(c) Service connection. For purpose of this section, the term "service-connected disability" encompasses combinations of disabilities of paired organs or extremities treated as if service-connected under the provisions of §3.383(a) of this part. The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C.
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3041(a)). Cases where eligibility for service-connected benefits is established under §3.800 are not included.

(d) Relationship—
(1) “Child” means the son or daughter of a veteran who meets the requirements of §3.57, except as to age and marital status.

(2) “Spouse” means a person whose marriage to the veteran meets the requirements of §3.50(a) of this part.

(3) “Surviving spouse” means a person whose marriage to the veteran meets the requirements of §§3.50(b) or 3.52 of this part.

(Authority: 38 U.S.C. 1160, 3501)

(2) Veterans not serving on active duty must be entitled to compensation for the disability. As to any claimant the disability must be service connected in accordance with usual criteria. (See §§3.1 (m) and (n), 3.301–3.310.)

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

(Authority: 38 U.S.C. 3902)

(d) Additional eligibility criteria for adaptive equipment. Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§17.119a through 17.119c of this chapter.

(Authority: 38 U.S.C. 3902)

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

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

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

(3) The term also includes other equipment which the Chief Medical Director or designee may deem necessary in an individual case.


§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations, or on or after October 28, 1986, for assistance in acquiring a residence already adapted with necessary special features, under 38 U.S.C.
§ 3.810 Clothing allowance.

(a) Except as provided in paragraph (d) of this section a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service-connected, is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 1162. The annual clothing allowance is payable in a lump sum, and the following eligibility criteria must also be satisfied:

(1) A VA examination or hospital or examination report from a facility specified in §3.326(c) discloses that the veteran wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in §3.350(a), (b), (c), (d), of (f); or

(2) The Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing, or that because of the use of a physician-prescribed medication for a skin condition which is due to the service-connected disability irreparable damage is done to the veteran's outergarments. For the purposes of this paragraph "appliance" includes a wheelchair.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraphs (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

(c)(1) Except as provided in paragraph (c)(2) of this section, the application for clothing allowance must be filed within 1 year of the anniversary date (August 1) for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allowance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(c)(2) Where the initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allowance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(d) If a veteran is incarcerated in a Federal, State, or local penal institution for a period of more than 60 days and is furnished clothing without charge by the institution, VA shall reduce the amount of the annual clothing allowance by 1/365th of the amount otherwise payable for each day the veteran was incarcerated during the 12-month period.
period preceding the anniversary date for which entitlement is established. No reduction shall be made for the first 60 days of incarceration.

(Authority: 38 U.S.C. 5313A)


§ 3.811 Minimum income annuity.

(a) Eligibility. The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Transportation has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425 as amended other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) Computation of the minimum income annuity payment—(1) Annual income. VA will determine a beneficiary’s annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 of this part for beneficiaries receiving old law section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen’s Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary’s income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) Termination. Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.


[63 FR 4122, Jan. 6, 1998]


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

(a) Eligibility requirements. (1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of
§ 3.812

this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

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

(b) Computation of payment rate—

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

(2) Original or reopened awards to surviving spouses. The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

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

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

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

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

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

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

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

(i) The Commonwealth Army of the Philippines while such forces were in
§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.

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

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

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

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


[38 U.S.C. 107 (1982)]
and indemnity compensation, respectively.

(e) Effective dates. Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Authority: Pub. L. 98-542)

[50 FR 34460, Aug. 26, 1985]

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for a child who it has determined is suffering from spina bifida and who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child suffering from spina bifida is the natural child of two Vietnam veterans, he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled “Application for Spina Bifida Benefits”: 
(c) Definitions—(1) Vietnam veteran.
   For the purposes of this section, the term "Vietnam veteran" means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions
§ 3.850 General.

(a) Payment of benefits to a duly recognized fiduciary may be made on behalf of a person who is mentally incompetent or who is a minor; or, payment may be made directly to the beneficiary or to a relative or other person of service involved duty or visitation in the Republic of Vietnam.

(2) Child. For the purposes of this section, the term "child" means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of §3.204(a)(1), VA shall require the types of evidence specified in §§3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) Spina bifida. For the purposes of this section, the term "spina bifida" means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) Level I. The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) Level II. Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child is ambulatory, but only with braces or other external support; or, has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) Level III. The child is unable to ambulate; or, has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, or to reassess the level of disability when required to do so under the provisions of paragraph (d)(4) or (5) of this section, VA will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. In either case, VA will reassess the level of disability when the child reaches the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0572.)

(Authority: 38 U.S.C. 501, 1805)

§ 3.852 Institutional awards.

(a) When an incompetent veteran entitled to pension, compensation or retirement pay is a patient in a hospital or other institution, payments on his (or her) account may be made to the chief officer of a Department of Veterans Affairs or non-Department of Veterans Affairs institution:

(1) When no fiduciary has been appointed or when payments to an unsatisfactory fiduciary have been discontinued;

(2) When the Veterans Services Officer certifies that a fiduciary is not furnishing the chief officer funds required for the veteran’s comforts and desires not otherwise provided by the institution;

(3) When a fiduciary requests that an institutional award be made or continued, and the Veterans Services Officer approves the request.

(b) In an institutional award of pension, compensation or retirement pay there may be paid to the chief officer of a non-Department of Veterans Affairs institution on behalf of the veteran an amount not in excess of $60 per month. An institutional award of disability pension will not exceed $25 per month if the award is apportionable under §3.454(a).

§ 3.851 St. Elizabeths Hospital, Washington, D.C.

Benefits due or becoming due any person who is a patient at St. Elizabeths Hospital will be paid to a duly appointed fiduciary of such person. The benefits payable to a veteran who has no spouse, child, or dependent parent will be paid by an institutional award in accordance with §3.852 if there is no such fiduciary. Benefits payable to veterans’ dependents who are patients at this hospital will be paid direct or to a fiduciary of such dependent, except that any awards now being paid to the superintendent will be continued while such dependent remains a patient.
and as may be certified by the Veterans Services Officer, needed for the benefit of the veteran and to pay for his (or her) care and maintenance. Moneys on deposit in Personal Funds of Patients will not be used for this purpose except as authorized by the Veterans Services Officer under §13.72 of this chapter.

(3) If the veteran has dependents, or more is payable under his (or her) rating, or there are funds to his (or her) credit in “Funds Due Incompetent Beneficiaries,” such additional amount as may be needed will be allowed on the basis of a certification by the chief officer with respect to need and amount required.

(c) Where there arises a situation as enumerated in paragraph (a)(1) of this section, apportionment to dependents will be under §3.451.

(Authority: 38 U.S.C. 5307)

(d) There will be paid to the chief officer of a Department of Veterans Affairs institution all sums otherwise payable in excess of apportionments or awards to fiduciaries.

(Authority: 38 U.S.C. 5503(b)(3))

(e) Any excess funds held by the chief officer of a non-Department of Veterans Affairs institution, not necessary for the benefit of the veteran, will be returned to the Department of Veterans Affairs or to a fiduciary, if one is serving. Upon death of a veteran with no surviving heirs, excess funds will be returned to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5502)

§ 3.853 Incompetents; estate over $25,000.

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

(1) Is rated incompetent by VA, and

(2) Has neither spouse, child, nor dependent parent, and

(3) Has an estate, excluding the value of the veteran’s home, which exceeds $25,000, further payments of compensation shall not be made until the estate is reduced to less than $10,000. The value of the veteran’s estate shall be computed under the provisions of §13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran’s estate exceeds $25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to less than $10,000, or any criterion of paragraph (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to less than $10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of §3.557 of this part.

(Authority: 38 U.S.C. 5505)

§ 3.854 Limitation on payments for minor.

Benefits will not be authorized to a fiduciary recognized or appointed for a child, by reason of its minority, for any period subsequent to the day preceding the date on which the child will attain its majority under the law of the State in which the child resides. Payments on or after that date, if otherwise in order, will be made direct to the child, if competent, or, if incompetent and direct payment under §3.850 is not in
§ 3.901 Fraud.

(a) Definition. An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Department of Veterans Affairs (except laws relating to insurance benefits).

(b) Effect on claim. For the purposes of paragraph (d) of this section, any person who commits fraud forfeits all rights to benefits under all laws administered by the Department of Veterans Affairs other than laws relating to insurance benefits.
(c) Forfeiture before September 2, 1959. Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran’s spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts:

(1) Service-connected death benefit payable.
(2) Amount of compensation payable but for the forfeiture.

No benefits are payable to any person who participated in the fraud causing the forfeiture.

(d) Forfeiture after September 1, 1959. After September 1, 1959, forfeiture by reason of fraud may be declared only

(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the fraudulent act; or
(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or
(3) The fraudulent act was committed in the Philippine Islands.

Where the veteran’s rights have been forfeited, no part of his or her benefit may be paid to his or her dependents.

(Authority: 38 U.S.C. 6103)

(e) Remission of forfeitures imposed prior to September 2, 1959. Where it is determined that a forfeiture for fraud which was imposed prior to September 2, 1959, would not be imposed under the law and regulation in effect on and after September 2, 1959, the forfeiture shall be remitted effective June 30, 1972. Benefits to which a person becomes eligible by virtue of the remission, upon application therefor, shall be awarded effective as provided by § 3.114.

(Authority: 38 U.S.C. 6103)

§ 3.902 Treasonable acts.

(a) Definition. An act of mutiny, treason, sabotage or rendering assistance to an enemy of the United States or of its allies.

(b) Effect on claim. For the purposes of paragraph (d) of this section, any person determined by the Department of Veterans Affairs to be guilty of a treasonable act forfeits all gratuitous benefits under laws administered by the Department of Veterans Affairs which he or she may be receiving or would have been entitled to receive in the future.

(c) Forfeiture before September 2, 1959. Where forfeiture for treasonable acts was declared before September 2, 1959, the Secretary may pay any part of benefits so forfeited to the dependents of the person provided the decision to apportion was authorized prior to September 2, 1959, except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit.

(Authority: 38 U.S.C. 6104(c))

(1) Compensation. Whenever a veteran entitled to disability compensation has forfeited his or her right, any part of the compensation payable except for the forfeiture may be paid to the veteran’s spouse, children and parents. The total amount payable will be the lesser of these amounts:

(i) Service-connected death benefit payable.
(ii) Amount of compensation payable but for the forfeiture.

No benefits are payable to any person participating in the treasonable act causing the forfeiture.

(2) Pension. Whenever a veteran entitled to pension has forfeited his or her right, any part of the pension payable except for the forfeiture provision may be paid to the veteran’s spouse and children. The total amount payable will be the lesser of these amounts:

(i) Nonservice-connected death benefit payable.
(ii) Amount of pension being paid the veteran at the time of forfeiture.

No benefits are payable to any person who participated in the treasonable act causing the forfeiture.

(d) Forfeiture after September 1, 1959. After September 1, 1959, forfeiture by
reason of a treasonable act may be declared only
(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the act; or
(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or
(3) The treasonable act was committed in the Philippine Islands.
No part of the benefits forfeited by the person primarily entitled shall be paid to any dependent.

(Authority: 38 U.S.C. 6104)

(e) Children. A treasonable act committed by a child or children, regardless of age, who are in the surviving spouse's custody and included in an award to such person will not affect the award to the surviving spouse.


§ 3.903 Subversive activities.

(a) Definition. Any offense for which punishment is prescribed: (1) In title 18 U.S.C., sections 792, 793, 794, 798, 2381 through 2385, 2387 through 2390, and chapter 105;
(2) In the Uniform Code of Military Justice, Articles 94, 104 and 106 (10 U.S.C. 894, 904, and 906);
(3) In the following sections of the Atomic Energy Act of 1954: Sections 222 through 226 (42 U.S.C. 2272-2276); and
(b) Effect on claim. (1) Any person who is convicted after September 1, 1959, of subversive activities shall from and after the date of commission of such offense have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Department of Veterans Affairs based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such person.
(2) The Attorney General will notify the Department of Veterans Affairs in each case in which a person is indicted or convicted of an offense listed in paragraphs (a)(1), (3), and (4) of this section. The Secretary of Defense or the Secretary of the Treasury, as may be appropriate, will notify the Department of Veterans Affairs in each case in which a person is convicted of an offense listed in paragraph (a)(2) of this section.
(c) Presidential pardon. Where any person whose right to benefits has been so terminated is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon, if otherwise eligible.

(Authority: 38 U.S.C. 6105)


§ 3.904 Effect of forfeiture after veteran's death.

(a) Fraud. Whenever a veteran has forfeited his or her right by reason of fraud, his or her surviving dependents upon proper application may be paid pension, compensation, or dependency and indemnity compensation, if otherwise eligible. No benefits are payable to any person who participated in the fraud causing the forfeiture.

(Authority: 38 U.S.C. 6103(c))

(b) Treasonable acts. Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959, and such benefits were authorized prior to that date. Otherwise, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture.

(Authority: 38 U.S.C. 6104(c))

(c) Subversive activities. Where the veteran was convicted of subversive activities after September 1, 1959, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture unless the veteran had been granted a pardon of the offense by the President.
§ 3.905 Declaration of forfeiture or remission of forfeiture.

(a) Jurisdiction. At the regional office level, except in VA Regional Office, Manila, Philippines, the Regional Counsel is authorized to determine whether the evidence warrants formal consideration as to forfeiture. In the Manila Regional Office the Adjudication Officer is authorized to make this determination. Submissions may also be made by the director of a service, the Chairman, Board of Veterans Appeals, and the General Counsel. Jurisdiction to determine whether the claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture is vested in the Director, Compensation and Pension Service, and personnel to whom authority has been delegated under the provisions of §3.100(c).

(b) Fraud or treasonable acts. Forfeiture of benefits under §3.901 or §3.902 will not be declared until the person has been notified by the Regional Counsel or, in VA Regional Office, Manila, Philippines, the Adjudication Officer, of the right to present a defense. Such notice shall consist of a written statement sent to the person’s latest address of record setting forth the following:

(1) The specific charges against the person;
(2) A detailed statement of the evidence supporting the charges, subject to regulatory limitations on disclosure of information;
(3) Citation and discussion of the applicable statute;
(4) The right to submit a statement or evidence within 60 days, either to rebut the charges or to explain the person’s position;
(5) The right to a hearing within 60 days, with representation by counsel of the person’s own choosing, that fees for the representation are limited in accordance with 38 U.S.C. 5904(c) and that no expenses incurred by a claimant, counsel or witness will be paid by VA.

(c) Subversive activities. Automatic forfeiture of benefits under §3.903 will be effectuated by an official authorized to declare a forfeiture as provided in paragraph (a) of this section.

(d) Finality of decisions. A decision of forfeiture is subject to the provisions of §§3.104(a) and §§20.1103 and 20.1104 of this chapter. The officials authorized to file administrative appeals and the time limit for filing such appeals are set forth in §19.51 of this chapter.

(e) Remission of forfeiture. In event of remission of forfeiture under §3.901(e), any amounts paid as an apportionment(s) during periods of the previously forfeited beneficiary’s reentitlement will be offset.


Cross References: Effective dates; forfeiture. See §3.400(m). Reductions and discontinuances; fraud. See §3.500(k). Reductions and discontinuances; treasonable acts or subversive activities. See §3.500(s). Adjustments and resumptions. See §3.669. Burial benefits. See §3.1609.
rating in effect on the date of the readjustment unless medical evidence establishes that the disability to be evaluated has actually improved.

(Authority: 38 U.S.C. 1155)

(b) A disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Department of Veterans Affairs will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation.

(Authority: 38 U.S.C. 110)

[34 FR 11970, July 16, 1969, as amended at 57 FR 10426, Mar. 26, 1992]


(a) In receipt of or entitled to receive benefits on December 31, 1958. Any person receiving or entitled to receive benefits under any public law administered by the Department of Veterans Affairs on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. The greater benefit under the previous law or the corresponding section of title 38 U.S.C., will be paid in the absence of an election to receive the lesser benefit.

(Authority: Section 10, Pub. L. 85-857)

(b) Emergency officers' retirement pay. Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.

(Authority: Section 11, Pub. L. 85-857)

(c) Service connection established under prior laws. In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are protected by section 2318(b), Pub. L. 85-56 and section 10, Pub. L. 85-857 as to both service connection and rate of compensation, so long as the conditions warranting
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Such status and rate continue. Any disability so service connected may be evaluated under the Schedule for Rating Disabilities, 1945 (looseleaf edition) and benefits awarded on the basis thereof, as well as special monthly compensation under 38 U.S.C. 1114, provided such action results in compensation payable at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants reevaluation of service-connected disabilities, compensation will be awarded under the provisions of 38 U.S.C. 1114.


§ 3.955 Burial allowance.

When any person who had a status under any law in effect on December 31, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. ch. 23.

(Authority: 38 U.S.C. 2305)

[26 FR 1608, Feb. 24, 1961]

§§ 3.955–3.956 [Reserved]

§ 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38 U.S.C., which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with §3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation.

(Authority: 38 U.S.C. 1159)

[33 FR 15026, Oct. 15, 1968]
(6) A section 306 pensioner has a net worth of such size that it is reasonable that some part of it be consumed for the pensioner’s maintenance. Evaluation of net worth shall be made under §3.263.

(c) Reduction. The pension rate payable under paragraph (a) of this section shall be reduced by the amount of any additional pension payable by reason of a dependent upon the loss of such dependent. A veteran or surviving spouse who no longer has any dependents shall not continue to receive either section 306 pension or old-law pension if countable annual income exceeds the appropriate rate in §3.26(a), (b), or (c).

(d) Finality of termination. Termination of section 306 pension or old-law pension for one of the reasons listed in paragraph (b) of this section precludes a person from thereafter establishing entitlement under any other pension program except the improved pension program.

(Authority: Sec. 306 of Pub. L. 95±588, 92 Stat. 2497)

[44 FR 45944, Aug. 6, 1979, as amended at 56 FR 28824, June 25, 1991]

ACCRUED


(a) Basic entitlement. Except as provided in §§3.1001 and 3.1008, where death occurred on or after December 1, 1962, periodic monetary benefits (other than insurance and servicemembers’ indemnity) authorized under laws administered by the Department of Veterans Affairs, to which a payee was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death, and due and unpaid for a period not to exceed 2 years prior to the last date of entitlement as provided in §3.500(g) will, upon the death of such person, be paid as follows:

(Authority: 38 U.S.C. 5121(a))

(1) Upon the death of a veteran to the living person first listed as follows:
   (i) His or her spouse;
   (ii) His or her children (in equal shares);
   (iii) His or her dependent parents (in equal shares) or the surviving parent.

(2) Upon the death of a surviving spouse or remarried surviving spouse, to the veteran’s children.

(3) Upon the death of a child, to the surviving children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation.

(4) In all other cases, only so much of the accrued benefit may be paid as may be necessary to reimburse the person who bore the expense of last sickness or burial. (See §3.1002.)

(b) Apportionments. (1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such unpaid amount is payable to the veteran or to any other dependent or dependents of the veteran.

(Authority: 38 U.S.C. 5121(a)(1))

(2) Where at the date of death of the veteran an apportioned share is being paid to or has been withheld on behalf of another person, the apportioned amount remaining unpaid for periods prior to the last day of the month before the veteran’s death is payable to the apportionee.

(3) Where the accrued death pension, compensation or dependency and indemnity compensation was payable for a child as an apportioned share of the surviving spouse’s benefit, payment will be made under the provisions of paragraph (a)(4) of this section, on the expenses of such deceased child’s last sickness or burial.

(c) Claims and evidence. Application for accrued benefits must be filed within 1 year after the date of death. A claim for death pension, compensation, or dependency and indemnity compensation, by an apportionee, surviving spouse, child or parent is deemed to include claim for any accrued benefits. (See §3.152(b)).

(1) If a claimant’s application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If such evidence is not received within 1 year from the date of such notification, no accrued benefits may be paid.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for
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reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(Authority: 38 U.S.C. 5121(c); 5112(b))

(d) Definitions.

(1) Spouse means the surviving spouse of the veteran, whose marriage meets the requirements of §3.1(j) or §3.52. Where the marriage meets the requirements of §3.1(j) date of marriage and continuous cohabitation are not factors.

(2) Child is as defined in §3.57 and includes an unmarried child who became permanently incapable of self-support prior to attaining 18 years of age as well as an unmarried child over the age of 18 but not over 23 years of age, who was pursuing a course of instruction within the meaning of §3.57 at the time of the payee's death. However, upon the death of a child in receipt of death pension, compensation, or dependency and indemnity compensation, any accrued will be payable to the surviving child or children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation. Upon the death of a child, another child who has elected dependents' educational assistance under 38 U.S.C. chapter 35 may receive accrued death pension, compensation, or dependency and indemnity compensation, payable on behalf of the deceased child for periods prior to the commencement of benefits under that chapter.

(3) Dependent parent is as defined in §3.59. Provided, That the mother or father was dependent within the meaning of §3.250 at the date of the veteran's death.

(4) Evidence in the file at date of death, as used in paragraph (a) of this section, will be considered to have been met when there is on file at the date of the veteran's death:

(i) Notwithstanding §3.200(b) evidence, including uncertified statements, which is essentially complete and of such weight as to establish service connection or degree of disability for disease or injury when substantiated by other evidence in file at date of death or when considered in connection with the identifying, verifying, or corroborative effect of the death certificate.

(ii) In the case of a veteran whose award is subject to reduction by reason of hospital treatment, institutional or domiciliary care by the Department of Veterans Affairs, and in the case of a veteran whose award is subject to increase by reason of the existence of dependents, prima facie proof of dependents, or of other factors affecting entitlement, such as statements on the claim for benefits, or allied forms, provided satisfactory evidence is furnished in support of the claim for accrued benefits. The provisions of this subdivision are not applicable to original awards of accrued benefits.

(e) Subsistence allowance. Subsistence allowance under the provisions of 38 U.S.C. ch. 31 remaining due and unpaid at the date of the veteran's death, is payable under the provisions of this section.

(f) Dependents' educational assistance. Educational assistance allowance or special restorative training allowance under 38 U.S.C. ch. 35 may receive accrued due and unpaid at the date of death of an eligible surviving spouse or eligible child is payable to a child or children of the veteran (see paragraphs (a)(2), (a)(3) and (d)(2) of this section), or on the expenses of last sickness and burial (see paragraph (a)(4) of this section.) Benefits due and unpaid at the date of death of an eligible spouse are payable only on the expenses of last sickness and burial (see paragraph (a)(4) of this section).

(g) Veterans educational assistance. Educational assistance allowance under 38 U.S.C. chapters 30, 32, or 34, and 10 U.S.C. chapter 1606 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

(Authority: 38 U.S.C. 5121)

(h) Clothing allowance. Clothing allowance under 38 U.S.C. 1162 remaining
due and unpaid at the date of the veteran's death is payable under the provisions of this section.

§ 3.1001 Hospitalized competent veterans.

The provisions of this section apply only to the payment of amounts actually withheld on a running award under §3.551(b) which are payable in a lump sum after the veteran's death.

(a) Basic entitlement. Where an award of disability pension for a competent veteran without dependents was reduced because of hospital treatment or institutional or domiciliary care by the Department of Veterans Affairs and the veteran dies while receiving such treatment or care or before payment of amounts withheld, the lump sum is payable to the living person first listed as follows:

(1) The veteran's spouse, as defined in §3.1000(d)(1);
(2) The veteran's children (in equal shares), as defined in §3.57 but without regard to their age or marital status;
(3) The veteran's dependent parents (in equal shares), or the surviving dependent parent, as defined in §3.1000(d)(3);
(4) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See §3.1002.)

(b) Claim. Applications must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit on the retroactive period of an award or for furnishing evidence.
(2) Failure to file timely claim, or a waiver of rights, by a preferred dependents will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(c) Lump sum withheld after discharge from institution. The provisions of paragraphs (a) and (b) of this section will apply in the event of the death of any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated against medical advice or as the result of disciplinary action.

(Authority: 38 U.S.C. 5503)

§ 3.1002 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary. (See §3.1(o)).

(Authority: 38 U.S.C. 5121(b) and 5502(d))

§ 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in §3.1000(a)(1) through (4), except that the total amount payable shall not include any payment for the month in which the payee died (see §3.500(g)), and payments to persons described in §3.1000(a)(4) shall be limited to the amount necessary to reimburse such persons for the expenses of last sickness and/or burial.

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

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(2) Nothing in this section will preclude payment to an otherwise entitled claimant having a lower order of precedence under § 3.1000(a)(1) through (4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in § 3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid upon settlement by the General Accounting Office to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not escheat.

(c) The provisions of this section do not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.557. These amounts are subject to the provisions of §§ 3.1001 and 3.1007, as applicable.

(Authority: 38 U.S.C. 501(a), 5122)

[59 FR 25329, May 16, 1994]

§ 3.1008 Accrued benefits payable to foreign beneficiaries.

In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemembers' indemnity) accruing under laws administered by the Department of Veterans Affairs, while the amount thereof remains in the special deposit account established by Pub. L. 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

[26 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Department of Veterans Affairs either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) Eligible persons. Gratuitous benefits shall be paid to the living person first listed as follows:

1. His or her spouse, as defined in § 3.1000(d)(1);
2. His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;
3. His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran’s death;
4. In all other cases, only so much may be paid as may be necessary to reimburse a person who bore the expense of last sickness or burial. (See § 3.1002.)

(Authority: 38 U.S.C. 5502(d))

(b) Claim. Application must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's
death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit for the submission of evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

Subpart B—Burial Benefits

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2302–2308, unless otherwise noted.

§ 3.1600 Payment of burial expenses of deceased veterans.

For the purpose of payment of burial expenses the term veteran includes a person who died during a period deemed to be active military, naval or air service under § 3.6(b)(6). The period of active service upon which the claim is based must have been terminated by discharge or release from active service under conditions other than dishonorable.

(a) Service-connected death and burial allowance. If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 2302 (or if entitlement is under § 3.8(c) or (d), an amount computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran’s funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran’s death, and

(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran’s death to have supported an award of compensation or pension effective prior to the date of the veteran’s death, or

(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of death to indicate that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Department of Veterans Affairs within 1 year from date of request, the burial allowance claim shall be disallowed; or

(b) Nonservice-connected death burial allowance. If a veteran’s death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 2302 (or if entitlement is under § 3.8(c) or (d), an amount computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran’s funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran’s death, and

(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran’s death to have supported an award of compensation or pension effective prior to the date of the veteran’s death, or

(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of death to indicate that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Department of Veterans Affairs within 1 year from date of request, the burial allowance claim shall be disallowed; or

(3) The deceased was a veteran of any war or was discharged or released from active military, naval, or air service for a disability incurred or aggravated in line of duty, and the body of the deceased is being held by a State (or a political subdivision of a State), and the Secretary determines,

(i) That there is no next of kin or other person claiming the body of the deceased veteran, and

(ii) That there are not available sufficient resources in the veteran’s estate to cover burial and funeral expenses; and

(Authority: 38 U.S.C. 2302(a))
§ 3.1600  
(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(Authority: 38 U.S.C. 501, 2302)

(c) Death while properly hospitalized. If a person dies from non-service-connected causes while properly hospitalized by VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 2303(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term hospitalized by VA means admission to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a); admission (transfer) to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703; admission (transfer) to a nursing home under the authority of 38 U.S.C. 1720 for nursing home care at the expense of the United States; or admission (transfer) to a State nursing home for nursing home care with respect to which payment is authorized under the authority of 38 U.S.C. 1741. (If the hospitalized person’s death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (d) of this section instead of this paragraph.)

(Authority: 38 U.S.C. 2303(a))

(d) Determinations. Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Department of Veterans Affairs will determine line of duty. The burden of proof will rest upon the claimant.

(e) Persons not included. Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

(1) A discharged or rejected draftee or selectee.

(2) A member of the National Guard who reported to camp in answer to the President’s call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Pub. L. 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) Plot or interment allowance. When a veteran dies from non-service-connected causes, an amount not to exceed the amount specified in 38 U.S.C. 2303(b) (or if the entitlement is under § 3.8(c) or (d), an amount computed in accordance with the provisions of § 3.8(c)) may be paid as a plot or interment allowance. The plot or interment allowance is payable to the person or entity who incurred the expenses. (For payment to a state or political subdivision thereof, see § 3.1604(c).) Entitlement is subject to the following conditions:

(1) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(2) The veteran served during a period of war and the conditions set forth in § 3.1604(d)(1)(i)-(v) (relating to burial in a state veterans’ cemetery) are met; or

(Authority: 38 U.S.C. 2303(b)(2))

(3) The veteran was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Department of Veterans Affairs has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(4) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(5) The applicable further provisions of this section and §§ 3.1601 through 3.1610.
(Authority: 38 U.S.C. 2303(b))

(g) Transportation expenses for burial in national cemetery. Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or non-service-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 2302 or the amount specified in 38 U.S.C. 2307 if the cause of death was service connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran’s place of death to the national cemetery nearest the veteran’s last place of residence in which burial space is available. The amounts payable under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.


CROSS REFERENCES: Definitions; veterans See § 3.1(d). Protection; burial allowance. See § 3.954.

§ 3.1601 Claims and evidence.

(a) Claims. Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(h) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. This time limit does not apply to claims for service-connected burial allowance under § 3.1600(a) or for the cost of transporting a veteran’s body to the place of burial under § 3.1600(c) or § 3.1600(g).

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran’s burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent’s personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof, under § 3.1604(d)) may be executed by:

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no
executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (a)(1)(iii) of this section for the burial allowance.

(3) For the purposes of the plot and interment allowance plot or burial plot means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Interment expenses are those costs associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of bodies for burial or interment.

(b) Supporting evidence. Evidence required to complete a claim for the burial allowance and the plot or interment allowance, when payable, (including a reopened claim filed within the 2-year period) must be submitted within 1 year from date of the Department of Veterans Affairs request for such evidence. In addition to the proper claim form the claimant (other than a §3.1604(d) claimant) is required to submit:

(1) Statement of account. Preferably on funeral director's or cemetery owner's billhead showing name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.

(2) Receipted bills. Must show by whom payment was made and show receipt by a person acting for the funeral director or cemetery owner.

(3) Proof of death. In accordance with § 3.211.

(4) Waivers from all other distributees. Where expenses of a veteran's burial, funeral, plot, interment and transportation were paid from funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, payment may be made to one heir upon unconditional written consent of all other heirs.

(5) Entitlement under § 3.1600(b)(3). In addition to the other evidentiary requirements of this subparagraph, there must be written certification over the signature of a responsible official of the State (or political subdivision of the State) where the body was held that—

(i) There is no next of kin or other person claiming the body of the deceased veteran, and

(ii) There are not available sufficient resources in the veteran's estate to cover burial and funeral expenses.

(Authority: 36 U.S.C. 2302(a))

§ 3.1603 Authority for burial of certain unclaimed bodies.

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, and there is burial allowance entitlement which is not based on § 3.1600(b)(3), the amount
provided for burial and plot or inter-
ment allowance will be available for
the burial upon receipt of a claim ac-
companied by a statement showing
what efforts were made to locate rel-
atives or friends. The question of es-
cheat of any part of such deceased vet-
eran's estate is not a factor in such a
claim. Burial allowance may be au-
thorized for cost of disinterment and
reburial of unclaimed remains origi-
nally accorded pauper burial but not
for initial expenses of a burial in a pot-
ter's field. Burial in a prison cemetery
is not considered a pauper burial.

[48 FR 41162, Sept. 14, 1983]

§ 3.1604 Payments from non-Depart-
ment of Veterans Affairs sources.

(a) Contributions or payments by public
or private organizations. When contribu-
tions or payments on the burial ex-
penses have been made by a state, any
agency or political subdivision of the
United States or of a State or the em-
ployer of the deceased veteran only the
difference between the entire burial ex-
penses and the amount paid thereon by
any of these agencies or organizations,
not to exceed the applicable statutory
burial allowance, will be authorized.
Contributions or payments by any
other public or private organization
such as a lodge, union, fraternal or
beneficial organization, society, burial
association or insurance company, will
bar payment of the burial allowance if
such allowance would revert to the
funds of such organization or would
discharge such organization's obliga-
tion without payment.

(Authority: 38 U.S.C. 2302; 2307)

(1) A contract or policy which pro-
vides for payment at death of a speci-
fi ed amount to a designated bene-
fi ciary other than the person rendering
burial and funeral services will not bar
payment of the burial allowance to the
beneficiary even though the organiza-
tion issuing the contract or policy re-
tains an option to make payment di-
rect to the person rendering burial and
funeral services.

(2) The provisions of this paragraph
do not apply to contributions or pay-
ments on the burial and funeral ex-
penses which are made for humani-
tarian reasons if the organization mak-
ing the contribution or payment is
under no legal obligation to do so.

(b) Payment by Federal agency. (1) Where a veteran dies while in employ-
ment covered by the United States Em-
ployees' Compensation Act, as amend-
ed, or other similar laws specifically
providing for payment of the expenses
of funeral, transportation, and inter-
ment out of Federal funds, burial al-
lowance will not be authorized by the
Department of Veterans Affairs.

(2) A provision in any Federal law or
regulation permitting the application
of funds due or accrued to the credit of
the deceased toward the expenses of fu-
nal, transportation and interment
(such as Social Security benefits), as
distinguished from a provision specifi-
cally prescribing a definite allowance
for such purpose, will not bar payment
of the burial allowance. In such cases
only the difference between the total
burial expense and the amount paid
thereon under such provision, not to
exceed the amount specified in 38
U.S.C. 2302, will be authorized.

(Authority: 38 U.S.C. 2302(b))

(3) Burial allowance is not payable
for deaths in active service, or during
the duty periods set forth in §3.6, or for
other deaths where the cost of burial
and transportation is paid by the serv-
dice department.

(c) Payment of plot or interment al-
lowance by public or private organization
except as provided for by §3.1604(d). Where
any part of the plot or interment ex-
penses has been paid or assumed by a
state, any agency or political subdivi-
sion of a State, or the employer of the
deceased veteran, only the difference
between the total amount of such ex-
penses and the amount paid or assumed
by any of these agencies or organiza-
tions, not to exceed the statutory plot
or interment allowance, will be author-
ized.

(Authority: 38 U.S.C. 2303(b))

(d) Payment of the plot or interment al-
lowance to a State or political subdivi-
sion thereof—(1) Conditions warranting pay-
ment. All of the following conditions
must be met:

(i) The plot or interment allowance is
payable based on the service of the de-
ceased veteran. See §3.1600.
§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Department of Veterans Affairs.

An amount may be paid not to exceed the amount payable under §3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Department of Veterans Affairs. (See §3.1600(c)). In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§3.1604 and 3.1606.

(a) Death enroute. When a veteran while traveling under proper prior authorization and at Department of Veterans Affairs expense to or from a specified place for the purpose of:

1. Examination; or
2. Treatment; or
3. Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be authorized as though death occurred while properly hospitalized by the Department of Veterans Affairs. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does not meet the requirements of this section.

(b) Transportation. Except for retired persons hospitalized under section 5 of Executive Order 10122 (15 FR 2173; 3 CFR 1950 Supp.) issued pursuant to Pub. L. 351, 81st Congress, and not as Department of Veterans Affairs beneficiaries, the cost of transportation of the body to the place of burial in addition to the burial and plot or interment allowance will be provided by the Department of Veterans Affairs where death occurs:

1. Within a State or the Canal Zone (38 U.S.C. 101(20)) while the veteran is hospitalized by the Department of Veterans Affairs and the body is buried in a State or the Canal Zone; or
2. While hospitalized within but burial is to be outside of a State or the Canal Zone, except that cost of transportation of the body will be authorized only from place of death to port of embarkation, or to border limits of

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons eligible for burial in a national cemetery.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) Claims. A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a State on a claim form prescribed by the Department of Veterans Affairs. Such claim must be received by the Department of Veterans Affairs within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) Amount of the allowance. A State or an agency or political subdivision of a state entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment.

(Authority: 38 U.S.C. 2303(b))

(4) Priority of payment. A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under §3.1601(a)(2).

(Authority: 38 U.S.C. 2303(b))

United States where burial is in Canada or Mexico.

(c) Extended entitlement. Entitlement extends to the following persons who die while properly hospitalized by the Department of Veterans Affairs:

(1) Discharged or rejected draftees; or

(2) Members of the National Guard who reported to camp in answer to the President's call for World War I, World War II, or Korean service, but who when medically examined were not finally accepted for active military service; or

(3) A veteran discharged under conditions other than dishonorable from a period of service other than a war period.

(d) Persons properly hospitalized. A person properly hospitalized who dies:

(1) While on authorized absence which has not exceeded 96 hours at time of death;

(2) While in a status of unauthorized absence for a period not in excess of 24 hours; or

(3) While absent from the hospital for a period totaling 24 hours of combined authorized and unauthorized absence (all other cases in which such absence arises at the expiration of an authorized absence are not included);

(e) Persons not properly hospitalized. Where a deceased person was not properly hospitalized, benefits will not be authorized under this section.

§ 3.1607 Cost of flags.

No reimbursement will be authorized for the cost of a burial flag privately purchased by relatives, friends, or other parties but such cost may be included in a claim for the burial allowance.

§ 3.1608 Nonallowable expenses.

No reimbursement will be allowed for:

(a) Accessory items. Such as items of food and drink.

(b) Duplicate items. Any item or cost of any item or service, such as casket, clothing, etc., previously provided or
§ 3.1609
paid for by any Federal agency (including the Department of Veterans Affairs).
[26 FR 1622, Feb. 24, 1961]

§ 3.1609 Forfeiture.
(a) Forfeiture of benefits for fraud by a veteran during his lifetime will not preclude payment of burial and plot or interment allowance if otherwise in order. No benefits will be paid to a claimant who participated in the fraud which caused the forfeiture by the veteran.
(b) Burial and plot or interment allowance is not payable based on a period of service commencing prior to the date of commission of the offense where either the veteran or claimant has forfeited the right to gratuitous benefits under §3.902 or §3.903 by reason of a treasonable act or subversive activities, unless the offense was pardoned by the President of the United States prior to the date of the veteran’s death.
(Authority: 38 U.S.C. 5904(c)(2), 5905(a))

CROSS REFERENCE: Effect of forfeiture after veteran’s death. See §3.904.

§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.
The statutory burial allowance and permissible transportation charges as provided in §§3.1600 through 3.1611 are also payable under the following conditions:
(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or
(b) Where the body of a deceased veteran is unclaimed by relatives or friends (see §3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of §3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.
(Authority: 38 U.S.C. 1501(a))
[57 FR 29025, June 30, 1992; 57 FR 40944, Sept. 8, 1992]

§ 3.1611 Official Department of Veterans Affairs representation at funeral.
When requested by the person entitled to the custody of the body of a deceased beneficiary of the Department of Veterans Affairs, official representation at the funeral will be granted provided an employee is available for the purpose and this representation will entail no expense to the Department of Veterans Affairs.
[26 FR 1622, Feb. 24, 1961]

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.
(a) Purpose. This section provides for the payment of a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of §1.631(a)(2) and (b) of this chapter to the person entitled to request such a headstone or marker.
(b) Eligibility for the allowance. All of the following conditions shall be met:
(1) The deceased veteran was eligible for burial in a National cemetery (See §1.620(a), (b), (c) and (d) of this chapter); or died under circumstances precluding the recovery or identification of the veteran’s remains or the veteran’s remains were buried at sea.
(2) The veteran was buried on or after October 18, 1978.
(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran’s identifying information was added to an existing headstone or marker.
(Authority: 38 U.S.C. 2306(d))

(4) The headstone or marker is for placement in a cemetery other than a National cemetery or the headstone or
marker upon which the veteran’s identifying information was added is situated in a cemetery other than a National cemetery.

(c) Person entitled to request a Government-furnished headstone or marker. For purposes of this monetary allowance, the term “person entitled to request a headstone or marker” includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran’s identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased’s estate.

(Authority: 38 U.S.C. 2306(d))

(d) Receipted bill. A receipted bill describing the headstone or marker (or the services rendered in adding the veteran’s identifying information to an existing headstone or marker) date of purchase, purchase price, the amount of payment and the name of the person who made such payment, shall accompany a claim for this monetary allowance.

(e) Payment and amount of the allowance.

(1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds of the deceased’s estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased’s identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent’s personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) The amount of the allowance payable is the lesser of the following:

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran’s identifying information to an existing headstone or marker; or

(ii) The average actual cost, as determined by VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran’s identifying information on an existing headstone or marker were purchased.

(Authority: 38 U.S.C. 2306(d))

(3) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of VA’s costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the “Notices” section of the Federal Register.

(Authority: 38 U.S.C. 2306(d))

(4) The following applies to joint or multiple headstones or markers:

(i) When a joint or multiple non-Government headstone or marker is purchased subsequent to the veteran’s death, the amount set forth in paragraph (e)(2)(ii) of this section shall be available as reimbursement for the cost of the veteran’s portion of the joint or multiple headstone or marker.

(ii) When a joint or multiple non-Government headstone or marker is existent at the time of the veteran’s death, the allowance payable as reimbursement under paragraph (e)(2) of this section shall be determined based on the cost of the services for adding the veteran’s identifying information.

(f) Payment of allowance prohibited. This monetary allowance shall not be paid when a Government headstone or marker has been requested or issued under the provisions of § 1.631(a)(2) and (b) of this chapter.

(Authority: 38 U.S.C. 2306(d))

(g) Claims. There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

(Authority: 38 U.S.C. 2306(d))
(h) The monetary allowance in lieu of a Government-furnished headstone or marker is not payable if death occurred on or after November 1, 1990.

(Authority: Pub. L. 101-508)


PART 4—SCHEDULE FOR RATING DISABILITIES

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Authority: 38 U.S.C. 1155, unless otherwise noted.

Source: 29 FR 6718, May 22, 1964, unless otherwise noted.

Subpart A—General Policy in Rating

§ 4.1 Essentials of evaluative rating.

This rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition. Over a period of many years, a veteran’s disability claim may require reratings in accordance with changes in laws, medical knowledge and his or her physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.

[41 FR 11292, Mar. 18, 1976]

§ 4.2 Interpretation of examination reports.

Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or
§ 4.3 Resolution of reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant. See §3.102 of this chapter.

[40 FR 42535, Sept. 15, 1975]

§ 4.6 Evaluation of evidence.

The element of the weight to be accorded the character of the veteran’s service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

[41 FR 11292, Mar. 18, 1976]

§ 4.7 Higher of two evaluations.

Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned.

§ 4.9 Congenital or developmental defects.

Mere congenital or developmental defects, absent, displaced or supernumerary parts, refractive error of the eye, personality disorder and mental deficiency are not diseases or injuries in the meaning of applicable legislation for disability compensation purposes.

[41 FR 11292, Mar. 18, 1976]

§ 4.10 Functional impairment.

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person’s ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity.

[41 FR 11292, Mar. 18, 1976]

§ 4.13 Effect of change of diagnosis.

The repercussion upon a current rating of service connection when change is made of a previously assigned diagnosis or etiology must be kept in mind. The aim should be the reconciliation and continuance of the diagnosis or etiology upon which service connection for the disability had been granted. The relevant principle enunciated in §4.125, entitled “Diagnosis of mental disorders,” should have careful attention in this connection. When any change in evaluation is to be made the rating agency should assure itself that
there has been an actual change in the conditions, for better or worse, and not merely a difference in thoroughness of the examination or in use of descriptive terms. This will not, of course, preclude the correction of erroneous ratings, nor will it preclude assignment of a rating in conformity with §4.7.

§ 4.14 Avoidance of pyramiding.

The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be service connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different diagnoses are to be avoided.

§ 4.15 Total disability ratings.

The ability to overcome the handicap of disability varies widely among individuals. The rating, however, is based primarily upon the average impairment in earning capacity, that is, upon the economic or industrial handicap which must be overcome and not from individual success in overcoming it. However, full consideration must be given to unusual physical or mental effects in individual cases, to peculiar effects of occupational activities, to defects in physical or mental endowment preventing the usual amount of success in overcoming the handicap of disability and to the effect of combinations of disability. Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation; Provided, That permanent total disability shall be taken to exist when the impairment is reasonably certain to continue throughout the life of the disabled person. The following will be considered to be permanent total disability: the permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or permanently bedridden. Other total disability ratings are scheduled in the various bodily systems of this schedule.

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: Provided That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, (2) disabilities resulting from common etiology or a single accident, (3) disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric, (4) multiple injuries incurred in action, or (5) multiple disabilities incurred as a prisoner of war. It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed...
the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.

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

(b) It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation and Pension Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.


§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanently and totally disabled. For the purpose of pension, the permanence of the percentage requirements of §4.16 is a requisite. When the percentage requirements are met, and the disabilities involved are of a permanent nature, a rating of permanent and total disability will be assigned if the veteran is found to be unable to secure and follow substantially gainful employment by reason of such disability. Prior employment or unemployment status is immaterial if in the judgment of the rating board the veteran's disabilities render him or her unemployable. In making such determinations, the following guidelines will be used:

(a) Marginal employment, for example, as a self-employed farmer or other person, while employed in his or her own business, or at odd jobs or while employed at less than half the usual renumeration will not be considered incompatible with a determination of unemployability, if the restriction, as to securing or retaining better employment, is due to disability.

(b) Claims of all veterans who fail to meet the percentage standards but who meet the basic entitlement criteria and are unemployable, will be referred by the rating board to the Adjudication Officer under §3.321(b)(2) of this chapter.


§ 4.17a Misconduct etiology.

A permanent and total disability rating under the provisions of §§4.15, 4.16 and 4.17 will not be precluded by reason of the coexistence of misconduct disability when:

(a) A veteran, regardless of employment status, also has innocently acquired 100 percent disability, or

(b) Where unemployable, the veteran has other disabilities innocently acquired which meet the percentage requirements of §§4.16 and 4.17 and would render, in the judgment of the rating agency, the average person unable to secure or follow a substantially gainful occupation.


§ 4.18 Unemployability.

A veteran may be considered as unemployable upon termination of employment which was provided on account of disability, or in which special consideration was given on account of the same, when it is satisfactorily shown that he or she is unable to secure further employment. With amputations, sequelae of fractures and other residuals of traumatism shown to be of
static character, a showing of continuous unemployability from date of incurrence, or the date the condition reached the stabilized level, is a general requirement in order to establish the fact that present unemployability is the result of the disability. However, consideration is to be given to the circumstances of employment in individual claims, and, if the employment was only occasional, intermittent, tryout or unsuccessful, or eventually terminated on account of the disability, present unemployability may be attributed to the static disability. Where unemployability for pension previously has been established on the basis of combined service-connected and non-service-connected disabilities and the service-connected disability or disabilities have increased in severity, §4.16 is for consideration.

\[40 \text{ F.R.} 42536, \text{Sept. 15, 1975, as amended at} 43 \text{ F.R. 45349, Oct. 2, 1978}\]

§ 4.19 Age in service-connected claims.

Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.

\[29 \text{ F.R.} 6718, \text{May 22, 1964, as amended at} 43 \text{ F.R. 45349, Oct. 2, 1978}\]

§ 4.20 Analogous ratings.

When an unlisted condition is encountered it will be permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies will be avoided, as will the use of analogous ratings for conditions of doubtful diagnosis or those not fully supported by clinical and laboratory findings. Nor will ratings assigned to organic diseases and injuries be assigned by analogy to conditions of functional origin.

§ 4.21 Application of rating schedule.

In view of the number of atypical instances it is not expected, especially with the more fully described grades of disabilities, that all cases will show all the findings specified. Findings sufficiently characteristic to identify the disease and the disability therefrom, and above all, coordination of rating with impairment of function will, however, be expected in all instances.

\[41 \text{ F.R.} 11293, \text{Mar. 18, 1976}\]

§ 4.22 Rating of disabilities aggravated by active service.

In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service, or it is determined upon the evidence of record to have existed at that time. It is necessary therefore, in all cases of this character to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent) no deduction will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.

§ 4.23 Attitude of rating officers.

It is to be remembered that the majority of applicants are disabled persons who are seeking benefits of law to which they believe themselves entitled. In the exercise of his or her functions, rating officers must not allow their personal feelings to intrude; an antagonistic, critical, or even abusive attitude on the part of a claimant should not in any instance influence the officers in the handling of the case. Fairness and courtesy must at all times be shown to applicants by all employees whose duties bring them in contact, directly or indirectly, with the Department’s claimants.

\[41 \text{ F.R.} 11292, \text{Mar. 18, 1976}\]

§ 4.24 Correspondence.

All correspondence relative to the interpretation of the schedule for rating
disabilities, requests for advisory opinions, questions regarding lack of clarity or application to individual cases involving unusual difficulties, will be addressed to the Director, Compensation and Pension Service. A clear statement will be made of the point or points upon which information is desired, and the complete case file will be simultaneously forwarded to Central Office. Rating agencies will assure themselves that the recent report of physical examination presents an adequate picture of the claimant’s condition. Claims in regard to which the schedule evaluations are considered inadequate or excessive, and errors in the schedule will be similarly brought to attention.

[41 FR 11292, Mar. 18, 1976]

§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 85 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5’s upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability.
**Table I—Combined Ratings Table**

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§ 4.26 Bilateral factor.

When a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (i.e., not combined) before proceeding with further combinations, or converting to degree of disability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out and the rating for such disabilities including the bilateral factor in this section will be treated as 1 disability for the purpose of arranging in order of severity and for all further combinations. For example, with disabilities evaluated at 60 percent, 20 percent, 10 percent and 10 percent (the two 10’s representing bilateral disabilities), the order of severity would be 60, 21 and 20. The 60 and 21 combine to 68 percent and the 68 and 20 to 74 percent, converted to 70 percent as the final degree of disability.

(a) The use of the terms “arms” and “legs” is not intended to distinguish between the arm, forearm and hand, or the thigh, leg, and foot, but relates to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh, for example, amputation, and one of the left foot, for example, pes planus, the bilateral factor applies, and similarly whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment.

(b) The correct procedure when applying the bilateral factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the 4 extremities in the order of their individual severity and apply the bilateral factor by adding, not combining, 10 percent of the combined value thus attained.

(c) The bilateral factor is not applicable unless there is partial disability of compensable degree in each of 2 paired extremities, or paired skeletal muscles.

§ 4.27 Use of diagnostic code numbers.

The diagnostic code numbers appearing opposite the listed ratable disabilities are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis in the Department of Veterans Affairs, and as will be observed, extend from 5000 to a possible 9999. Great care will be exercised in the selection of the applicable code number and in its citation on the rating sheet. No other numbers than these listed or hereafter furnished are to be employed for rating purposes, with an exception as described in this section, as to unlisted conditions. When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be “built-up” as follows: The first 2 digits will be selected from that part of the schedule most closely identifying the part, or system, of the body involved; the last 2 digits will be “99” for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy. In the selection of code numbers, injuries will generally be represented by the number assigned to the disease on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease.
itself; if the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus, rheumatoid (atrophic) arthritis rated as ankylosis of the lumbar spine should be coded “5002±5289.” In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology will be that of the medical examiner, with no attempt to translate the terms into schedule nomenclature. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease.

[41 FR 11293, Mar. 18, 1976]

§ 4.28 Prestabilization rating from date of discharge from service.

The following ratings may be assigned, in lieu of ratings prescribed elsewhere, under the conditions stated for disability from any disease or injury. The prestabilization rating is not to be assigned in any case in which a total rating is immediately assignable under the regular provisions of the schedule or on the basis of individual unemployability. The prestabilization 50-percent rating is not to be used in any case in which a rating of 50 percent or more is immediately assignable under the regular provisions.

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<td>Substantially gainful employment is not feasible or advisable</td>
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<td>Unhealed or incompletely healed wounds or injuries—</td>
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<td>Material impairment of employability likely</td>
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NOTE (1): Department of Veterans Affairs examination is not required prior to assignment of prestabilization ratings; however, the fact that examination was accomplished will not preclude assignment of these benefits. Prestabilization ratings are for assignment in the immediate postdischarge period. They will continue for a 12-month period following discharge from service. However, prestabilization ratings may be changed to a regular schedular total rating or one authorizing a greater benefit at any time. In each prestabilization rating an examination will be requested to be accomplished not earlier than 6 months nor more than 12 months following discharge. In those prestabilization ratings in which following examination reduction in evaluation is found to be warranted, the higher evaluation will be continued to the end of the 12th month following discharge or to the end of the period provided under §3.109(e) of this chapter, whichever is later. Special monthly compensation should be assigned concurrently in these cases whenever records are adequate to establish entitlement.

NOTE (2): Diagnosis of disease, injury, or residuals will be cited, with diagnostic code number assigned from this rating schedule for conditions listed therein.

[35 FR 11906, July 24, 1970]

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Department of Veterans Affairs or an approved hospital for a period in excess of 21 days or hospital observation at Department of Veterans Affairs expense for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability. A temporary release which is approved by an attending Department of Veterans Affairs physician as part of the treatment plan will not be considered an absence.

(1) An authorized absence in excess of 4 days which begins during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the first day of such authorized absence. An authorized absence of 4 days or less which results in a total of more than 8 days of authorized absence during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the ninth day of authorized absence.

(2) Following a period of hospitalization in excess of 21 days, an authorized
absence in excess of 14 days or a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which either the authorized absence in excess of 14 days or the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to §3.105(e) of this chapter.

(b) Notwithstanding that hospital admission was for disability not connected with service, if during such hospitalization, hospital treatment for a service-connected disability is instituted and continued for a period in excess of 21 days, the increase to a total rating will be granted from the first day of such treatment. If service connection for the disability under treatment is granted after hospital admission, the rating will be from the first day of hospitalization if otherwise in order.

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge. Particular attention, with a view to proper rating under the rating schedule, is to be given to the claims of veterans discharged from hospital, regardless of length of hospitalization, with indications on the final summary of expected confinement to bed or house, or to inability to work with requirement of frequent care of physician or nurse at home.

(d) On these total ratings Department of Veterans Affairs regulations governing effective dates for increased benefits will control.

(e) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (a) of this section.

(f) Extension of periods of 1, 2 or 3 months beyond the initial 3 months may be made upon approval of the Adjudication Officer.

(g) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation and Pension Service, under §3.322(b)(1) of this chapter.

§ 4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a) (1), (2) or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to §3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)

(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)

(3) Immobilization by cast, without surgery, of one major joint or more.
Department of Veterans Affairs

(Effective as to outpatient treatment March 10, 1976.)

§ 4.42 Complete medical examination of injury cases.

The importance of complete medical examination of injury cases at the time of first medical examination by the Department of Veterans Affairs cannot be overemphasized. When possible, this should include complete neurological and psychiatric examination, and other special examinations indicated by the physical condition, in addition to the required general and orthopedic or surgical examinations. When complete examinations are not conducted covering all systems of the body affected by disease or injury, it is impossible to visualize the nature and extent of the service connected disability. Incomplete examination is a common cause of incorrect diagnosis, especially in the neurological and psychiatric fields, and frequently leaves the Department of Veterans Affairs with the impossible task of determining the etiology of the disability. When complete examination is made, and the examination reveals a service connected disability, its etiology is readily determined. When incomplete examination is made, the etiology of the disability is frequently impossible to determine. In such instances, the Department is frequently unable to determine whether the disability is service connected or not.

Department of Veterans Affairs

§ 4.42

(Effective as to outpatient treatment March 10, 1976.)

A reduction in the total rating will not be subject to § 3.105(e) of this chapter. The total rating will be followed by an open rating reflecting the appropriate schedular evaluation; where the evidence is inadequate to assign the schedular evaluation, a physical examination will be scheduled prior to the end of the total rating period.

(b) A total rating under this section will require full justification on the rating sheet and may be extended as follows:

(1) Extensions of 1, 2 or 3 months beyond the initial 3 months may be made under paragraph (a) (1), (2) or (3) of this section.

(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a) (2) or (3) of this section upon approval of the Adjudication Officer.


§ 4.31 Zero percent evaluations.

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[58 FR 52018, Oct. 6, 1993]

Subpart B—Disability Ratings

The Musculoskeletal System

§ 4.40 Functional loss.

Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, coordination and endurance. It is essential that the examination on which ratings are based adequately portray the anatomical damage, and the functional loss, with respect to all these elements. The functional loss may be due to absence of part, or all, of the necessary bones, joints and muscles, or associated structures, or to deformity, adhesions, defective innervation, or other pathology, or it may be due to pain, supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking the motion. Weakness is as important as limitation of motion, and a part which becomes painful on use must be regarded as seriously disabled. A little used part of the musculoskeletal system may be expected to show evidence of disuse, either through atrophy, the condition of the skin, absence of normal callosity or the like.

§ 4.41 History of injury.

In considering the residuals of injury, it is essential to trace the medical-industrial history of the disabled person from the original injury, considering the nature of the injury and the attendant circumstances, and the requirements for, and the effect of, treatment over past periods, and the course of the recovery to date. The duration of the initial, and any subsequent, period of total incapacity, especially periods reflecting delayed union, inflammation, swelling, drainage, or operative intervention, should be given close attention. This consideration, or the absence of clear cut evidence of injury, may result in classifying the disability as not of traumatic origin, either reflecting congenital or developmental etiology, or the effects of healed disease.

§ 4.42 Complete medical examination of injury cases.

The importance of complete medical examination of injury cases at the time of first medical examination by the Department of Veterans Affairs cannot be overemphasized. When possible, this should include complete neurological and psychiatric examination, and other special examinations indicated by the physical condition, in addition to the required general and orthopedic or surgical examinations. When complete examinations are not conducted covering all systems of the body affected by disease or injury, it is impossible to visualize the nature and extent of the service connected disability. Incomplete examination is a common cause of incorrect diagnosis, especially in the neurological and psychiatric fields, and frequently leaves the Department of
§ 4.43

Veterans Affairs in doubt as to the presence or absence of disabling conditions at the time of the examination.

§ 4.43 Osteomyelitis.

Chronic, or recurring, suppurative osteomyelitis, once clinically identified, including chronic inflammation of bone marrow, cortex, or periosteum, should be considered as a continuously disabling process, whether or not an actively discharging sinus or other obvious evidence of infection is manifest from time to time, and unless the focus is entirely removed by amputation will entitle to a permanent rating to be combined with other ratings for residual conditions, however, not exceeding amputation ratings at the site of election.

§ 4.44 The bones.

The osseous abnormalities incident to trauma or disease, such as malunion with deformity throwing abnormal stress upon, and causing malalignment of joint surfaces, should be depicted from study and observation of all available data, beginning with inception of injury or disease, its nature, degree of prostration, treatment and duration of convalescence, and progress of recovery with development of permanent residuals. With shortening of a long bone, some degree of angulation is to be expected; the extent and direction should be brought out by X-ray and observation. The direction of angulation and extent of deformity should be carefully related to strain on the neighboring joints, especially those connected with weight-bearing.

§ 4.45 The joints.

As regards the joints the factors of disability reside in reductions of their normal excursion of movements in different planes. Inquiry will be directed to these considerations:

(a) Less movement than normal (due to ankylosis, limitation or blocking, adhesions, tendon-tie-up, contracted scars, etc.).

(b) More movement than normal (from flail joint, resections, nonunion of fracture, relaxation of ligaments, etc.).

(c) Weakened movement (due to muscle injury, disease or injury of peripheral nerves, divided or lengthened tendons, etc.).

(d) Excess fatigability.

(e) Incoordination, impaired ability to execute skilled movements smoothly.

(f) Pain on movement, swelling, deformity or atrophy of disuse. Instability of station, disturbance of locomotion, interference with sitting, standing and weight-bearing are related considerations. For the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints; multiple involvements of the interphalangeal, metacarpal and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. The lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

§ 4.46 Accurate measurement.

Accurate measurement of the length of stumps, excursion of joints, dimensions and location of scars with respect to landmarks, should be insisted on. The use of a goniometer in the measurement of limitation of motion is indispensable in examinations conducted within the Department of Veterans Affairs. Muscle atrophy must also be accurately measured and reported.

[41 FR 11294, Mar. 18, 1976]

§§ 4.47-4.54 [Reserved]

§ 4.55 Principles of combined ratings for muscle injuries.

(a) A muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part, unless the injuries affect entirely different functions.

(b) For rating purposes, the skeletal muscles of the body are divided into 23 muscle groups in 5 anatomical regions: 6 muscle groups for the shoulder girdle and arm (diagnostic codes 5301 through 5306); 3 muscle groups for the forearm and hand (diagnostic codes 5307 through 5309); 3 muscle groups for the
$4.56$ Evaluation of muscle disabilities.

(a) An open comminuted fracture with muscle or tendon damage will be rated as a severe injury of the muscle group involved unless, for locations such as in the wrist or over the tibia, evidence establishes that the muscle damage is minimal.

(b) A through-and-through injury with muscle damage shall be evaluated as no less than a moderate injury for each group of muscles damaged.

(c) For VA rating purposes, the cardinal signs and symptoms of muscle disability are loss of power, weakness, lowered threshold of fatigue, fatiguelinear, or impaired tonus. No impairment of function or metallic fragments retained in muscle tissue.

(ii) History and complaint. Service department record of superficial wound with brief treatment and return to duty. Healing with good functional results. No cardinal signs or symptoms of muscle disability as defined in paragraph (c) of this section.

(iii) Objective findings. Minimal scar. No evidence of fascial defect, atrophy, or impaired tonus. No impairment of function or metallic fragments retained in muscle tissue.

(2) Moderate disability of muscles—(i) Type of injury. Through and through or deep penetrating wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residuals of debridement, or prolonged infection.

(ii) History and complaint. Service department record or other evidence of in-service treatment for the wound. Record of consistent complaint of one or more of the cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section, particularly lowered threshold of fatigue after average use, affecting the particular functions controlled by the injured muscles.

(iii) Objective findings. Entrance and (if present) exit scars, small or linear, indicating short track of missile through muscle tissue. Some loss of deep fascia or muscle substance or impairment of muscle tonus and loss of power or lowered threshold of fatigue when compared to the sound side.

(3) Moderately severe disability of muscles—(i) Type of injury. Through and through or deep penetrating wound by small high velocity missile or large
low-velocity missile, with debridement, prolonged infection, or sloughing of soft parts, and intermuscular scarring.

(ii) History and complaint. Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section and, if present, evidence of inability to keep up with work requirements.

(iii) Objective findings. Entrance and (if present) exit scars indicating track of missile through one or more muscle groups. Indications on palpation of loss of deep fascia, muscle substance, or normal firm resistance of muscles compared with sound side. Tests of strength and endurance compared with sound side demonstrate positive evidence of impairment.

(4) Severe disability of muscles—(i) Type of injury. Through and through or deep penetrating wound due to high-velocity missile, or large or multiple low-velocity missiles, or with shattering bone fracture or open comminuted fracture with extensive debridement, prolonged infection, or sloughing of soft parts, intermuscular binding and scarring.

(ii) History and complaint. Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section, worse than those shown for moderately severe muscle injuries, and, if present, evidence of inability to keep up with work requirements.

(iii) Objective findings. Ragged, depressed and adherent scars indicating wide damage to muscle groups in missile track. Palpation shows loss of deep fascia or muscle substance, or soft flabby muscles in wound area. Muscles swell and harden abnormally in contraction. Tests of strength, endurance, or coordinated movements compared with the corresponding muscles of the uninjured side indicate severe impairment of function. If present, the following are also signs of severe muscle disability:

(A) X-ray evidence of minute multiple scattered foreign bodies indicating intermuscular trauma and explosive effect of the missile.

(B) Adhesion of scar to one of the long bones, scapula, pelvic bones, sacrum or vertebrae, with epithelial sealing over the bone rather than true skin covering in an area where bone is normally protected by muscle.

(C) Diminished muscle excitability to pulsed electrical current in electrodiagnostic tests.

(D) Visible or measurable atrophy.

(E) Adaptive contraction of an opposing group of muscles.

(F) Atrophy of muscle groups not in the track of the missile, particularly of the trapezius and serratus in wounds of the shoulder girdle.

(G) Induration or atrophy of an entire muscle following simple piercing by a projectile.

(Authority: 38 U.S.C. 1155

38 CFR Ch. I (7-1-98 Edition)

§ 4.57 Static foot deformities.

It is essential to make an initial distinction between bilateral flatfoot as a congenital or as an acquired condition. The congenital condition, with depression of the arch, but no evidence of abnormal callosities, areas of pressure, strain or demonstrable tenderness, is a congenital abnormality which is not compensable or pensionable. In the acquired condition, it is to be remembered that depression of the longitudinal arch, or the degree of depression, is not the essential feature. The attention should be given to anatomical changes, as compared to normal, in the relationship of the foot and leg, particularly to the inward rotation of the superior portion of the os calcis, medial deviation of the insertion of the Achilles tendon, the medial tilting of the upper border of the astragalus. This is an unfavorable mechanical relationship of the parts. A plumb line dropped from the middle of the patella falls inside of the normal point. The forepart of the foot is abducted, and the foot everted. The plantar surface of the foot is painful and shows demonstrable tenderness, and manipulation of the foot produces spasm of the Achilles tendon, peroneal spasm due to adhesion about the peroneal sheaths, and other evidence of pain and limited
motion. The symptoms should be apparent without regard to exercise. In severe cases there is gaping of bones on the inner border of the foot, and rigid valgus position with loss of the power of inversion and adduction. Exercise with undeveloped or unbalanced musculature, producing chronic irritation, can be an aggravating factor. In the absence of trauma or other definite evidence of aggravation, service connection is not in order for pes cavus which is a typically congenital or juvenile disease.

§ 4.58 Arthritis due to strain.

With service incurred lower extremity amputation or shortening, a disabling arthritis, developing in the same extremity, or in both lower extremities, with indications of earlier, or more severe, arthritis in the injured extremity, including also arthritis of the lumbosacral joints and lumbar spine, if associated with the leg amputation or shortening, will be considered as service incurred, provided, however, that arthritis affecting joints not directly subject to strain as a result of the service incurred amputation will not be granted service connection. This will generally require separate evaluation of the arthritis in the joints directly subject to strain. Amputation, or injury to an upper extremity, is not considered as a causative factor with subsequently developing arthritis, except in joints subject to direct strain or actually injured.

§ 4.59 Painful motion.

With any form of arthritis, painful motion is an important factor of disability, the facial expression, wincing, etc., on pressure or manipulation, should be carefully noted and definitely related to affected joints. Muscle spasm will greatly assist the identification. Sciatic neuritis is not commonly caused by arthritis of the spine. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. Crepitation either in the soft tissues such as the tendons or ligaments, or crepitation within the joint structures should be noted carefully as points of contact which are diseased. Flexion elicits such manifestations. The joints involved should be tested for pain on both active and passive motion, in weight-bearing and nonweight-bearing and, if possible, with the range of the opposite undamaged joint.

§ 4.60 [Reserved]

§ 4.61 Examination.

With any form of arthritis (except traumatic arthritis) it is essential that the examination for rating purposes cover all major joints, with especial reference to Heberden's or Haygarth's nodes.

§ 4.62 Circulatory disturbances.

The circulatory disturbances, especially of the lower extremity following injury in the popliteal space, must not be overlooked, and require rating generally as phlebitis.

§ 4.63 Loss of use of hand or foot.

Loss of use of a hand or a foot, for the purpose of special monthly compensation, will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function of the hand or foot, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance and propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis.

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of 2 major joints of an extremity, or shortening of the lower extremity of 3½ inches (8.9 cms.) or more, will be taken as loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent, footdrop, accompanied
by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.


§ 4.64 Loss of use of both buttocks.

Loss of use of both buttocks shall be deemed to exist when there is severe damage to muscle Group XVII, bilateral (diagnostic code number 5317) and additional disability rendering it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be rendered by the person’s own hands or arms, and, in the matter of postural stability, by a special appliance.

§ 4.65 [Reserved]

§ 4.66 Sacroiliac joint.

The common cause of disability in this region is arthritis, to be identified in the usual manner. The lumbosacral and sacroiliac joints should be considered as one anatomical segment for rating purposes. X-ray changes from arthritis in this location are decrease or obliteration of the joint space, with the appearance of increased bone density of the sacrum and ilium and sharpening of the margins of the joint. Disability is manifest from erector spinae spasm (not accounted for by other pathology), tenderness on deep palpation and percussion over these joints, loss of normal quickness of motion and resiliency, and postural defects often accompanied by limitation of flexion and extension of the hip. Traumatism is a rare cause of disability in this connection, except when superimposed upon congenital defect or upon an existent arthritis; to permit assumption of pure traumatic origin, objective evidence of damage to the joint, and history of trauma sufficiently severe to injure this extremely strong and practically immovable joint is required. There should be careful consideration of lumbosacral sprain, and the various symptoms of pain and paralysis attributable to disease affecting the lumbar vertebrae and the intervertebral disc.

§ 4.67 Pelvic bones.

The variability of residuals following these fractures necessitates rating on specific residuals, faulty posture, limitation of motion, muscle injury, painful motion of the lumbar spine, manifest by muscle spasm, mild to moderate sciatic neuritis, peripheral nerve injury, or limitation of hip motion.

§ 4.68 Amputation rule.

The combined rating for disabilities of an extremity shall not exceed the rating for the amputation at the elective level, were amputation to be performed. For example, the combined evaluations for disabilities below the knee shall not exceed the 40 percent evaluation, diagnostic code 5165. This 40 percent rating may be further combined with evaluation for disabilities above the knee but not to exceed the above the knee amputation elective level. Painful neuroma of a stump after amputation shall be assigned the evaluation for the elective site of reamputation.

§ 4.69 Dominant hand.

Handedness for the purpose of a dominant rating will be determined by the evidence of record, or by testing on VA examination. Only one hand shall be considered dominant. The injured hand, or the most severely injured hand, of an ambidextrous individual will be considered the dominant hand for rating purposes.

(Authority: 38 U.S.C. 1155)

§ 4.70 Inadequate examinations.

If the report of examination is inadequate as a basis for the required consideration of service connection and evaluation, the rating agency may request a supplementary report from the examiner giving further details as to the limitations of the disabled person’s ordinary activity imposed by the disease, injury, or residual condition, the prognosis for return to, or continuance of, useful work. When the best interests of the service will be advanced by personal conference with the examiner,
such conference may be arranged through channels.

§ 4.71 Measurement of ankylosis and joint motion.

Plates I and II provide a standardized description of ankylosis and joint motion measurement. The anatomical position is considered as 0°, with two major exceptions: (a) Shoulder rotation—arm abducted to 90°, elbow flexed to 90° with the position of the forearm reflecting the midpoint 0° between internal and external rotation of the shoulder; and (b) supination and pronation—the arm next to the body, elbow flexed to 90°, and the forearm in midposition 0° between supination and pronation. Motion of the thumb and fingers should be described by appropriate reference to the joints (See Plate III) whose movement is limited, with a statement as to how near, in centimeters, the tip of the thumb can approximate the fingers, or how near the tips of the fingers can approximate the median transverse fold of the palm.
§ 4.71a Schedule of ratings—musculo-skeletal system.

### ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
<tr>
<td>60</td>
</tr>
<tr>
<td>30</td>
</tr>
<tr>
<td>20</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
</table>

**NOTE (1):** A rating of 10 percent, as an exception to the amputation rule, is to be assigned in any case of active osteomyelitis where the amputation rating for the affected part is no percent. This 10 percent rating and the other partial ratings of 30 percent or less are to be combined with ratings for ankylosis, limited motion, nonunion or malunion, shortening, etc., subject, of course, to the amputation rule. The 60 percent rating, as it is based on constitutional symptoms, is not subject to the amputation rule. A rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.
§ 4.71a 38 CFR Ch. I (7-1-98 Edition)

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

<table>
<thead>
<tr>
<th>NOTE (2): The 20 percent rating on the basis of activity within the past 5 years is not assignable following the initial infection of active osteomyelitis with no subsequent reactivation. The prerequisite for this historical rating is an established recurrent osteomyelitis. To qualify for the 10 percent rating, 2 or more episodes following the initial infection are required. This 20 percent rating or the 10 percent rating, when applicable, will be assigned once only to cover disability at all sites of previously active infection with a future ending date in the case of the 20 percent rating.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5001 Bones and joints, tuberculosis of, active or inactive:</td>
</tr>
<tr>
<td>Inactive: See §§ 4.88b and 4.89. .................................</td>
</tr>
<tr>
<td>5002 Arthritis rheumatoid (atrophic) As an active process:</td>
</tr>
<tr>
<td>With constitutional manifestations associated with active joint involvement, totally incapacitating.</td>
</tr>
<tr>
<td>Less than criteria for 100 percent but with weight loss and anemia productive of severe impairment of health or severely incapacitating exacerbations occurring 4 or more times a year or a lesser number over prolonged periods ..........................</td>
</tr>
<tr>
<td>Symptom combinations productive of definite impairment of health objectively supported by examination findings or incapacitating exacerbations occurring 3 or more times a year ......</td>
</tr>
<tr>
<td>One or two exacerbations a year in a well-established diagnosis .............................................</td>
</tr>
<tr>
<td>NOTE: The ratings for the active process will not be combined with the residual ratings for limitation of motion or arthralgia. Assign the higher evaluation.</td>
</tr>
<tr>
<td>5003 Arthritis, degenerative (hypertrophic or osteoarthritis):</td>
</tr>
<tr>
<td>Degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved. Where, however, the limitation of motion of the specific joint or joints involved is noncompensable under the codes a rating of 10 percent for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5002. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.</td>
</tr>
<tr>
<td>With X-ray evidence of involvement of 2 or more major joints or 2 more minor joint groups, with occasional incapacitating exacerbations .................................</td>
</tr>
<tr>
<td>With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups .................................</td>
</tr>
<tr>
<td>NOTE (1): The 20 percent and 10 percent ratings based on X-ray findings, above, will not be combined with ratings based on limitation of motion.</td>
</tr>
<tr>
<td>NOTE (2): The 20 percent and 10 percent ratings based on X-ray findings, above, will not be utilized in rating conditions listed under diagnostic codes 5013 to 5024, inclusive.</td>
</tr>
<tr>
<td>5004 Arthritis, gonorrheal. .................................</td>
</tr>
<tr>
<td>5005 Arthritis, pneumococcic. .................................</td>
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<tr>
<td>5006 Arthritis, typhoid. .................................</td>
</tr>
<tr>
<td>5007 Arthritis, syphilitic. .................................</td>
</tr>
<tr>
<td>5008 Arthritis, streptococcic. .................................</td>
</tr>
<tr>
<td>5009 Arthritis, other types (specify). .................................</td>
</tr>
<tr>
<td>With the types of arthritis, diagnostic codes 5004 through 5009, rate the disability as rheumatoid arthritis.</td>
</tr>
<tr>
<td>5010 Arthritis, due to trauma, substantiated by X-ray findings: Rate as arthritis, degenerative.</td>
</tr>
<tr>
<td>5011 Bones, caisson disease of: Rate as arthritis, cord involvement, or deafness, depending on the severity of disabling manifestations.</td>
</tr>
<tr>
<td>5012 Bones, new growths of, malignant .................................</td>
</tr>
<tr>
<td>NOTE: The 100 percent rating will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.</td>
</tr>
<tr>
<td>5013 Osteoporosis, with joint manifestations. .................................</td>
</tr>
<tr>
<td>5014 Osteomalacia. .................................</td>
</tr>
<tr>
<td>5015 Bones, new growths of, benign. .................................</td>
</tr>
<tr>
<td>5016 Osteitis deformans. .................................</td>
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<tr>
<td>5017 Gout. .................................</td>
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<tr>
<td>5018 Hydroarthrosis, intermittent. .................................</td>
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<tr>
<td>5019 Bursitis. .................................</td>
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<tr>
<td>5020 Synovitis. .................................</td>
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<td>5021 Myositis. .................................</td>
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<tr>
<td>5022 Periostitis. .................................</td>
</tr>
<tr>
<td>5023 Myositis ossificans. .................................</td>
</tr>
<tr>
<td>5024 Tenosynovitis. .................................</td>
</tr>
<tr>
<td>The diseases under diagnostic codes 5013 through 5024 will be rated on limitation of motion of affected parts, as arthritis, degenerative, except gout which will be rated under diagnostic code 5002.</td>
</tr>
<tr>
<td>5025 Fibromyalgia (fibrositis, primary fibromyalgia syndrome) .................................</td>
</tr>
<tr>
<td>With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms:</td>
</tr>
<tr>
<td>That are constant, or nearly so, and refractory to therapy .................................</td>
</tr>
<tr>
<td>That are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time .................................</td>
</tr>
<tr>
<td>That require continuous medication for control .................................</td>
</tr>
</tbody>
</table>

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### Department of Veterans Affairs

#### § 4.71a

**ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Following implantation of prosthesis with painful motion or weakness such as to require the use of crutches</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Markedly severe residual weakness, pain or limitation of motion following implantation of prosthesis</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Moderately severe residuals of weakness, pain or limitation of motion</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Minimum rating</td>
<td>30</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE**: The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.

**NOTE (1)**: The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.

**NOTE (2)**: Special monthly compensation is assignable during the 100 pct rating period the earliest date permanent use of crutches is established.

**PROSTHETIC IMPLANTS—Continued**

<table>
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<tr>
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<td></td>
</tr>
<tr>
<td>Minimum rating</td>
<td>30</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE**: Widespread pain means pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities.

<table>
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<tr>
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</tbody>
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**PROSTHETIC IMPLANTS**

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<td></td>
</tr>
<tr>
<td>Minimum rating</td>
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<td></td>
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**NOTE**: Widespread pain means pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities.

### COMBINATIONS OF DISABILITIES

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5104 Anatomical loss of one hand and loss of use of one foot</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5105 Anatomical loss of one foot and loss of use of one hand</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5106 Anatomical loss of both hands</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5107 Anatomical loss of both feet</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5108 Anatomical loss of one hand and one foot</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5109 Loss of use of both hands</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5110 Loss of use of both feet</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5111 Loss of use of one hand and one foot</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

*Also entitled to special monthly compensation.*

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<table>
<thead>
<tr>
<th>Impairment of one extremity</th>
<th>Impairment of other extremity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anatomical loss or loss of use below elbow</td>
<td>Anatomical loss or loss of use below elbow</td>
</tr>
<tr>
<td>L Codes L-1 a, b, or c, 38 CFR 3.350 (c)(1)(i)</td>
<td>M Codes M-1 a, b, or c, 38 CFR 3.350 (c)(1)(i)</td>
</tr>
<tr>
<td>Anatomical loss or loss of use below knee</td>
<td>Anatomical loss or loss of use below knee</td>
</tr>
<tr>
<td>L Codes L-1 d, e, f, or g, 38 CFR 3.350 (b)</td>
<td>M Codes M-2, 38 CFR 3.350 (c)(1)(i)</td>
</tr>
<tr>
<td>Anatomical loss or loss of use above elbow (preventing use of prosthesis)</td>
<td>Anatomical loss or loss of use above elbow (preventing use of prosthesis)</td>
</tr>
<tr>
<td>L Codes L-2 a, b, or c, 38 CFR 3.350 (b)</td>
<td>M Codes M-2 a, 38 CFR 3.350 (c)(1)(ii)</td>
</tr>
<tr>
<td>Anatomical loss near shoulder (preventing use of prosthesis)</td>
<td>Anatomical loss near shoulder (preventing use of prosthesis)</td>
</tr>
<tr>
<td>L Codes L-3 a, b, or c, 38 CFR 3.350 (b)</td>
<td>M Codes M-3 a, 38 CFR 3.350 (c)(1)(iii)</td>
</tr>
<tr>
<td>Anatomical loss near hip (preventing use of prosthesis)</td>
<td>Anatomical loss near hip (preventing use of prosthesis)</td>
</tr>
<tr>
<td>L Codes L-4 a, b, or c, 38 CFR 3.350 (b)</td>
<td>M Codes M-4 a, 38 CFR 3.350 (c)(1)(iv)</td>
</tr>
</tbody>
</table>

NOTE.—Need for aid attendance or permanently bedridden qualifies for subpar. L. Code L-1 h, i (38 CFR 3.350(b)). Paraplegia with loss of use of both lower extremities and loss of anal and bladder sphincter control qualifies for subpar. O. Code O-2 (38 CFR 3.350(e)(iii)). Where there are additional disabilities rated 50% or 100%, or anatomical or loss of use of a third extremity see 38 CFR 3.350(f)(1), (4) or (5).

(Authority: 38 U.S.C. 1115)
### AMPUTATIONS: UPPER EXTREMITY

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arm, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5120 Disarticulation</td>
<td>190</td>
<td>190</td>
</tr>
<tr>
<td>5121 Above insertion of deltoid</td>
<td>190</td>
<td>180</td>
</tr>
<tr>
<td>5122 Below insertion of deltoid</td>
<td>180</td>
<td>170</td>
</tr>
</tbody>
</table>

| For forearm, amputation of: | | |
| 5123 Above insertion of pronator teres | 180 | 170 |
| 5124 Below insertion of pronator teres | 170 | 160 |
| 5125 Hand, loss of use of | 170 | 160 |

<table>
<thead>
<tr>
<th>MULTIPLE FINGER AMPUTATIONS</th>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5126 Five digits of one hand, amputation of</td>
<td>170</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>Four digits of one hand, amputation of:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5127 Thumb, index, middle and ring</td>
<td>170</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>5128 Thumb, index, middle and little</td>
<td>170</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>5129 Thumb, index, ring and little</td>
<td>170</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>5130 Thumb, middle, ring and little</td>
<td>170</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>5131 Index, middle, ring and little</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Three digits of one hand, amputation of:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5132 Thumb, index and middle</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5133 Thumb, index and ring</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5134 Thumb, index and little</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5135 Thumb, middle and ring</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5136 Thumb, middle and little</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5137 Thumb, ring and little</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>5138 Index, middle and ring</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5139 Index, middle and little</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5140 Index, ring and little</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5141 Middle, ring and little</td>
<td>40</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Two digits of one hand, amputation of:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5142 Thumb and index</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5143 Thumb and middle</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5144 Thumb and ring</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5145 Thumb and little</td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>5146 Index and middle</td>
<td>40</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>5147 Index and ring</td>
<td>40</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>5148 Index and little</td>
<td>40</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>5149 Middle and ring</td>
<td>30</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>5150 Middle and little</td>
<td>30</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>5151 Ring and little</td>
<td>30</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

(a) The ratings for multiple finger amputations apply to amputations at the proximal interphalangeal joints or through proximal phalanges.
(b) Amputation through middle phalanges will be rated as prescribed for unfavorable ankylosis of the fingers.
(c) Amputations at distal joints, or through distal phalanges, other than negligible losses, will be rated as prescribed for favorable ankylosis of the fingers.

### AMPUTATIONS: UPPER EXTREMITY—Continued

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
</table>
| (d) Amputation or resection of metacarpal bones (more than one-half the bone lost) in multiple fingers injuries will require a rating of 10 percent added to (not combined with) the ratings, multiple finger amputations, subject to the amputation rule applied to the forearm.

(e) Combinations of finger amputations at various levels, or finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability; i.e., amputation, unfavorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.

(f) Loss of use of the hand will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump with a suitable prosthetic applicance.

### SINGLE FINGER AMPUTATIONS

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5152 Thumb, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With metacarpal resection</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>At metacarpophalangeal joint or through proximal phalanx</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>At distal joint or through distal phalanx</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>5153 Index finger, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With metacarpal resection (more than one-half the bone lost)</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Without metacarpal resection, at proximal interphalangeal joint or proximal thereto</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Through middle phalanx or at distal joint</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5154 Middle finger, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With metacarpal resection (more than one-half the bone lost)</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Without metacarpal resection, at proximal interphalangeal joint or proximal thereto</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5155 Ring finger, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With metacarpal resection (more than one-half the bone lost)</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Without metacarpal resection, at proximal interphalangeal joint or proximal thereto</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5156 Little finger, amputation of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With metacarpal resection (more than one-half the bone lost)</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Without metacarpal resection, at proximal interphalangeal joint or proximal thereto</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

NOTE: The single finger amputation ratings are the only applicable ratings for amputations of whole or part of single fingers.

1 Entitled to special monthly compensation.
### AMPUTATIONS: LOWER EXTREMITY

| 5160 | Disarticulation, with loss of extrinsic pelvic girdle muscles | 290 |
| 5161 | Upper third, one-third of the distance from perineum to knee joint measured from perineum | 280 |
| 5162 | Middle or lower thirds | 260 |
| 5163 | Leg, amputation of:  
With defective stump, thigh amputation recommended | 260 |
| 5164 | Amputation not improvable by prosthesis controlled by natural knee action | 260 |
| 5165 | At a lower level, permitting prosthesis | 240 |
| 5166 | Forefoot, amputation proximal to metatarsal bones (more than one-half of metatarsal loss) | 240 |
| 5167 | Foot, loss of use of | 240 |

### AMPUTATIONS: LOWER EXTREMITY—Continued

| Rating | 5170 | Toes, all, amputation of, without metatarsal loss | 230 |
| 5171 | Toe, great, amputation of:  
With removal of metatarsal head | 230 |
| 5172 | Without metatarsal involvement | 20 |
| 5173 | Toes, other than great, amputation of, with removal of metatarsal head:  
One or two | 20 |
| 5174 | Without metatarsal involvement | 0 |
| 5175 | Toes, three or four, amputation of, without metatarsal involvement:  
Including great toe | 20 |
| 5176 | Not including great toe | 10 |

*Also entitled to special monthly compensation.*
### The Shoulder and Arm

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5200 Scapulothoracic articulation, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable, abduction limited to 25° from side</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Intermediate between favorable and unfavorable</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Favorable, abstraction to 60°, can reach mouth and head</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>5201 Arm, limitation of motion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To 25° from side</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Midway between side and shoulder level</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>At shoulder level</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>5202 Humerus, other impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss of head of (flail shoulder)</td>
<td>80</td>
<td>70</td>
</tr>
<tr>
<td>Nonunion of (false flail joint)</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Fibrous union of</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Recurrent dislocation of acromiohumeral joint.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With frequent episodes and guarding of all arm movements</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>With infrequent episodes, and guarding of movement only at shoulder level</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Malunion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marked deformity</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Moderate deformity</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>5203 Clavicle or scapula, impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dislocation of</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Nonunion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With loose movement</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Without loose movement</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Malunion of</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Or rate on impairment of function of contiguous joint.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### The Elbow and Forearm—Continued

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5205 Elbow, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable, at an angle of less than 50° or with complete loss of supination or pronation</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Intermediate, at an angle of more than 90°, or between 70° and 90°</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Favorable, at an angle between 90° and 70°</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>5206 Forearm, limitation of flexion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 45°</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Flexion limited to 55°</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Flexion limited to 70°</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Flexion limited to 90°</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Flexion limited to 100°</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Flexion limited to 110°</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5207 Forearm, limitation of extension of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension limited to 110°</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Extension limited to 100°</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Extension limited to 90°</td>
<td>30</td>
<td>20</td>
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<tr>
<td>Extension limited to 75°</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Extension limited to 60°</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Extension limited to 45°</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5208 Forearm, flexion limited to 100° and extension to 45°</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>5209 Elbow, other impairment of Flail joint</td>
<td>60</td>
<td>50</td>
</tr>
</tbody>
</table>

### The Wrist

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5214 Wrist, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable, in any degree of palmar flexion, or with ulnar or radial deviation</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Any other position, except favorable</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Favorable in 20° to 30° dorsiflexion</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>NOTE: Extremely unfavorable ankylosis will be rated as loss of use of hands under diagnostic code 5125.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5215 Wrist, limitation of motion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dorsiflexion less than 15°</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Palmar flexion limited in line with forearm</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>
### MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5216 Five digits of one hand, unfavorable ankylosis of</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>5217 Four digits of one hand, unfavorable ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thumb, index and ring</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Thumb, index and little</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Thumb, middle and ring</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Thumb, middle and little</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Index, middle and ring</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Index, middle and little</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Ring and ring</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Ring and little</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>5219 Two digits of one hand, unfavorable ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thumb and index</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb and middle</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb and ring</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb and little</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Index and middle</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Index and ring</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Index and little</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Middle and ring</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Middle and little</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Ring and little</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

### MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS—Continued

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Extremely unfavorable ankylosis of the fingers, all joints in extension or in extreme flexion, or with rotation and angulation of bones, will be rated as amputation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) The ratings for codes 5216 through 5219 apply to unfavorable ankylosis or limited motion preventing flexion of tips to within 2 inches (5.1 cms.) of median transverse fold of the palm.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Combinations of finger amputations at various levels, or of finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, i.e., amputation, unfavorable ankylosis, or favorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### MULTIPLE FINGERS: FAVORABLE ANKYLOSIS

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5220 Five digits of one hand, favorable ankylosis of</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>5221 Four digits of one hand, favorable ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thumb, index and ring</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Thumb, index and little</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Thumb, middle and ring</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Thumb, middle and little</td>
<td>50</td>
<td>40</td>
</tr>
</tbody>
</table>

---

(Continued from page 361)
### Department of Veterans Affairs

#### § 4.71a

**Multiple Fingers: Favorable Ankylosis—Continued**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index, middle, ring and little</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>5222 Three digits of one hand, favorable ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thumb, index and middle</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb, index and ring</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb, index and little</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb, middle and ring</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb, middle and little</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Thumb, ring and little</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Index, middle and ring</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Index, middle and little</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Index, ring and little</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Middle, ring and little</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>5223 Two digits of one hand, favorable ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thumb and index</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Thumb and middle</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Thumb and ring</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Thumb and little</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Index and middle</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Index and ring</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Index and little</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Middle and ring</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Middle and little</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Ring and little</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

(a) The ratings for codes 5220 through 5223 apply to favorable ankylosis or limited motion permitting flexion of the tips to within 2 inches (5.1 cms.) of the transverse fold of the palm. Limitation of motion of less than 1 inch (2.5 cms.) in either direction is not considered disabling.

(b) Combination of finger amputations at various levels, or of finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, i.e., amputation, unfavorable ankylosis, or favorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.

#### Ankylosis of Individual Fingers

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5224 Thumb, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Favorable</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5225 Index finger, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Favorable</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5226 Middle finger, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Favorable</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5227 Finger, any other, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### The Hip and Thigh

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5250 Hip, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfavorable, extremely unfavorable ankylosis, the foot not reaching ground, crutches necessary</td>
<td>190</td>
<td>0</td>
</tr>
<tr>
<td>Intermediate</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Favorable, in flexion at an angle between 20° and 45°, and slight adduction or abduction</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>5251 Thigh, limitation of extension of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension limited to 5°</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5252 Thigh, limitation of flexion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 10°</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 20°</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 30°</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 45°</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5253 Thigh, impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitation of abduction of, motion lost beyond 10°</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Limitation of adduction of, cannot cross legs</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Limitation of rotation of, cannot toe-out more than 15°, affected leg</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5254 Hip, flail joint</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>5255 Femur, impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fracture of shaft or anatomical neck of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With nonunion, with loose motion (spiral or oblique fracture)</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>With nonunion, without loose motion, weightbearing preserved with aid of brace</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Fracture of surgical neck of, with false joint</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Malunion:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With marked knee or hip disability</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>With moderate knee or hip disability</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>With slight knee or hip disability</td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>

*Entitled to special monthly compensation.*

### The Knee and Leg

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5256 Knee, ankylosis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extremely unfavorable, in flexion at an angle of 45° or more</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>In flexion between 20° and 45°</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>In flexion between 10° and 20°</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Favorable angle in full extension, or in slight flexion between 0° and 10°</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>5257 Knee, other impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recurrent subluxation or lateral instability:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severe</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Moderate</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Slight</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5258 Cartilage, semilunar, dislocated, with frequent episodes of &quot;locking,&quot; pain, and effusion into the joint</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>5259 Cartilage, semilunar, removal of, symptomatic</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5260 Leg, limitation of flexion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 15°</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 30°</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 45°</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Flexion limited to 60°</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>5261 Leg, limitation of extension of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension limited to 45°</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Extension limited to 30°</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Extension limited to 20°</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Extension limited to 15°</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Extension limited to 10°</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Extension limited to 5°</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>5262 Tibia and fibula, impairment of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonunion of, with loose motion, requiring brace</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Malunion of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With marked knee or ankle disability</td>
<td>30</td>
<td></td>
</tr>
</tbody>
</table>
### The Knee and Leg—Continued

<table>
<thead>
<tr>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>With moderate knee or ankle disability</td>
<td>20</td>
</tr>
<tr>
<td>With slight knee or ankle disability</td>
<td>10</td>
</tr>
<tr>
<td>5263 Genu recurvatum (acquired, traumatic, with weakness and insecurity in weight-bearing objectively demonstrated)</td>
<td>10</td>
</tr>
</tbody>
</table>

### The Ankle

<table>
<thead>
<tr>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ankle, ankylosis of: In planar flexion at more than 40°, or in dorsi-</td>
<td></td>
</tr>
<tr>
<td>flexion at more than 10° or with abduction, adduction, inversion or eversion deformity</td>
<td></td>
</tr>
<tr>
<td>In planar flexion, between 30° and 40°, or in dorsi-flexion, between 0° and 10°</td>
<td></td>
</tr>
<tr>
<td>In planar flexion, less than 30°</td>
<td></td>
</tr>
<tr>
<td>5271 Ankle, limited motion of: Marked</td>
<td>20</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>5272 Subastragalar or tarsal joint, ankylosis of:</td>
<td></td>
</tr>
<tr>
<td>In poor weight-bearing position</td>
<td>20</td>
</tr>
<tr>
<td>In good weight-bearing position</td>
<td>10</td>
</tr>
<tr>
<td>5273 Os calcis or astragalus, malunion of:</td>
<td></td>
</tr>
<tr>
<td>Marked defority</td>
<td>20</td>
</tr>
<tr>
<td>Moderate defority</td>
<td>10</td>
</tr>
<tr>
<td>5274 Astragallectomy</td>
<td>20</td>
</tr>
</tbody>
</table>

### Shortening of the Lower Extremity

<table>
<thead>
<tr>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bones, of the lower extremity, shortening of:</td>
<td></td>
</tr>
<tr>
<td>Over 4 inches (10.2 cms.)</td>
<td>≥60</td>
</tr>
<tr>
<td>3 to 4 inches (7.6 cms. to 10.2 cms.)</td>
<td>≥50</td>
</tr>
<tr>
<td>2 to 3 inches (6.4 cms. to 7.6 cms.)</td>
<td>40</td>
</tr>
<tr>
<td>2 to 3 ½ inches (5.1 cms. to 6.4 cms.)</td>
<td>30</td>
</tr>
<tr>
<td>1½ to 2 inches (3.2 cms. to 5.1 cms.)</td>
<td>20</td>
</tr>
<tr>
<td>¼ to 2 inches (3.2 cms. to 5.1 cms.)</td>
<td>10</td>
</tr>
<tr>
<td>Note: Measure both lower extremities from anterior superior spine of the ilium to the internal malleolus of the tibia. Not to be combined with other ratings for fracture or fault injury in the same extremity.</td>
<td></td>
</tr>
</tbody>
</table>

3 Also entitled to special monthly compensation.

### The Foot—Continued

<table>
<thead>
<tr>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate; weight-bearing line over or medial to great toe, inward bowing of the tendon achillis, pain on manipulation and use of the feet, bilateral or unilateral</td>
<td>10</td>
</tr>
<tr>
<td>Mild; symptoms relieved by built-up shoe or arch support</td>
<td>0</td>
</tr>
<tr>
<td>5277 Weak foot, bilateral: A symptomatic condition secondary to many constitutional conditions, characterized by atrophy of the musculature, disturbed circulation, and weakness:</td>
<td></td>
</tr>
<tr>
<td>Rate the underlying condition, minimum rating</td>
<td>10</td>
</tr>
<tr>
<td>5278 Claw foot (pes cavus), acquired:</td>
<td></td>
</tr>
<tr>
<td>Marked contraction of plantar fascia with dropped forefoot, all toes hammer toes, very painful calllosities, marked varus deformity:</td>
<td></td>
</tr>
<tr>
<td>Bilateral</td>
<td>50</td>
</tr>
<tr>
<td>Unilateral</td>
<td>30</td>
</tr>
<tr>
<td>All toes tending to dorsiflexion, limitation of dorsiflexion at ankle to right angle, shortened plantar fascia, and marked tenderness under metatarsal heads:</td>
<td></td>
</tr>
<tr>
<td>Bilateral</td>
<td>30</td>
</tr>
<tr>
<td>Unilateral</td>
<td>20</td>
</tr>
<tr>
<td>Great toe dorsiflexed, some limitation of dorsiflexion at ankle, definite tenderness under metatarsal heads:</td>
<td></td>
</tr>
<tr>
<td>Bilateral</td>
<td>10</td>
</tr>
<tr>
<td>Unilateral</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
</tr>
<tr>
<td>5279 Metatarsalgia, anterior (Morton's disease), unilateral, or bilateral</td>
<td>10</td>
</tr>
<tr>
<td>5280 Hallux valgus, unilateral:</td>
<td></td>
</tr>
<tr>
<td>Operated with resection of metatarsal head</td>
<td>10</td>
</tr>
<tr>
<td>Severe, if equivalent to amputation of great toe</td>
<td>10</td>
</tr>
<tr>
<td>5281 Hallux rigidus, unilateral, severe:</td>
<td></td>
</tr>
<tr>
<td>Rate as hallux valgus, severe.</td>
<td></td>
</tr>
<tr>
<td>Note: Not to be combined with claw foot ratings.</td>
<td></td>
</tr>
<tr>
<td>5282 Hammer toe: All toes, unilateral without claw foot</td>
<td>10</td>
</tr>
<tr>
<td>Single toes</td>
<td>0</td>
</tr>
<tr>
<td>5283 Tarsal, or metatarsal bones, malunion of, or nonunion of:</td>
<td></td>
</tr>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderately severe</td>
<td>20</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Note: With actual loss of use of the foot, rate 40 percent.</td>
<td></td>
</tr>
<tr>
<td>5284 Foot injuries, other:</td>
<td></td>
</tr>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderately severe</td>
<td>20</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Note: With actual loss of use of the foot, rate 40 percent.</td>
<td></td>
</tr>
</tbody>
</table>

### The Spine

<table>
<thead>
<tr>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5285 Vertebra, fracture of, residuals:</td>
<td></td>
</tr>
<tr>
<td>With cord involvement, bedridden, or requiring long leg braces</td>
<td>100</td>
</tr>
<tr>
<td>Consider special monthly compensation; with lesser involvements rate for limited motion, nerve paralysis.</td>
<td></td>
</tr>
<tr>
<td>Without cord involvement; abnormal mobility requiring neck brace (jury mast)</td>
<td>60</td>
</tr>
</tbody>
</table>
THE SPINE—Continued

5286 Skull, removal of, both inner and outer tables:  
Without brain hernia:  
Area larger than size of a 50-cent piece or 1.140 in² (7.355 cm²) .......... 80  
Area intermediate .................. 50  
Area smaller than the size of a 25-cent piece or 0.716 in² (4.619 cm²) .......... 10  
NOTE: Rate separately for intracranial complications.

THE SKULL—Continued

5288 Spine, ankylosis of, dorsal:  
Favorable ............................................. 0  
Favorable angle  
60  
5287 Spine, ankylosis of, cervical:  
Favorable ............................................. 40  
Favorable angle  
60  
5286 Spine, complete bony fixation (ankylosis) of:  
Unfavorable angle, with marked deformity and involvement of major joints (Marie-Strumpell type) ................................................................. 100  
With slight subjective symptoms only .................. 0  
With characteristic pain on motion ....................... 10  
With muscle spasm on extreme forward bending, limitation of motion or muscle spasm, adding 10 percent for demonstrable deformity of vertebral body.  
NOTE: Both under ankylosis and limited motion, ratings should not be assigned for more than one segment by reason of involvement of only the first or last vertebrae of an adjacent segment.

5289 Spine, ankylosis of, lumbar:  
Unfavorable ............................................. 50  
Favorable ............................................. 40  
5288 Spine, ankylosis of, dorsal:  
Favorable ............................................. 30  
5287 Spine, ankylosis of, cervical:  
Favorable ............................................. 20  
5286 Spine, complete bony fixation (ankylosis) of:  
Unfavorable angle, with marked deformity and involvement of major joints (Bechterew type) ................................................................. 100  
Favorable angle  
60  
5285 Spine, limitation of motion of, cervical:  
Severe .................................................. 30  
Moderate ............................................... 20  
Slight .................................................... 10  
5291 Spine, limitation of motion of, dorsal:  
Severe .................................................. 10  
Moderate ............................................... 10  
Slight .................................................... 0  
5290 Spine, limitation of motion of, lumbar:  
Severe .................................................. 40  
Moderate ............................................... 20  
Slight .................................................... 10  
5293 Intervertebral disc syndrome:  
Pronounced; with persistent symptoms compatible with sciatic neuritis with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Without muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position  
20  
With characteristic pain on motion  
10  
With slight subjective symptoms only  
0  
NOTE (1): The rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity.  
NOTE (2): However, rib resection will be considered as rib removal in thoracoplasty performed for collapse therapy or to accomplish obliteration of space and will be combined with the rating for lung collapse, or with the rating for lobectomy, pneumonectomy or the graduated ratings for pulmonary tuberculosis.

THE RIBS

5290 Spine, limitation of motion of, cervical:  
Severe .................................................. 30  
Moderate ............................................... 20  
Slight .................................................... 10  
5292 Spine, limitation of motion of, lumbar:  
Severe .................................................. 40  
Moderate ............................................... 20  
Slight .................................................... 10  
5293 Intervertebral disc syndrome:  
Pronounced; with persistent symptoms compatible with sciatic neuritis with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Without muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position  
20  
With characteristic pain on motion  
10  
With slight subjective symptoms only  
0  
NOTE (1): The rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity.  
NOTE (2): However, rib resection will be considered as rib removal in thoracoplasty performed for collapse therapy or to accomplish obliteration of space and will be combined with the rating for lung collapse, or with the rating for lobectomy, pneumonectomy or the graduated ratings for pulmonary tuberculosis.

THE COCCYX

5290 Spine, limitation of motion of, cervical:  
Severe .................................................. 30  
Moderate ............................................... 20  
Slight .................................................... 10  
5292 Spine, limitation of motion of, lumbar:  
Severe .................................................. 40  
Moderate ............................................... 20  
Slight .................................................... 10  
5293 Intervertebral disc syndrome:  
Pronounced; with persistent symptoms compatible with sciatic neuritis with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Severe; with listing of whole spine to opposite side, positive Goldthwait’s sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.  
Without muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position  
20  
With characteristic pain on motion  
10  
With slight subjective symptoms only  
0  
NOTE (1): The rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity.  
NOTE (2): However, rib resection will be considered as rib removal in thoracoplasty performed for collapse therapy or to accomplish obliteration of space and will be combined with the rating for lung collapse, or with the rating for lobectomy, pneumonectomy or the graduated ratings for pulmonary tuberculosis.

THE SKULL

5296 Skull, loss of part of, both inner and outer tables:
### The Shoulder Girdle and Arm

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>V</td>
<td>Upper rotation of scapula; elevation of arm above shoulder level. Extrinsic muscles of shoulder girdle: (1) Deltoid; (2) levator scapulae; (3) serratus magnus. Intrinsic muscles of shoulder girdle: (1) Pectoralis major I (clavicular); (2) latissimus dorsi and teres major (teres major, although technically an intrinsic muscle, is included with latissimus dorsi); (3) pectoralis minor; (4) rhomboids.</td>
<td>Slight: 0 0, Moderate: 10 10, Moderately Severe: 30 20, Severe: 40 30</td>
</tr>
<tr>
<td>VI</td>
<td>Depression of arm from vertical overhead to hanging at side (1, 2); down arm swing of arm. Extrinsic muscles of shoulder girdle: (1) Supraspinatus; (2) infraspinatus and teres minor; (3) subscapularis; (4) coracobrachialis.</td>
<td>Slight: 0 0, Moderate: 10 10, Moderately Severe: 30 20, Severe: 40 30</td>
</tr>
<tr>
<td>VII</td>
<td>Elevation and abduction of arm to level of shoulder; act with 1 and 2 of Group II in forward and backward swing of arm. Extrinsic muscles of shoulder girdle: (1) Pectoralis major I (clavicular); (2) deltoid.</td>
<td>Slight: 0 0, Moderate: 10 10, Moderately Severe: 30 20, Severe: 40 30</td>
</tr>
<tr>
<td>VIII</td>
<td>Stabilization of shoulder against injury in strong movements, holding head of humerus in socket; abduction; outward rotation and inward rotation of arm. Extrinsic muscles of shoulder girdle: (1) Supraspinatus; (2) infraspinatus and teres minor; (3) subscapularis; (4) coracobrachialis.</td>
<td>Slight: 0 0, Moderate: 10 10, Moderately Severe: 30 20, Severe: 40 30</td>
</tr>
<tr>
<td>IX</td>
<td>Movements of forefoot and toes; propulsion thrust in walking. Intrinsic muscles of the foot: Plantar: (1) Flexor digitorum brevis; (2) abductor hallucis; (3) abductor digiti minimi; (4) quadratus plantae; (5) lumbricales; (6) flexor hallucis brevis; (7) adductor hallucis; (8) flexor digiti minimi brevis; (9) dorsal and plantar interossei. Other important plantar structures: Plantar aponeurosis, long plantar and calcaneonavicular ligaments, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
<tr>
<td>X</td>
<td>Elbow supination (1) (long head of biceps is stabilizer of shoulder joint); flexion of elbow (1, 2, 3). Extrinsic muscles of elbow: (1) Biceps; (2) brachialis; (3) brachioradialis.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
<tr>
<td>XI</td>
<td>Extension of elbow (long head of triceps is stabilizer of shoulder joint); Extensor muscles of the elbow: (1) Triceps; (2) anconeus.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
</tbody>
</table>

### The Forearm and Hand

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>VII</td>
<td>Flexion of wrist and fingers. Muscles arising from internal condyle of humerus: Flexors of the carpus and long flexors of fingers and thumb; pronator.</td>
<td>Slight: 0 0, Moderate: 10 10, Moderately Severe: 30 20, Severe: 40 30</td>
</tr>
<tr>
<td>VIII</td>
<td>Extension of wrist, fingers, and thumb; abduction of thumb. Muscles arising mainly from external condyle of humerus: Extensors of carpus, fingers, and thumb; supinator.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
</tbody>
</table>

### The Foot and Leg

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Movements of forefoot and toes; propulsion thrust in walking. Intrinsic muscles of the foot: Plantar: (1) Flexor digitorum brevis; (2) abductor hallucis; (3) abductor digiti minimi; (4) quadratus plantae; (5) lumbricales; (6) flexor hallucis brevis; (7) adductor hallucis; (8) flexor digiti minimi brevis; (9) dorsal and plantar interossei. Other important plantar structures: Plantar aponeurosis, long plantar and calcaneonavicular ligaments, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
<tr>
<td>XI</td>
<td>Elbow supination (1) (long head of biceps is stabilizer of shoulder joint); flexion of elbow (1, 2, 3). Extrinsic muscles of elbow: (1) Biceps; (2) brachialis; (3) brachioradialis.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
<tr>
<td>XII</td>
<td>Extension of elbow (long head of triceps is stabilizer of shoulder joint); Extensor muscles of the elbow: (1) Triceps; (2) anconeus.</td>
<td>Slight: 0 0, Moderate: 10 10, Severe: 30 20, Moderately Severe: 40 30</td>
</tr>
</tbody>
</table>
### THE FOOT AND LEG—Continued

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5313</td>
<td>Extension of hip and flexion of knee; outward and inward rotation of flexed knee; acting with rectus femoris and sartorius</td>
<td>Slight 0</td>
</tr>
</tbody>
</table>

#### Thigh group:
- Sartorius
- Rectus femoris
- Vastus (1, 2, 3, 4, 5)
- Biceps femoris

#### Anterior thigh muscles:
- Hamstring complex of 2-joint muscles:
  - Biceps femoris
  - Semimembranosus
  - Semitendinosus

### THE PELVIC GIRDLE AND THIGH—Continued

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5317</td>
<td>Extension of hip (1); abduction of thigh; elevation of opposite side of pelvis (2, 3); tension of fascia lata and iliobibial tract (Maiti's band), acting with XVII (6) in postural support of body steadying pelvis upon head of femur and condyles of femur on tibia</td>
<td>Severe 60</td>
</tr>
</tbody>
</table>

#### Pelvic girdle group 2:
- Pyformis
- Gemellus (superior or inferior)
- Obturator (external or internal)
- Quadratus femoris

#### Quadriceps femoris:
- Slight 0
- Moderate Severe 20
- Moderate 10
- Slight 0

### THE TORSO AND NECK

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5319</td>
<td>Support and compression of abdominal wall and lower thorax; flexion and lateral motions of spine; synergists in strong downward movements of arm (1). Muscles of the abdominal wall: (1) Rectus abdominis; (2) external oblique; (3) internal oblique; (4) transversalis; (5) quadratus lumborum.</td>
<td>Severe 50</td>
</tr>
</tbody>
</table>

#### Cervical and thoracic region:
- Severe 40
- Moderate Severe 20
- Moderate 10
- Slight 0

#### Lumbar region:
- Severe 60
- Moderate Severe 40
- Moderate 20
- Slight 0

### THE PELVIC GIRDLE AND THIGH—Continued

<table>
<thead>
<tr>
<th>Group</th>
<th>Function</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5322</td>
<td>Function: Rotary and forward movements of the head; respiration; deglutition.</td>
<td>Severe 40</td>
</tr>
</tbody>
</table>
- Muscles of the front of the neck (Lateral, supra- and infrahyoid group): (1) Trapezius I (clavicular insertion); (2) sternocleidomastoid; (3) the “hyoid” muscles; (4) sternothyroid; (5) digastric.

#### Pelvic girdle group 1:
- Psoas
- Iliacus

#### Pectoral muscles:
- Slight 0
- Moderate Severe 20
- Moderate 10
- Slight 0

### NOTE:
Minimum rating for through-and-through wounds of the foot—10.
§ 4.75 Examination of visual acuity.

Ratings on account of visual impairments considered for service connection are, when practicable, to be based only on examination by specialists. Such special examinations should include uncorrected and corrected central visual acuity for distance and near, with record of the refraction. Snellen’s test type or its equivalent will be used. Mydriatics should be routine, except when contraindicated. Funduscopic and ophthalmological findings must be recorded. The best distant vision obtainable after best correction by glasses will be the basis of rating, except in cases of keratoconus in which contact lenses are medically required. Also, if there exists a difference of more than 4 diopters of spherical correction between the two eyes, the best possible visual acuity of the poorer eye without glasses, or with a lens of not more than 4 diopters difference from that used with the better eye will be taken as the visual acuity of the poorer eye. When such a difference exists, close attention will be given to the likelihood of congenital origin in mere refractive error. [40 FR 42537, Sept. 15, 1975]

§ 4.76 Examination of field vision.

Measurement of the visual field will be made when there is disease of the optic nerve or when otherwise indicated. The usual perimetric methods will be employed, using a standard perimeter and 3 mm. white test object. At least 16 meridians 22½ degrees apart will be charted for each eye. (See Figure 1. For the 8 principal meridians, see Table III.) The charts will be made when there is disease of the optic nerve or when otherwise indicated. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function. [43 FR 45352, Oct. 2, 1978]
of degrees lost is determined at each meridian by subtracting the remaining degrees from the normal visual fields given in table III. The degrees lost are then added together to determine total degrees lost. This is subtracted from 500. The difference represents the total remaining degrees of visual field. The difference divided by eight represents the average contraction for rating purposes.

<table>
<thead>
<tr>
<th></th>
<th>Normal degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporally</td>
<td>85</td>
</tr>
<tr>
<td>Down temporally</td>
<td>85</td>
</tr>
<tr>
<td>Down</td>
<td>65</td>
</tr>
<tr>
<td>Down nasally</td>
<td>50</td>
</tr>
<tr>
<td>Nasally</td>
<td>60</td>
</tr>
<tr>
<td>Up nasally</td>
<td>55</td>
</tr>
<tr>
<td>Up</td>
<td>45</td>
</tr>
<tr>
<td>Up temporally</td>
<td>55</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>500</strong></td>
</tr>
</tbody>
</table>
Example of computation of concentric contraction under the schedule with abnormal findings taken from Figure 1.

<table>
<thead>
<tr>
<th>Loss</th>
<th>Degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporally</td>
<td>55</td>
</tr>
<tr>
<td>Down temporally</td>
<td>55</td>
</tr>
<tr>
<td>Down</td>
<td>45</td>
</tr>
</tbody>
</table>
§ 4.77 Examination of muscle function.

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40° in the lateral or downward quadrants, or within 30° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

<table>
<thead>
<tr>
<th>Loss</th>
<th>Degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Down nasally</td>
<td>30</td>
</tr>
<tr>
<td>Nasally</td>
<td>40</td>
</tr>
<tr>
<td>Up nasally</td>
<td>35</td>
</tr>
<tr>
<td>Up</td>
<td>25</td>
</tr>
<tr>
<td>Up temporally</td>
<td>35</td>
</tr>
<tr>
<td>Total loss</td>
<td>320</td>
</tr>
</tbody>
</table>

Remaining field 500° minus 320° = 180°. 180° ÷ 8 = 22 1/2° average concentric contraction.

[43 FR 45352, Oct. 2, 1978]
§ 4.78 Computing aggravation.

In determining the effect of aggravation of visual disability, even though the visual impairment of only one eye is service connected, evaluate the vision of both eyes, before and after suffering the aggravation, and subtract the former evaluation from the latter except when the bilateral vision amounts to total disability. In the event of subsequent increase in the disability of either eye, due to intercurrent disease or injury not associated with the service, the condition of the eyes before suffering the subsequent increase will be taken as the basis of compensation subject to the provisions of § 3.383(a) of this chapter.


§ 4.79 Loss of use of one eye, having only light perception.

Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot (.30m.) and when further examination of the eyes reveals that perception of objects, hand movements or counting fingers cannot be accomplished at 3 feet (.91m.), lesser extents of visions, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet (.91 m.), being considered of negligible utility. With visual acuity 5/200 (1.5/60) or less or the visual field reduced to 5° concentric contraction, in either event in both eyes, the question of entitlement on account of regular aid and attendance will be determined on the facts in the individual case.


§ 4.80 Rating of one eye.

Combined ratings for disabilities of the same eye should not exceed the amount for total loss of vision of that eye unless there is an enucleation or a serious cosmetic defect added to the total loss of vision.

§ 4.83 Ratings at scheduled steps and distances.

In applying the ratings for impairment of visual acuity, a person not having the ability to read at any one of the scheduled steps or distances, but reading at the next scheduled step or distance, is to be rated as reading at this latter step or distance. That is, a person who can read at 20/100 (6/30) but who cannot at 20/70 (6/21), should be rated as seeing at 20/100 (6/30).


§ 4.83a Impairment of central visual acuity.

The percentage evaluation will be found from table V by intersecting the horizontal row appropriate for the Snellen index for one eye and the vertical column appropriate to the Snellen index of the other eye. For example, if one eye has a Snellen index of 5/200 (1.5/60) and the other eye has a Snellen index of 20/70 (6/21), the percentage evaluation is found in the third horizontal row from the bottom and the fourth vertical column from the left. The evaluation is 50 percent and the diagnostic code 6073.


§ 4.84 Differences between distant and near visual acuity.

Where there is a substantial difference between the near and distant corrected vision, the case should be referred to the Director, Compensation and Pension Service.

[40 FR 42537, Sept. 15, 1975]

§ 4.84a Schedule of ratings—eye.

<table>
<thead>
<tr>
<th>Disease of the Eye</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uveitis</td>
<td>6000</td>
</tr>
<tr>
<td>Keratitis</td>
<td>6001</td>
</tr>
<tr>
<td>Scleritis</td>
<td>6002</td>
</tr>
<tr>
<td>Iritis</td>
<td>6003</td>
</tr>
<tr>
<td>Cyclitis</td>
<td>6004</td>
</tr>
<tr>
<td>Choroiditis</td>
<td>6005</td>
</tr>
<tr>
<td>Retinitis</td>
<td>6006</td>
</tr>
<tr>
<td>Hemorrhage, intra-ocular, recent</td>
<td>6007</td>
</tr>
</tbody>
</table>
### DISEASES OF THE EYE—Continued

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6008</td>
<td>Retina, detachment of</td>
<td></td>
</tr>
<tr>
<td>6009</td>
<td>Eye, injury of, unhealed.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The above disabilities, in chronic form, are to be rated from 10 percent to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100 percent for impairment of visual acuity or field loss, pain,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>rest-requirements, or episodic incapacity, combining an additional rating of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 percent during continuance of active pathology. Minimum rating</td>
<td></td>
</tr>
<tr>
<td></td>
<td>during active pathology.</td>
<td></td>
</tr>
<tr>
<td>6010</td>
<td>Eye, tuberculosis of, active or inactive:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Active: See §§ 4.88b and 4.89.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inactive: See §§ 4.88b and 4.89.</td>
<td></td>
</tr>
<tr>
<td>6011</td>
<td>Retina, localized scars, atrophy, or irregularities of, centrally located,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>with irregular, duplicated enlarged or diminished image:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unilateral or bilateral</td>
<td></td>
</tr>
<tr>
<td>6012</td>
<td>Glaucoma, congestive or inflammatory:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Frequent attacks of considerable duration; during continuance of actual</td>
<td></td>
</tr>
<tr>
<td></td>
<td>total disability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Or, rate as iritis, diagnostic Code 6003.</td>
<td></td>
</tr>
<tr>
<td>6013</td>
<td>Glaucoma, simple, primary, noncongestive:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate on impairment of visual acuity or field loss.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minimum rating</td>
<td></td>
</tr>
<tr>
<td>6014</td>
<td>New growths, malignant (eyeball only):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pending completion of operation or other indicated treatment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Healed; rate on residuals.</td>
<td></td>
</tr>
<tr>
<td>6015</td>
<td>New growths, benign (eyeball and adnexa, other than superficial)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate on impaired vision, minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Healed; rate on residuals.</td>
<td></td>
</tr>
<tr>
<td>6016</td>
<td>Nystagmus, central</td>
<td></td>
</tr>
<tr>
<td>6017</td>
<td>Conjunctivitis, trachomatous, chronic:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Active; rate for impairment of visual acuity; minimum rating while there is</td>
<td></td>
</tr>
<tr>
<td></td>
<td>active pathology</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Healed; rate on residuals, if no residuals</td>
<td></td>
</tr>
<tr>
<td>6018</td>
<td>Conjunctivitis, other, chronic:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Active, with objective symptoms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Healed; rate on residuals, if no residuals</td>
<td></td>
</tr>
<tr>
<td>6019</td>
<td>Proxis, unilateral or bilateral:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pupil wholly obscured.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate equivalent to 5/200 (1.5/60).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pupil one-half or more obscured.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate equivalent to 20/100 (6/30).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>With less interference with vision.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate as disfigurement.</td>
<td></td>
</tr>
<tr>
<td>6020</td>
<td>Ectropion:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bilateral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unilateral</td>
<td></td>
</tr>
<tr>
<td>6021</td>
<td>Entropion:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bilateral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unilateral</td>
<td></td>
</tr>
<tr>
<td>6022</td>
<td>Lagophthalmos:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bilateral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unilateral</td>
<td></td>
</tr>
</tbody>
</table>

### DISEASES OF THE EYE—Continued

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6023</td>
<td>Eyebrows, loss of, complete, unilateral or bilateral</td>
<td></td>
</tr>
<tr>
<td>6024</td>
<td>Eyelashes, loss of, complete, unilateral or bilateral</td>
<td></td>
</tr>
<tr>
<td>6025</td>
<td>Epiphora (lacrimal duct, interference with, from any cause):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bilateral</td>
<td></td>
</tr>
<tr>
<td>6026</td>
<td>Neuritis, optic:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate underlying disease, and combine impairment of visual acuity or field</td>
<td></td>
</tr>
<tr>
<td></td>
<td>loss.</td>
<td></td>
</tr>
<tr>
<td>6027</td>
<td>Cataract, traumatic:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preoperative,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate on impairment of vision.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Postoperative</td>
<td></td>
</tr>
<tr>
<td>6028</td>
<td>Cataract, senile, and others:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate on impairment of vision.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Postoperative</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate on impairment of vision and aphakia.</td>
<td></td>
</tr>
<tr>
<td>6029</td>
<td>Aphakia:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bilateral or unilateral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate for loss of vision, if any.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Combined ratings for disabilities of the same eye should not exceed the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>amount for total loss of vision of that eye unless there is an enucleation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or a serious cosmetic defect added to the total loss of vision.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NOTE: The 30 percent rating prescribed for aphakia is a minimum rating to be</td>
<td></td>
</tr>
<tr>
<td></td>
<td>applied to the unilateral or bilateral condition and is not to be combined</td>
<td></td>
</tr>
<tr>
<td></td>
<td>with any other rating for impaired vision. When only one eye is aphakic,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the eye having poorer corrected visual acuity will be rated on the basis of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>its acuity without correction. When both eyes are aphakic, both will be</td>
<td></td>
</tr>
<tr>
<td></td>
<td>rated on corrected vision. The corrected vision of one or both aphakic eyes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>will be taken one step worse than the ascertained value, however, not better</td>
<td></td>
</tr>
<tr>
<td></td>
<td>than 20/70 (6/21).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Combined ratings for disabilities of the same eye should not exceed the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>amount for total loss of vision of that eye unless there is an enucleation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or a serious cosmetic defect added to the total loss of vision.</td>
<td></td>
</tr>
<tr>
<td>6030</td>
<td>Accommodation, paralysis of</td>
<td></td>
</tr>
<tr>
<td>6031</td>
<td>Dacryocystitis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate as epiphora.</td>
<td></td>
</tr>
<tr>
<td>6032</td>
<td>Eyelids, loss of portion of:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate as disfigurement. (See diseases of the skin.)</td>
<td></td>
</tr>
<tr>
<td>6033</td>
<td>Lens, crystalline, dislocation of:</td>
<td></td>
</tr>
<tr>
<td>6034</td>
<td>Pterygium:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate for loss of vision, if any.</td>
<td></td>
</tr>
<tr>
<td>6035</td>
<td>Keratoconus:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>To be evaluated on impairment of corrected visual acuity using contact</td>
<td></td>
</tr>
<tr>
<td></td>
<td>lenses.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NOTE: When contact lenses are medically required for keratoconus, either</td>
<td></td>
</tr>
<tr>
<td></td>
<td>unilateral or bilateral, the minimum rating will be 30 percent.</td>
<td></td>
</tr>
</tbody>
</table>

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### TABLE IV—Table for Rating Bilateral Blindness or Blindness Combined with Hearing Loss With Dictator’s Code and 38 CFR Citations

<table>
<thead>
<tr>
<th>Vision one eye</th>
<th>Vision other eye</th>
<th>Plus service-connected Hearing loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/200 (1.5/60) or less</td>
<td>5/200 (1.5/60) or less</td>
<td>Add ½ step Code PB±1 38 CFR 3.350(f)(2)(vi).</td>
</tr>
<tr>
<td>Light perception only</td>
<td>Light perception only</td>
<td>No additional SMC</td>
</tr>
</tbody>
</table>

1 With need for aid and attendance qualifies for Subpar. m. code MB±1, b; 38 CFR 3.350(c)(1)(vi).

Note.—(1) Any of the additional SMC payable under Dictator’s Codes PB±1, PB±2, or PB±3 is not to exceed the rate payable under Subpar. O. (2) If in addition to any of the above the veteran has the service-connected loss or loss of use of an extremity, additional SMC is payable, not to exceed the rate payable under Subpar. O. See Dictator’s Codes PB±4, PB±5, PB±6, and 38 CFR 3.350(f)(2)(vi) (A), (B), (C).

(Authority: 38 U.S.C. 1115)
TABLE V—Ratings for Central Visual Acuity Impairment
[With Diagnostic Code]

<table>
<thead>
<tr>
<th>Vision in one eye</th>
<th>Vision in other eye</th>
<th>Light perception only/anatomical loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vision in one eye</td>
<td>20/40 (6/12)</td>
<td>20/50 (6/15)</td>
</tr>
<tr>
<td></td>
<td>20/70 (6/21)</td>
<td>20/100 (6/30)</td>
</tr>
<tr>
<td></td>
<td>20/200 (6/60)</td>
<td>15/200 (4.5/60)</td>
</tr>
<tr>
<td></td>
<td>10/200 (3/60)</td>
<td>5/200 (1.5/60)</td>
</tr>
<tr>
<td>20/40 (6/12)</td>
<td>20/50 (6/15)</td>
<td>20/70 (6/21)</td>
</tr>
<tr>
<td>20/70 (6/21)</td>
<td>20/100 (6/30)</td>
<td>15/200 (4.5/60)</td>
</tr>
<tr>
<td>20/100 (6/30)</td>
<td>20/200 (6/60)</td>
<td>15/200 (4.5/60)</td>
</tr>
<tr>
<td>20/200 (6/60)</td>
<td>15/200 (4.5/60)</td>
<td>10/200 (3/60)</td>
</tr>
<tr>
<td>5/200 (1.5/60)</td>
<td>5/200 (1.5/60)</td>
<td>5/200 (1.5/60)</td>
</tr>
<tr>
<td>Light perception only</td>
<td>5/200 (1.5/60)</td>
<td>5/200 (1.5/60)</td>
</tr>
</tbody>
</table>

- Anatomical loss both eyes: 100%
- Blindness in both eyes: 100%
- Blindness in 1 eye, having only light perception: 50%
- Blindness in 1 eye: 40%
- Vision in 1 eye: 30%
- Vision in 1 eye: 20%
- Vision in 1 eye: 10%
- Vision in 1 eye: 0%

*Also entitled to special monthly compensation.
*Add 10% if artificial eye cannot be worn; also entitled to special monthly compensation.
§ 4.84a

38 CFR Ch. I (7-1-98 Edition)

TABLE V—RATINGS FOR CENTRAL VISUAL ACUITY IMPAIRMENT—Continued

[With Diagnostic Code]

<table>
<thead>
<tr>
<th>Vision in one eye</th>
<th>Vision in other eye</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/40 (6/12)</td>
<td>(6/70)</td>
</tr>
<tr>
<td>20/50 (6/15)</td>
<td>(6/69)</td>
</tr>
<tr>
<td>20/70 (6/21)</td>
<td>(6/69)</td>
</tr>
<tr>
<td>20/100 (6/30)</td>
<td>(6/69)</td>
</tr>
<tr>
<td>20/200 (6/60)</td>
<td>(6/69)</td>
</tr>
<tr>
<td>15/200 (4.5/60)</td>
<td>(6/64)</td>
</tr>
<tr>
<td>10/200 (3/60)</td>
<td>(6/68)</td>
</tr>
<tr>
<td>5/200 (1.5/60)</td>
<td>(6/67)</td>
</tr>
<tr>
<td>Light perception anatomical loss</td>
<td>(6/62)</td>
</tr>
</tbody>
</table>

Anatomical loss of one eye:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/60 (1.5/60)</td>
<td>20</td>
</tr>
<tr>
<td>20/100 (6/30)</td>
<td>50</td>
</tr>
<tr>
<td>20/200 (6/60)</td>
<td>100</td>
</tr>
</tbody>
</table>

6080 Field vision, impairment of:

<table>
<thead>
<tr>
<th>Homonymous hemianopia</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bilateral</td>
<td>30</td>
</tr>
<tr>
<td>Unilateral</td>
<td>10</td>
</tr>
</tbody>
</table>

Field, visual, loss of temporal half:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Or rate as 20/70 (6/21)</td>
<td>10</td>
</tr>
<tr>
<td>Bilateral</td>
<td>20</td>
</tr>
<tr>
<td>Unilateral</td>
<td>10</td>
</tr>
</tbody>
</table>

Field, visual, loss of nasal half:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Or rate as 20/50 (6/15)</td>
<td>10</td>
</tr>
<tr>
<td>Bilateral</td>
<td>20</td>
</tr>
</tbody>
</table>

Field, visual, concentric contraction of:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Or rate as 5/200 (1.5/60)</td>
<td>10</td>
</tr>
<tr>
<td>To 15° but not to 5°:</td>
<td></td>
</tr>
<tr>
<td>Bilateral</td>
<td>70</td>
</tr>
<tr>
<td>Unilateral</td>
<td>20</td>
</tr>
</tbody>
</table>

Field, visual, loss of nasal half:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Or rate as 20/200 (6/60)</td>
<td>50</td>
</tr>
<tr>
<td>To 30° but not to 15°:</td>
<td></td>
</tr>
<tr>
<td>Bilateral</td>
<td>10</td>
</tr>
</tbody>
</table>

Degree of diplopia

<table>
<thead>
<tr>
<th>Degree of diplopia</th>
<th>Equivalent visual acuity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central 20°</td>
<td>5/200</td>
</tr>
<tr>
<td>21° to 30°</td>
<td>15/200</td>
</tr>
<tr>
<td>Down</td>
<td>20/100</td>
</tr>
<tr>
<td>Lateral</td>
<td>20/70</td>
</tr>
<tr>
<td>31° to 40°</td>
<td>20/200</td>
</tr>
<tr>
<td>Up</td>
<td>20/40</td>
</tr>
</tbody>
</table>

RATINGS FOR IMPAIRMENT OF FIELD VISION—Continued

6081 Scotoma, pathological, unilateral:

<table>
<thead>
<tr>
<th>Degree of visual (acuity) loss</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bilateral</td>
<td>20</td>
</tr>
<tr>
<td>Unilateral</td>
<td>10</td>
</tr>
</tbody>
</table>

Notes:

1. Correct diagnosis reflecting disease or injury should be cited.
2. The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.
3. When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.
4. When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

6091 Syblepharon.
§ 4.87 Determinations of auditory acuity.

By impairment of auditory acuity is meant the organic hearing loss for speech.
## TABLE VI

### Numeric Designation of Hearing Impairment

#### Average Puretone Decibel Loss

<table>
<thead>
<tr>
<th>PERCENT OF DISCRIMINATION</th>
<th>0-41</th>
<th>42-49</th>
<th>50-57</th>
<th>58-65</th>
<th>66-73</th>
<th>74-81</th>
<th>82-89</th>
<th>90-97</th>
<th>98+</th>
</tr>
</thead>
<tbody>
<tr>
<td>92-100</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>II</td>
<td>II</td>
<td>III</td>
<td>III</td>
<td>IV</td>
<td>IV</td>
</tr>
<tr>
<td>84-90</td>
<td>II</td>
<td>II</td>
<td>II</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>IV</td>
<td>IV</td>
<td>IV</td>
</tr>
<tr>
<td>76-82</td>
<td>III</td>
<td>III</td>
<td>IV</td>
<td>IV</td>
<td>IV</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>68-74</td>
<td>IV</td>
<td>IV</td>
<td>V</td>
<td>V</td>
<td>VI</td>
<td>VII</td>
<td>VII</td>
<td>VII</td>
<td>VII</td>
</tr>
<tr>
<td>60-66</td>
<td>V</td>
<td>V</td>
<td>VI</td>
<td>VI</td>
<td>VII</td>
<td>VII</td>
<td>VII</td>
<td>VIII</td>
<td>VIII</td>
</tr>
<tr>
<td>52-58</td>
<td>VI</td>
<td>VI</td>
<td>VII</td>
<td>VII</td>
<td>VIII</td>
<td>VIII</td>
<td>VIII</td>
<td>VIII</td>
<td>IX</td>
</tr>
<tr>
<td>44-50</td>
<td>VII</td>
<td>VII</td>
<td>VIII</td>
<td>VIII</td>
<td>VIII</td>
<td>IX</td>
<td>IX</td>
<td>IX</td>
<td>X</td>
</tr>
<tr>
<td>36-42</td>
<td>VIII</td>
<td>VIII</td>
<td>VIII</td>
<td>IX</td>
<td>IX</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>0-34</td>
<td>IX</td>
<td>X</td>
<td>XI</td>
<td>XI</td>
<td>XI</td>
<td>XI</td>
<td>XI</td>
<td>XI</td>
<td>XI</td>
</tr>
</tbody>
</table>

#### TABLE VIa*

### Average Puretone Decibel Loss

<table>
<thead>
<tr>
<th>Average Puretone Decibel Loss</th>
<th>0-41</th>
<th>42-49</th>
<th>49-55</th>
<th>56-62</th>
<th>63-69</th>
<th>70-76</th>
<th>77-83</th>
<th>84-90</th>
<th>91-97</th>
<th>98-104</th>
<th>105+</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>II</td>
<td>III</td>
<td>IV</td>
<td>V</td>
<td>VI</td>
<td>VII</td>
<td>VIII</td>
<td>IX</td>
<td>X</td>
<td>XI</td>
<td></td>
</tr>
</tbody>
</table>

### Numeric Designation

* This table is for use only as specified in 4.85(c).*
### § 4.87a

#### Diseases of the Ear

<table>
<thead>
<tr>
<th>Rating</th>
<th>Otitis media, suppurative, chronic: During the continuance of the suppurative process</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Note: To be combined with ratings for loss of hearing.</td>
<td></td>
</tr>
<tr>
<td>6200</td>
<td>Otitis media, catarrhal, chronic: Rate loss of hearing.</td>
<td></td>
</tr>
<tr>
<td>6201</td>
<td>Otosclerosis: Rate loss of hearing.</td>
<td></td>
</tr>
<tr>
<td>6202</td>
<td>Labyrinthitis, chronic: Severe; tinnitus, dizziness and occasional staggering.</td>
<td>30</td>
</tr>
<tr>
<td>6203</td>
<td>Bilateral</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>Unilateral</td>
<td>30</td>
</tr>
</tbody>
</table>

### TABLE VII

Percentage Evaluations for Hearing Impairment (with diagnostic codes)

<table>
<thead>
<tr>
<th>Ear</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>XI</td>
<td>100* (6110)</td>
</tr>
<tr>
<td>X</td>
<td>90 (6109), 80 (6108)</td>
</tr>
<tr>
<td>IX</td>
<td>80 (6108), 70 (6107), 60 (6106)</td>
</tr>
<tr>
<td>VIII</td>
<td>70 (6107), 60 (6106), 50 (6105)</td>
</tr>
<tr>
<td>VII</td>
<td>60 (6106), 50 (6105), 40 (6104)</td>
</tr>
<tr>
<td>VI</td>
<td>50 (6105), 40 (6104), 30 (6103)</td>
</tr>
<tr>
<td>V</td>
<td>40 (6104), 30 (6103), 20 (6102)</td>
</tr>
<tr>
<td>IV</td>
<td>30 (6103), 20 (6102), 10 (6101)</td>
</tr>
<tr>
<td>III</td>
<td>20 (6102), 10 (6101), 0 (6100)</td>
</tr>
<tr>
<td>II</td>
<td>10 (6101), 0 (6100)</td>
</tr>
<tr>
<td>I</td>
<td>0 (6100)</td>
</tr>
</tbody>
</table>

* Entitled to special monthly compensation under 38 CFR 3.350(a) (38 U.S.C. 314(a)).

[41 FR 11298, Mar. 18, 1976, as amended at 52 FR 44119, Nov. 18, 1987]
### § 4.87b Schedule of ratings—other sense organs.

<table>
<thead>
<tr>
<th>Code</th>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6275</td>
<td>Loss of sense of smell, complete</td>
<td>10</td>
</tr>
<tr>
<td>6276</td>
<td>Loss of sense of taste, complete</td>
<td>10</td>
</tr>
</tbody>
</table>

Note: Anatomical or pathological basis required for the ratings under diagnostic codes 6275 and 6276.

### § 4.88b Schedule of ratings—infectious diseases, immune disorders and nutritional deficiencies.

<table>
<thead>
<tr>
<th>Code</th>
<th>Disease</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6300</td>
<td>Cholera, Asiatic:</td>
<td>100</td>
</tr>
<tr>
<td>6301</td>
<td>Visceral Leishmaniasis:</td>
<td>100</td>
</tr>
<tr>
<td>6302</td>
<td>Leprosy (Hansen's Disease):</td>
<td>100</td>
</tr>
<tr>
<td>6304</td>
<td>Malaria:</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: A 100 percent evaluation shall continue beyond the date that an examining physician has determined that this has become inactive. Six months after the date of inactivity, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as skin lesions or peripheral neuropathy under the appropriate system.

Note: A 100 percent evaluation shall continue beyond the cessation of treatment for active disease. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as liver damage or lymphadenopathy under the appropriate system.

### § 4.88b Chronic fatigue syndrome.

(a) For VA purposes, the diagnosis of chronic fatigue syndrome requires:

1. new onset of debilitating fatigue severe enough to reduce daily activity to less than 50 percent of the usual level for at least six months; and

2. the exclusion, by history, physical examination, and laboratory tests, of all other clinical conditions that may produce similar symptoms; and

3. six or more of the following:

   (i) acute onset of the condition,
   (ii) low grade fever,
   (iii) nonexudative pharyngitis,
   (iv) palpable or tender cervical or axillary lymph nodes,
   (v) generalized muscle aches or weakness,
   (vi) fatigue lasting 24 hours or longer after exercise,
   (vii) headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state),
   (viii) migratory joint pains,
   (ix) neuropsychologic symptoms,
   (x) sleep disturbance.

(b) [Reserved]

[59 FR 60902, Nov. 29, 1994]
### Section 4.88b

<table>
<thead>
<tr>
<th>Illness/Malady</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIV-Related Illness:</td>
<td></td>
</tr>
<tr>
<td>AIDS with recurrent opportunistic infections or with secondary diseases affecting multiple body systems</td>
<td>100</td>
</tr>
<tr>
<td>HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions</td>
<td>10</td>
</tr>
</tbody>
</table>

**NOTE:** The diagnosis of malaria depends on the identification of the malarial parasites in blood smears. If the veteran resides in an endemic area and presents signs and symptoms compatible with malaria, the diagnosis may be based on clinical grounds alone. Relapses must be confirmed by the presence of malarial parasites in blood smears.

**Thereafter rate residuals such as liver or spleen damage under the appropriate system**

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

6305  Lympatic Filariasis:

| As active disease | 100 |

6306  Bartonellosis:

| As active disease | 100 |

6307  Plague:

| As active disease | 100 |

6308  Relapsing Fever:

| As active disease | 100 |

6309  Rheumatic fever:

| As active disease | 100 |

6310  Syphilis, and other treponemal infections:

| Rate the complications of nervous system, vascular system, eyes or ears. (See DC 7004, syphilitic heart disease, DC 8013, cerebrospinal syphilis, DC 8014, meningovascular syphilis, DC 8015, tabes dorsalis, and DC 9301, dementia associated with central nervous system syphilis) | |

| As active disease | 100 |

| Inactive: See §§ 4.88c and 4.89. | |

6311  Tuberculosis, miliary:

| As active disease | 100 |

6312  Avitaminosis:

| Marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia | 100 |
| With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor | 60 |
| With stomatitis, diarrhea, and symmetrical dermatitis | 40 |
| With stomatitis, or achlorhydria, or diarrhea | 20 |

| Confirmed diagnosis with nonspecific symptoms such as: decreased appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability | 10 |

6314  Benzen:

| As active disease: | 100 |
| With congestive heart failure, anasarca, or Wernerke-Korsakoff syndrome | |
| With cardiomegaly, or, with peripheral neuropathy with footdrop or atrophy of thigh or calf muscles | 60 |
| With peripheral neuropathy with absent knee or ankle jerks and loss of sensation, or, with symptoms such as weakness, fatigue, anorexia, dizziness, heaviness and stiffness of legs, headache or sleep disturbance | 30 |

| Thereafter rate residuals under the appropriate body system. | |

6315  Pellegra:

| Marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia | 100 |
| With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor | 60 |
| With stomatitis, diarrhea, and symmetrical dermatitis | 40 |
| With stomatitis, or achlorhydria, or diarrhea | 20 |

| Confirmed diagnosis with nonspecific symptoms such as: decreased appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability | 10 |

6316  Brucellosis:

| As active disease | 100 |

6317  Typhus, scrub:

| As active disease, and for 3 months convalescence | 100 |

| Thereafter rate residuals such as spleen damage or skin conditions under the appropriate system | |

6318  Melioidosis:

| As active disease | 100 |

| Thereafter rate residuals such as arthritis, lung lesions or meningitis under the appropriate system | |

6319  Lyme Disease:

| As active disease | 100 |

| Thereafter rate residuals such as arthritis under the appropriate system | |

6320  Parasitic diseases otherwise not specified:

| As active disease | 100 |

| Thereafter rate residuals such as spleen or liver damage under the appropriate system | |

6350  Lupus erythematosus, systemic (disseminated):

| Not to be combined with ratings under DC 7809 Acute, with frequent exacerbations, producing severe impairment of health | 100 |
| Exacerbations lasting a week or more, 2 or 3 times per year | 60 |
| Exacerbations once or twice a year or symptomatic during the past 2 years | 10 |

**NOTE:** Evaluate this condition either by combining the evaluations for residuals under the appropriate system, or by evaluating DC 6350, whichever method results in a higher evaluation.

6351  HIV-Related Illness:

| AIDS with recurrent opportunistic infections or with secondary diseases affecting multiple body systems; HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions | 100 |
§ 4.88c Ratings for inactive nonpulmonary tuberculosis initially entitled after August 19, 1968.

For 1 year after date of inactivity, following active tuberculosis

Thereafter: Rate residuals under the specific body system or systems affected.

Following the total rating for the 1 year period after date of inactivity, the scheduler evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., will be assigned under the appropriate diagnostic code for the residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hip joint with residual ankylosis would be coded 5001–5250. Where there are existing residuals of pulmonary and nonpulmonary conditions, the evaluations for residual separate functional impairment may be combined.

Where there are existing pulmonary and nonpulmonary conditions, the total rating for the 1 year, after attainment of inactivity, may not be applied to both conditions during the same period. However, the total rating during the 1-year period for the pulmonary or for the nonpulmonary condition will be utilized, combined with evaluation for residuals of the condition not covered by the 1-year total evaluation, so as to allow any additional benefit provided during such period.

<table>
<thead>
<tr>
<th>Rating</th>
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<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

§ 4.89 Ratings for inactive nonpulmonary tuberculosis in effect on August 19, 1968.

Public Law 90–493 repealed section 356 of title 38, United States Code which provided graduated ratings for inactive tuberculosis.

The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Pub. L. 90–493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For use in rating cases in which the protective provisions of Pub. L. 90–493 apply, the former evaluations are retained in this section.

<table>
<thead>
<tr>
<th>Rating</th>
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<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

For 2 years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently

Thereafter, for 4 years, or in any event, to 6 years after date of inactivity

Thereafter, for 5 years, or to 11 years after date of inactivity

Thereafter, in the absence of a schedule compensable permanent residual
Following the total rating for the 2-year period after date of inactivity, the schedule evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., if in excess of 50 percent or 30 percent will be assigned under the appropriate diagnostic code for the specific residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hip joint with residual ankylosis would be coded 5001-5250.

The graduated ratings for nonpulmonary tuberculosis will not be combined with residuals of nonpulmonary tuberculosis unless the graduated rating and the rating for residual disability cover separate functional losses, e.g., graduated ratings for tuberculosis of the kidney and residuals of tuberculosis of the spine. Where there are existing pulmonary and nonpulmonary conditions, the graduated evaluation for the pulmonary, or for the nonpulmonary, condition will be utilized, combined with evaluations for residuals of the condition not covered by the graduated evaluation utilized, so as to provide the higher evaluation over such period. The ending dates of all graduated ratings of nonpulmonary tuberculosis will be controlled by the date of attainment of inactivity.

These ratings are applicable only to veterans with nonpulmonary tuberculosis active on or after October 10, 1949.


§ 4.96 Special provisions regarding evaluation of respiratory conditions.

(a) Rating coexisting respiratory conditions. Ratings under diagnostic codes 6600 through 6817 and 6822 through 6847 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 through 6817 or 6822 through 6847. A single rating will be assigned under the diagnostic code which reflects the predominant disability with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. However, in cases protected by the provisions of Pub. L. 90-493, the graduated ratings of 50 and 30 percent for inactive tuberculosis will not be elevated.

(b) Rating “protected” tuberculosis cases. Public Law 90-493 repealed section 356 of title 38, United States Code which had provided graduated ratings for inactive tuberculosis. The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Pub. L. 90-493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For application in rating cases in which the protective provisions of Pub. L. 90-493 apply the former evaluations pertaining to pulmonary tuberculosis are retained in §4.97.

(c) Special monthly compensation. When evaluating any claim involving complete organic aphonia, refer to §3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.

(Authority: 38 U.S.C. 1155)

[34 FR 5062, Mar. 11, 1969, as amended at 61 FR 46727, Sept. 5, 1996]

§ 4.97 Schedule of ratings—respiratory system.

DISEASES OF THE NOSE AND THROAT

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6502  Septum, nasal, deviation of:</td>
</tr>
<tr>
<td>6504  Nose, loss of part of, or scars:</td>
</tr>
</tbody>
</table>

Exposing both nasal passages ................................................................. 30
Loss of part of one aila, or other obvious disfigurement ......................... 10

Note: Or evaluate as DC 7800, scars, disfiguring, head, face, or neck.

6510 Sinusitis, pansinusitis, chronic.
6511 Sinusitis, ethmoid, chronic.
6512 Sinusitis, frontal, chronic.
6513 Sinusitis, maxillary, chronic.
### § 4.97 38 CFR Ch. I (7–1–98 Edition)

<table>
<thead>
<tr>
<th>6514</th>
<th>Sinusitis, sphenoid, chronic.</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Rating Formula for Sinusitis (DC’s 6510 through 6514):</td>
<td></td>
</tr>
<tr>
<td>Following radical surgery with chronic osteomyelitis, or; near constant sinusitis characterized by headaches, pain and tenderness of affected sinus, and purulent discharge or crusting after repeated surgeries</td>
<td>50</td>
</tr>
<tr>
<td>Three or more incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; more than six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting</td>
<td>30</td>
</tr>
<tr>
<td>One or two incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; three to six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting</td>
<td>10</td>
</tr>
<tr>
<td>Detected by X-ray only</td>
<td>0</td>
</tr>
<tr>
<td><strong>Note:</strong> An incapacitating episode of sinusitis means one that requires bed rest and treatment by a physician.</td>
<td></td>
</tr>
</tbody>
</table>

| 6515 | Laryngitis, tuberculous, active or inactive. |
| Rate under §§ 4.88c or 4.89, whichever is appropriate. |

| 6516 | Laryngitis, chronic: |
| Hoarseness, with thickening or nodules of cords, polyps, submucous infiltration, or pre-malignant changes on biopsy | 30 |
| Hoarseness, with inflammation of cords or mucous membrane | 10 |

| 6518 | Laryngectomy, total. |
| Rate the residuals of partial laryngectomy as laryngitis (DC 6516), aphony (DC 6519), or stenosis of larynx (DC 6520). |

| 6519 | Aphony, complete organic: |
| Constant inability to communicate by speech | 100 |
| Constant inability to speak above a whisper | 60 |
| **Note:** Evaluate incomplete aphony as laryngitis, chronic (DC 6516). |

| 6520 | Larynx, stenosis of, including residuals of laryngeal trauma (unilateral or bilateral): |
| Forced expiratory volume in one second (FEV−1) less than 40 percent of predicted value, with Flow-Volume Loop compatible with upper airway obstruction, or; permanent tracheostomy | 100 |
| FEV−1 of 40- to 55-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction | 60 |
| FEV−1 of 56- to 70-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction | 30 |
| FEV−1 of 71- to 80-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction | 10 |
| **Note:** Evaluate as aphony (DC 6519). |

| 6521 | Pharynx, injuries to: |
| Stricture or obstruction of pharynx or nasopharynx, or; absence of soft palate secondary to trauma, chemical burn, or granulomatous disease, or; paralysis of soft palate with swallowing difficulty (nasal regurgitation) and speech impairment | 50 |

| 6522 | Allergic or vasomotor rhinitis: |
| With polyps | 30 |
| Without polyps, but with greater than 50-percent obstruction of nasal passage on both sides or complete obstruction on one side | 10 |

| 6523 | Bacterial rhinitis: |
| Rhinoscleroma | 50 |
| With permanent hypertrophy of turbinates and with greater than 50-percent obstruction of nasal passage on both sides or complete obstruction on one side | 10 |

| 6524 | Granulomatous rhinitis: |
| Wegener’s granulomatosis, lethal midline granuloma | 100 |
| Other types of granulomatous infection | 20 |

### DISEASES OF THE TRACHEA AND BRONCI

| 6600 | Bronchitis, chronic: |
| FEV−1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV−1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy | 100 |
| FEV−1 of 40- to 55-percent predicted, or; FEV−1/FVC of 40- to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit) | 60 |
| FEV−1 of 56- to 70-percent predicted, or; FEV−1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted | 30 |
| FEV−1 of 71- to 80-percent predicted, or; FEV−1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted | 10 |

| 6601 | Bronchiectasis: |
| With incapacitating episodes of infection of at least six weeks total duration per year | 100 |
| With incapacitating episodes of infection of four to six weeks total duration per year, or; near constant findings of cough with purulent sputum associated with anorexia, weight loss, and frank hemoptysis and requiring antibiotic usage almost continuously | 60 |
| With incapacitating episodes of infection of two to four weeks total duration per year, or; daily productive cough with sputum that is at times purulent or blood-tinged and that requires prolonged (lasting four to six weeks) antibiotic usage more than twice a year | 30 |
| Intermittent productive cough with acute infection requiring a course of antibiotics at least twice a year | 10 |
### Department of Veterans Affairs § 4.97

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

#### Note (1):

- The 100-percent rating under codes 6701 through 6724 is not subject to a requirement of precedent hospital treatment. It will be reduced to 50 percent for failure to submit to examination or to follow prescribed treatment upon report to that effect from the medical authorities. When a veteran is placed on the 100-percent rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity, as given in footnote 1 to 38 U.S.C. 1156, which has been repealed by Public Law 90–493, to notify the Adjudication Division in the event of failure to submit to examination or to follow treatment.

#### Note (2):

- The graduated 50-percent and 30-percent ratings and the permanent 30 percent and 20 percent ratings for inactive pulmonary tuberculosis are not to be combined with ratings for other respiratory disabilities. Following thoracoplasty the rating will be for removal of ribs combined with the rating for collapsed lung. Resection of the ribs incident to thoracoplasty will be rated as removal.

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**DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS**

**Ratings for Pulmonary Tuberculosis Entitled on August 19, 1968**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6701</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, active</td>
<td>100</td>
</tr>
<tr>
<td>6702</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, active</td>
<td>100</td>
</tr>
<tr>
<td>6703</td>
<td>Tuberculosis, pulmonary, chronic, minimal, active</td>
<td>100</td>
</tr>
<tr>
<td>6704</td>
<td>Tuberculosis, pulmonary, chronic, active, advancement unspecified</td>
<td>100</td>
</tr>
<tr>
<td>6721</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, inactive</td>
<td>100</td>
</tr>
<tr>
<td>6722</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, inactive</td>
<td>100</td>
</tr>
<tr>
<td>6723</td>
<td>Tuberculosis, pulmonary, chronic, minimal, inactive</td>
<td>100</td>
</tr>
<tr>
<td>6724</td>
<td>Tuberculosis, pulmonary, chronic, inactive, advancement unspecified</td>
<td>100</td>
</tr>
</tbody>
</table>

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#### Note (1):

- Following moderately advanced lesions, provided there is continued disability, emphysema, dyspnea on exertion, impairment of health, etc.

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#### Note (2):

- An incapacitating episode is one that requires bed rest and treatment by a physician.
<table>
<thead>
<tr>
<th>Diagnostic Code</th>
<th>Condition Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6730</td>
<td>Tuberculosis, pulmonary, chronic, active</td>
<td>100</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>Active pulmonary tuberculosis will be considered permanently and totally disabling</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for non-service-connected pension purposes in the following circumstances:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Associated with active tuberculosis involving other than the respiratory system.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) With severe associated symptoms or with extensive cavity formation.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Reactivated cases, generally.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) With advancement of lesions on successive examinations or while under treatment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(e) Without retrogression of lesions or other evidence of material improvement at the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>end of six months hospitalization or without change of diagnosis from &quot;active&quot; at the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>end of 12 months hospitalization. Material improvement means lessening or absence of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>clinical symptoms, and X-ray findings of a stationary or retrogressive lesion.</td>
<td></td>
</tr>
<tr>
<td>6731</td>
<td>Tuberculosis, pulmonary, chronic, inactivate:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Depending on the specific findings, rate residuals as interstitial lung disease,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>restrictive lung disease, or, when obstructive lung disease is the major residual,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>as chronic bronchitis (DC 6600). Rate thoracoplasty as removal of ribs under DC 5297.</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>A mandatory examination will be requested immediately following notification that</td>
<td></td>
</tr>
<tr>
<td></td>
<td>active tuberculosis evaluated under DC 6730 has become inactive. Any change in</td>
<td></td>
</tr>
<tr>
<td></td>
<td>evaluation will be carried out under the provisions of §3.105(e).</td>
<td></td>
</tr>
<tr>
<td>6732</td>
<td>Pleurisy, tuberculous, active or inactivate:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate under §§ 4.48c or 4.49, whichever is appropriate.</td>
<td></td>
</tr>
</tbody>
</table>

### Nontuberculous Diseases

<table>
<thead>
<tr>
<th>Diagnostic Code</th>
<th>Condition Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6817</td>
<td>Pulmonary Vascular Disease:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Primary pulmonary hypertension, or; chronic pulmonary thromboembolism with evidence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of pulmonary hypertension, or cor pulmonale, or; pulmonary hypertension secondary to</td>
<td></td>
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<tr>
<td></td>
<td>other obstructive disease of pulmonary arteries or veins with evidence of right</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ventilatory hypopertotphy or cor pulmonale ................................................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Chronic pulmonary thromboembolism requiring anticoagulant therapy, or; following</td>
<td></td>
</tr>
<tr>
<td></td>
<td>inferior vena cava surgery without evidence of pulmonary hypertension or right</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ventricular dysfunction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Symptomatic, following resolution of acute pulmonary embolism ................................</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Asymptomatic, following resolution of pulmonary thromboembolism</td>
<td>0</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>Evaluate other residuals following pulmonary embolism or chronic obstructive disease</td>
<td></td>
</tr>
<tr>
<td></td>
<td>under the most appropriate diagnostic code, such as chronic bronchitis (DC 6600) or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>chronic pleural effusion or fibrosis (DC 6844), but do not combine that evaluation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>with any of the above evaluations.</td>
<td></td>
</tr>
<tr>
<td>6819</td>
<td>Neoplasms, malignant, any specified part of respiratory system exclusive of skin</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>growths</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray,</td>
<td></td>
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<tr>
<td></td>
<td>antineoplastic chemotherapy or other therapeutic procedure. Six months after</td>
<td></td>
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<tr>
<td></td>
<td>discontinuance of such treatment, the appropriate disability rating shall be</td>
<td></td>
</tr>
<tr>
<td></td>
<td>determined by mandatory VA examination. Any change in evaluation based upon that or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>any subsequent examination shall be subject to the provisions of §3.105(e) of this</td>
<td></td>
</tr>
<tr>
<td></td>
<td>chapter. If there has been no local recurrence or metastasis, rate on residuals.</td>
<td></td>
</tr>
<tr>
<td>6820</td>
<td>Neoplasms, benign, any specified part of respiratory system. Evaluate using an</td>
<td></td>
</tr>
<tr>
<td></td>
<td>appropriate respiratory analogy.</td>
<td></td>
</tr>
</tbody>
</table>

### Bacterial Infections of the Lung

<table>
<thead>
<tr>
<th>Diagnostic Code</th>
<th>Condition Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6822</td>
<td>Actinomycosis.</td>
<td></td>
</tr>
<tr>
<td>6823</td>
<td>Nocardiosis.</td>
<td></td>
</tr>
<tr>
<td>6824</td>
<td>Chronic lung abscess.</td>
<td></td>
</tr>
<tr>
<td><strong>General Rating Formula for Bacterial Infections of the Lung (diagnostic codes 6822 through 6824):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Active infection with systemic symptoms such as fever, night sweats, weight loss,</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>or hemoptysis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Depending on the specific findings, rate residuals as interstitial lung disease,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>restrictive lung disease, or, when obstructive lung disease is the major residual,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>as chronic bronchitis (DC 6600).</td>
<td></td>
</tr>
</tbody>
</table>

### Interstitial Lung Disease

<table>
<thead>
<tr>
<th>Diagnostic Code</th>
<th>Condition Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6825</td>
<td>Diffuse interstitial fibrosis (interstitial pneumonitis, fibrosis)</td>
<td></td>
</tr>
<tr>
<td>6826</td>
<td>Desquamative interstitial pneumonitis.</td>
<td></td>
</tr>
<tr>
<td>6827</td>
<td>Pulmonary alveolar proteinosis.</td>
<td></td>
</tr>
<tr>
<td>6828</td>
<td>Eosinophilic granuloma of lung.</td>
<td></td>
</tr>
<tr>
<td>6829</td>
<td>Drug-induced pulmonary pneumonitits and fibrosis.</td>
<td></td>
</tr>
<tr>
<td>6830</td>
<td>Radiation-induced pulmonary pneumonitits and fibrosis.</td>
<td></td>
</tr>
<tr>
<td>6831</td>
<td>Hypersensitivity pneumonitis (extrinsic allergic alveolitis).</td>
<td></td>
</tr>
<tr>
<td>6832</td>
<td>Pneumococcosis (silicosis, asbestosis, etc.).</td>
<td></td>
</tr>
<tr>
<td>6833</td>
<td>Asbestosis.</td>
<td></td>
</tr>
<tr>
<td><strong>General Rating Formula for Interstitial Lung Disease (diagnostic codes 6825 through 6833):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Forced Vital Capacity (FVC) less than 50-percent predicted, or; Diffusion Capacity of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen</td>
<td></td>
</tr>
<tr>
<td></td>
<td>consumption with cardiorespiratory limitation, or; cor pulmonale or pulmonary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>hypertension, or; requires outpatient oxygen therapy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FVC of 50- to 64-percent predicted, or; DLCO (SB) of 40- to 56-percent predicted,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or; maximum exercise capacity of 15 to 20 ml/kg/min oxygen consumption with</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>cardiorespiratory limitation</td>
<td></td>
</tr>
</tbody>
</table>
§ 4.97

<table>
<thead>
<tr>
<th>Rating</th>
<th>Mycotic Lung Disease</th>
</tr>
</thead>
<tbody>
<tr>
<td>6839</td>
<td>Mucormycosis.</td>
</tr>
<tr>
<td>6838</td>
<td>Aspergillosis.</td>
</tr>
<tr>
<td>6837</td>
<td>Cryptococcosis.</td>
</tr>
<tr>
<td>6836</td>
<td>Blastomycosis.</td>
</tr>
<tr>
<td>6835</td>
<td>Coccidioidomycosis.</td>
</tr>
<tr>
<td>6834</td>
<td>Histoplasmosis of lung.</td>
</tr>
</tbody>
</table>

Note: Coccidioidomycosis has an incubation period up to 21 days, and the disseminated phase is ordinarily manifest within six months of the primary phase. However, there are instances of dissemination delayed up to many years after the initial infection which may have been unrecognized. Accordingly, when service connection is under consideration in the absence of record or other evidence of the disease in service, service in southwestern United States where the disease is endemic and absence of prolonged residence in this locality before or after service will be the deciding factor.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Restrictive Lung Disease</th>
</tr>
</thead>
<tbody>
<tr>
<td>6840</td>
<td>Diaphragm paralysis or paresis.</td>
</tr>
<tr>
<td>6841</td>
<td>Spinal cord injury with respiratory insufficiency.</td>
</tr>
<tr>
<td>6842</td>
<td>Kyphoscoliosis, pectus excavatum, pectus carinatum.</td>
</tr>
<tr>
<td>6843</td>
<td>Traumatic chest wall defect, pneumothorax, hernia, etc.</td>
</tr>
<tr>
<td>6844</td>
<td>Post-surgical residual (lobectomy, pneumonectomy, etc.).</td>
</tr>
<tr>
<td>6845</td>
<td>Chronic pleural effusion or fibrosis.</td>
</tr>
</tbody>
</table>

Note: (1): A 100-percent rating shall be assigned for pleurisy with empyema, with or without pleurocutaneous fistula, until resolved.

1 Review for entitlement to special monthly compensation under § 3.350 of this chapter.

[61 FR 46728, Sept. 5, 1996]
§§ 4.100—4.103

THE CARDIOVASCULAR SYSTEM

§§ 4.100—4.103 [Reserved]

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

NOTE (1): Evaluate cor pulmonale, which is a form of secondary heart disease, as part of the pulmonary condition that causes it.

NOTE (2): One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. When the level of METs at which dyspnea, fatigue, angina, dizziness, or syncope develops is required for evaluation, and a laboratory determination of METs by exercise testing cannot be done for medical reasons, an estimation by a medical examiner of the level of activity (expressed in METs and supported by specific examples, such as slow stair climbing or shoveling snow) that results in dyspnea, fatigue, angina, dizziness, or syncope may be used.

7000 Valvular heart disease (including rheumatic heart disease):

- During active infection with valvular heart damage and for three months following cessation of therapy for the active infection.
- Thereafter, with valvular heart disease (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:
  - Chronic congestive heart failure, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, left ventricular dysfunction with an ejection fraction of less than 30 percent.
  - More than one episode of acute congestive heart failure in the past year, or; workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or x-ray.
  - Continuous medication required.

7001 Endocarditis:

- For three months following cessation of therapy for active infection with cardiac involvement.
  - Thereafter, with endocarditis (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:
    - Chronic congestive heart failure, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, left ventricular dysfunction with an ejection fraction of less than 30 percent.
    - Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or x-ray.
    - Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, continuous medication required.

7002 Pericarditis:

- For three months following cessation of therapy for active infection with cardiac involvement.
- Thereafter, with documented pericarditis resulting in:
  - Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope; or, left ventricular dysfunction with an ejection fraction of less than 30 percent.
  - More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, left ventricular dysfunction with an ejection fraction of 30 to 50 percent.
  - Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or x-ray.
  - Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, continuous medication required.

7003 Pericardial adhesions:

- Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope; or, left ventricular dysfunction with an ejection fraction of less than 30 percent.
- More than one episode of acute congestive heart failure in the past year, or; workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or x-ray.
- Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or, continuous medication required.

7004 Syphilitic heart disease:
### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chronic congestive heart failure, or; workload of 3 METs or less results</td>
<td>100</td>
</tr>
<tr>
<td>in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of less than 30 percent</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 7 METs but not greater than 5 METs results in</td>
<td>60</td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac</td>
<td></td>
</tr>
<tr>
<td>hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 5 METs but not greater than 3 METs results in</td>
<td>30</td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication</td>
<td></td>
</tr>
<tr>
<td>required</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 5 METs results in dyspnea, fatigue, angina,</td>
<td></td>
</tr>
<tr>
<td>dizziness, or syncope, or; left ventricular dysfunction with an ejection</td>
<td></td>
</tr>
<tr>
<td>fraction of 30 to 50 percent</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 5 METs results in dyspnea, fatigue, angina,</td>
<td></td>
</tr>
<tr>
<td>dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation</td>
<td></td>
</tr>
<tr>
<td>on electrocardiogram, echocardiogram, or X-ray</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 7 METs but not greater than 10 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of less than 30 percent</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 5 METs results in dyspnea, fatigue, angina,</td>
<td></td>
</tr>
<tr>
<td>dizziness, or syncope, or; left ventricular dysfunction with an ejection</td>
<td></td>
</tr>
<tr>
<td>fraction of 30 to 50 percent</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Evaluate syphilitic aortic aneurysms under DC 7110 (aortic aneurysm).

### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7005 Arteriosclerotic heart disease (Coronary artery disease):</td>
<td></td>
</tr>
<tr>
<td>With documented coronary artery disease resulting in:</td>
<td></td>
</tr>
<tr>
<td>Chronic congestive heart failure, or; workload of 3 METs or less results</td>
<td>10</td>
</tr>
<tr>
<td>in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of less than 30 percent</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 5 METs but not greater than 3 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of 30 to 50 percent</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 5 METs but not greater than 3 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac</td>
<td></td>
</tr>
<tr>
<td>hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 7 METs but not greater than 10 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication</td>
<td></td>
</tr>
<tr>
<td>required</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** If nonservice-connected arteriosclerotic heart disease is superimposed on service-connected valvular or other non-arteriosclerotic heart disease, request a medical opinion as to which condition is causing the current signs and symptoms.

### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7006 Myocardial infarction:</td>
<td></td>
</tr>
<tr>
<td>During and for three months following myocardial infarction, documented</td>
<td></td>
</tr>
<tr>
<td>by laboratory tests</td>
<td></td>
</tr>
<tr>
<td>Thereafter</td>
<td></td>
</tr>
<tr>
<td>With history of documented myocardial infarction, resulting in:</td>
<td></td>
</tr>
<tr>
<td>Chronic congestive heart failure, or; workload of 3 METs or less results</td>
<td></td>
</tr>
<tr>
<td>in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of less than 30 percent</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 3 METs but not greater than 5 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of 30 to 50 percent</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 5 METs but not greater than 7 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac</td>
<td></td>
</tr>
<tr>
<td>hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray</td>
<td></td>
</tr>
<tr>
<td>Workload of greater than 7 METs but not greater than 10 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication</td>
<td></td>
</tr>
<tr>
<td>required</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Evaluate syphilitic aortic aneurysms under DC 7110 (aortic aneurysm).

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7007 Hypertensive heart disease:</td>
<td></td>
</tr>
<tr>
<td>Chronic congestive heart failure, or; workload of 3 METs or less results</td>
<td>100</td>
</tr>
<tr>
<td>in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
<td></td>
</tr>
<tr>
<td>dysfunction with an ejection fraction of less than 30 percent</td>
<td></td>
</tr>
<tr>
<td>More than one episode of acute congestive heart failure in the past year,</td>
<td></td>
</tr>
<tr>
<td>or; workload of greater than 3 METs but not greater than 5 METs results in</td>
<td></td>
</tr>
<tr>
<td>dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular</td>
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<tr>
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<tr>
<td>Workload of greater than 5 METs but not greater than 7 METs results in</td>
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<td>Workload of greater than 7 METs but not greater than 10 METs results in</td>
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</tr>
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<td>dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication</td>
<td></td>
</tr>
<tr>
<td>required</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Include as part of the overall evaluation for hyperthyroidism under DC 7900. However, when atrial fibrillation is present, hyperthyroidism may be evaluated either under DC 7900 or under DC 7010 (supraventricular arrhythmia), whichever results in a higher evaluation.

### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7010 Supraventricular arrhythmias:</td>
<td></td>
</tr>
<tr>
<td>Paroxysmal atrial fibrillation or other supraventricular tachycardia, with</td>
<td>30</td>
</tr>
<tr>
<td>more than four episodes per year documented by ECG or Holter monitor</td>
<td></td>
</tr>
<tr>
<td>Permanent atrial fibrillation (tone atrial fibrillation), or; one to four</td>
<td></td>
</tr>
<tr>
<td>episodes per year of paroxysmal atrial fibrillation or other supraventricular tachycardia documented by ECG or Holter monitor</td>
<td>10</td>
</tr>
</tbody>
</table>

**Note:** If nonservice-connected arteriosclerotic heart disease is superimposed on service-connected valvular or other non-arteriosclerotic heart disease, request a medical opinion as to which condition is causing the current signs and symptoms.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7011 Ventricular arrhythmias (sustained):</td>
<td></td>
</tr>
<tr>
<td>For indefinite period from date of hospital admission for initial evalua-</td>
<td></td>
</tr>
<tr>
<td>tion and medical therapy for a sustained ventricular arrhythmia, or; for</td>
<td></td>
</tr>
<tr>
<td>indefinite period from date of hospital admission for ventricular aneu-</td>
<td></td>
</tr>
<tr>
<td>rysymmetry, or; with an automatic implantable Cardioverter-Defibrillator</td>
<td></td>
</tr>
<tr>
<td>(AICD) in place</td>
<td>100</td>
</tr>
</tbody>
</table>

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**DISEASES OF THE HEART—Continued**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
<tr>
<td>60</td>
<td>Workload of greater than 7 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of 30 to 50 percent.</td>
</tr>
<tr>
<td>30</td>
<td>Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or continuous medication required.</td>
</tr>
<tr>
<td>10</td>
<td>Thereafter: Chronic congestive heart failure, or: workload of 3 METs or less results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
</tbody>
</table>

**NOTE:** A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
<tr>
<td>60</td>
<td>Workload of greater than 7 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of 30 to 50 percent.</td>
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<tr>
<td>30</td>
<td>Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope; or continuous medication required.</td>
</tr>
</tbody>
</table>

**NOTE:** Unusual cases of arrhythmia such as atrioventricular block associated with a supraventricular or pathologic bradycardia should be submitted to the Director, Compensation and Pension Service. Simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.

**DISEASES OF THE HEART—Continued**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
<tr>
<td>60</td>
<td>Thereafter: Chronic congestive heart failure, or: workload of 3 METs or less results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
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</tbody>
</table>

**NOTE:** A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
<tr>
<td>60</td>
<td>Thereafter: Chronic congestive heart failure, or: workload of 3 METs or less results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
</tbody>
</table>

**NOTE:** A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
</tbody>
</table>

**NOTE:** A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Workload of greater than 7 METs results in symptoms of fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent.</td>
</tr>
</tbody>
</table>

**NOTE:** A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.
### Department of Veterans Affairs

#### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Rating</th>
<th>Diseases of the Arteries and Veins</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Hypertensive vascular disease (hypertension and isolated systolic hypertension):</td>
</tr>
<tr>
<td></td>
<td>Diastolic pressure predominantly 130 or more</td>
</tr>
<tr>
<td></td>
<td>Diastolic pressure predominantly 120 or more</td>
</tr>
<tr>
<td></td>
<td>Diastolic pressure predominantly 110 or more, or; systolic pressure predominantly 200 or more</td>
</tr>
<tr>
<td></td>
<td>Diastolic pressure predominantly 100 or more, or; systolic pressure predominantly 160 or more, or; minimum evaluation for an individual with a history of diastolic pressure predominantly 100 or more who requires continuous medication for control</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Diseases of the Heart—Continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>7110</td>
<td>Aneurysm, any small artery:</td>
</tr>
<tr>
<td>100</td>
<td>If symptomatic, or; for indefinite period from date of hospital admission for surgical correction</td>
</tr>
<tr>
<td>60</td>
<td>Following surgery:</td>
</tr>
<tr>
<td></td>
<td>Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less</td>
</tr>
<tr>
<td>30</td>
<td>Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less</td>
</tr>
<tr>
<td>10</td>
<td>Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less</td>
</tr>
</tbody>
</table>

**NOTE (1):** Hypertension or isolated systolic hypertension must be confirmed by readings taken two or more times on at least three different days. For purposes of this section, the term hypertension means that the diastolic blood pressure is predominantly 90mm. or greater, and isolated systolic hypertension means that the systolic blood pressure is predominantly 160mm. or greater with a diastolic blood pressure of less than 90mm.

**NOTE (2):** Evaluate hypertension due to aortic insufficiency or hyperthyroidism, which is usually the isolated systolic type, as part of the condition causing it rather than by a separate evaluation.

**NOTE (3):** A rating of 100 percent shall be assigned as of the date of hospital admission for surgical correction. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.
### Diseases of the Heart—Continued

<table>
<thead>
<tr>
<th>Disease Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asymptomatic</td>
<td>0</td>
</tr>
<tr>
<td>NOTE: If symptomatic, evaluate according to body system affected. Following surgery, evaluate residuals under the body system affected.</td>
<td></td>
</tr>
</tbody>
</table>

**7113** Arteriovenous fistula, traumatic:
- With high output heart failure ........................................ 100  
- Without heart failure but with enlarged heart, wide pulse pressure, and tachycardia .... 60  
- Without cardiac involvement but with edema, stasis dermatisis, and either ulceration or cellulitis: 
  - Lower extremity .............................................. 50  
  - Upper extremity .............................................. 40  
  - With edema or stasis dermatisis: 
    - Lower extremity .............................................. 30  
    - Upper extremity .............................................. 20  

**7114** Arteriosclerosis obliterans:
- Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less ........................................ 100  
- Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; either persistent coldness of the extremity or ankle/brachial index of 0.5 or less ........................................ 60  
- Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less ........................................ 40  
- Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less .... 20  

NOTE (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.

NOTE (2): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.

NOTE (3): These evaluations are for involvement of a single extremity, regardless of the number of extremities involved or whether the nose and ears are involved.

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<table>
<thead>
<tr>
<th>Disease Description</th>
<th>Rating</th>
</tr>
</thead>
</table>
| Raynaud's syndrome: 
  - With two or more digital ulcers plus autonomic changes of one or more digits and history of characteristic attacks .......... 100  
  - With two or more digital ulcers and history of characteristic attacks .......... 60  
  - Characteristic attacks occurring at least daily ........................................ 40  
  - Characteristic attacks occurring four to six times a week .......................... 20  
  - Characteristic attacks occurring one to three times a week .......................... 10  

NOTE: For purposes of this section, characteristic attacks consist of sequential color changes of the digits of one or more extremities lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for the disease as a whole.

**7118** Angioneurotic edema:
- Attacks without laryngeal involvement lasting one to seven days or longer and occurring more than eight times a year, or; attacks with laryngeal involvement of any duration occurring more than twice a year ........................................ 100  
- Attacks without laryngeal involvement lasting one to seven days and occurring five to eight times a year, or; attacks with laryngeal involvement of any duration occurring once or twice a year ........................................ 40  
- Attacks without laryngeal involvement lasting one to seven days and occurring two to four times a year .......................... 20  

**7119** Erythromelalgia:
- Characteristic attacks that occur more than once a day, last an average of more than two hours each, respond poorly to treatment, but that do not restrict most routine daily activities ........................................ 100  
- Characteristic attacks that occur more than once a day, last an average of more than two hours each, and respond poorly to treatment, and that restrict most routine daily activities ........................................ 60  
- Characteristic attacks that occur daily or more often but that respond to treatment ........................................ 30  
- Characteristic attacks that occur less than daily but at least three times a week and that respond to treatment ........................................ 10  

**7120** Varicose veins:
- With the following findings attributed to the effects of varicose veins: Massive board-like edema with constant pain at rest ........................................ 100  
- Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration ........................................ 60

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NOTE: These evaluations are for involvement of a single extremity. If more than one extremity is involved, evaluate each extremity separately and combine (under §4.25), using the bilateral factor (§4.26), if applicable.

7121 Post-phlebitic syndrome of any etiology:
With the following findings attributed to venous disease:
- Massive board-like edema with constant pain at rest .................
- Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration ...........
- Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration ...........
- Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema .......... 
- Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery ...........
- Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration .......... 
- Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema .......... 

NOTE: These evaluations are for involvement of a single extremity. If more than one extremity is involved, evaluate each extremity separately and combine (under §4.25), using the bilateral factor (§4.26), if applicable.

7122 Cold injury residuals:
With pain, numbness, cold sensitivity, or arthralgia plus two or more of the following: tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteofrrosis, subarticular punched out lesions, or osteoarthritis) of affected parts.

With pain, numbness, cold sensitivity, or arthralgia plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteofrrosis, subarticular punched out lesions, or osteoarthritis) of affected parts.

NOTE (1): Amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy should be separately evaluated under other diagnostic codes.

7123 Soft tissue sarcoma (of vascular origin) .......... 100

NOTE (2): Evaluate each affected part (hand, foot, ear, nose) separately and combine the ratings, if appropriate, in accordance with §§4.25 and 4.26.


THE DIGESTIVE SYSTEM

§ 4.110 Ulcers.
Experience has shown that the term “peptic ulcer” is not sufficiently specific for rating purposes. Manifest differences in ulcers of the stomach or duodenum in comparison with those at an anastomotic stoma are sufficiently recognized as to warrant two separate graduated descriptions. In evaluating the ulcer, care should be taken that the findings adequately identify the particular location.

§ 4.111 Postgastrectomy syndromes.
There are various postgastrectomy symptoms which may occur following anastomotic operations of the stomach. When present, those occurring during or immediately after eating and known as the “dumping syndrome” are characterized by gastrointestinal complaints and generalized symptoms simulating hypoglycemia; those occurring from 1 to 3 hours after eating usually present definite manifestations of hypoglycemia.

§ 4.112 Weight loss.
Minor weight loss or greater losses of weight for periods of brief duration are not considered of importance in rating. Rather, weight loss becomes of importance where there is appreciable loss which is sustained over a period of time. In evaluating weight loss generally, consideration will be given not only to standard age, height, and

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§ 4.114 Schedule of ratings—digestive system.

Ratings under diagnostic codes 7301 to 7329, inclusive, 7331, 7342, and 7345 to 7348 inclusive will not be combined with a single evaluation. A single evaluation will be assigned under the diagnostic code which reflects the predominant disability picture, with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7200</td>
<td>Mouth, injuries of. Rate as for disfigurement and impairment of function of mastication.</td>
<td></td>
</tr>
<tr>
<td>7201</td>
<td>Lips, injuries of. Rate as for disfigurement of face.</td>
<td></td>
</tr>
<tr>
<td>7202</td>
<td>Tongue, loss of whole or part: With inability to communicate by speech ........................................................................</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>One-half or more ...............................................................................................................................................</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>With marked speech impairment .......................................................................................................................................</td>
<td>30</td>
</tr>
<tr>
<td>7203</td>
<td>Esophagus, stricture of. Permitting passage of liquids only, with marked impairment of general health ................................</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>Severe, permitting liquids only .......................................................................................................................................</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>Moderate .................................................................................................................................................................</td>
<td>30</td>
</tr>
<tr>
<td>7204</td>
<td>Esophagus, spasm of (cardiospasm). If not amenable to dilatation, rate as for the degree of obstruction (stricture).</td>
<td></td>
</tr>
<tr>
<td>7205</td>
<td>Esophagus, diverticulum of, acquired. Rate as for obstruction (stricture). ...........................................................................</td>
<td></td>
</tr>
<tr>
<td>7301</td>
<td>Peritoneum, adhesions of.</td>
<td></td>
</tr>
<tr>
<td>7302</td>
<td>Ulcer, duodenal: Severe; pain only partially relieved by standard ulcer therapy, periodic vomiting, recurrent hematemesis, and melena, with manifestations of anemia and weight loss progressive of definite impairment of health ................................</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Moderately severe; less than severe with impairment of health manifested by anemia and weight loss requiring ulcer therapy with periodic vomiting, recurrent hematemesis, and melena or pernicious anemia.</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>Mild ........................................................................................................................................................................</td>
<td>20</td>
</tr>
<tr>
<td>7303</td>
<td>Ulcer, marginal (gastrojejunal): Pronounced; periodic or continuous pain unrelieved by standard ulcer therapy with periodic vomiting, recurrent hematemesis, and weight loss. Totally incapacitating ........................................................................</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Severe; same as pronounced with less pronounced and less continuous symptoms with definite impairment of health ................</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Moderately severe; intermittent episodes of abdominal pain at least once a month partially relieved by standard ulcer therapy with periodic vomiting or melena ........................................</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>Moderate; with episodes of recurring symptoms several times a year ..................................................................................</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Mild; with brief episodes of recurring symptoms once or twice yearly ................................................................................</td>
<td>10</td>
</tr>
<tr>
<td>7307</td>
<td>Gastritis, hypertrophic (identified by gastroscopy): Chronic; with severe hemorrhages, or large ulcerated or eroded areas ........</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Chronic; with multiple small eroded or ulcerated areas, and symptoms ..................................................................................</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Chronic; with small nodular lesions, and symptoms .........................................................................................................</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Gastritis, atrophic. A complication of a number of diseases, including peptic anemia. .........................................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rate the underlying condition. ..................................................................................................................................................</td>
<td></td>
</tr>
<tr>
<td>7308</td>
<td>Postgastrectomy syndromes: Severe; associated with nausea, sweating, circulatory disturbance after meals, diarrhea, hypoglycemic symptoms, and weight loss with malnutrition and anemia ........................................</td>
<td>60</td>
</tr>
</tbody>
</table>
Department of Veterans Affairs § 4.114

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7309 Stomach, stenosis of</td>
<td>Moderate; less frequent episodes of epigastric disorders with characteristic mild circulatory symptoms after meals but with diarrhea and weight loss</td>
</tr>
<tr>
<td>7310 Stomach, injury of, residuals</td>
<td>Mild: infrequent episodes of epigastric distress with characteristic mild circulatory symptoms or continuous mild manifestations</td>
</tr>
<tr>
<td>7311 Liver, injury of</td>
<td>Rate as for gastric ulcers</td>
</tr>
<tr>
<td>7312 Liver, cirrhosis of</td>
<td>Pronounced; aggravation of the symptoms for moderate and severe, necessitating frequent tapping</td>
</tr>
<tr>
<td>7313 Liver, abscess of, residuals</td>
<td>With residual disability, rate as peritoneal adhesions. Healed, no residuals</td>
</tr>
<tr>
<td>7314 Cholecystitis, chronic</td>
<td>Severe; ascites requiring infrequent tapping, or recurrent hemmorhage from esophagical varices, aggravated symptoms and impaired health</td>
</tr>
<tr>
<td>7315 Cholelithiasis, chronic</td>
<td>Moderately severe; liver definitely enlarged with abdominal distention due to early ascites and with muscle wasting and loss of strength</td>
</tr>
<tr>
<td>7316 Gall bladder, removal of</td>
<td>Moderate; with dilatation of superficial abdominal veins, chronic dyspepsia, slight loss of weight or impairment of health</td>
</tr>
<tr>
<td>7317 Gall bladder, injury of</td>
<td>With severe symptoms</td>
</tr>
<tr>
<td>7318 Gall bladder, removal of</td>
<td>With mild symptoms</td>
</tr>
<tr>
<td>7319 Irritable colon syndrome (spastic colitis, mucous colitis, etc.)</td>
<td>Non-symptomatic</td>
</tr>
<tr>
<td>7320 Amebiasis</td>
<td>Spleen, disease or injury of. See Hemic and Lymphatic Systems.</td>
</tr>
<tr>
<td>7321 Amebiasis</td>
<td>Severe; diarrhea, or alternating diarrhea and constipation, with more or less constant abdominal distress</td>
</tr>
<tr>
<td>7322 Dysentery, bacillary</td>
<td>Moderate; frequent episodes of bowel disturbance with abdominal distress</td>
</tr>
<tr>
<td>7324 Distomiasis, intestinal or hepatic</td>
<td>Mild gastrointestinal disturbances, lower abdominal cramps, nausea, gaseous distention, chronic constipation interrupted by diarrhea.</td>
</tr>
<tr>
<td>7325 Enteritis, chronic</td>
<td>Asymptomatic</td>
</tr>
<tr>
<td>7326 Enterocolitis, chronic</td>
<td>NOTE: Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.</td>
</tr>
<tr>
<td>7327 Diverticulitis</td>
<td>Rate as for irritable colon syndrome, peritoneal adhesions, or colitis, ulcerative, depending upon the predominant disability picture.</td>
</tr>
<tr>
<td>7328 Intestine, small, resection of</td>
<td>Rate as for impairment of sphincter control</td>
</tr>
<tr>
<td>7329 Intestine, large, resection of</td>
<td>Complete loss of sphincter control</td>
</tr>
<tr>
<td>7330 Intestine, fistula of, persistent, or after attempt at operative closure</td>
<td>Copious and frequent, fecal discharge</td>
</tr>
<tr>
<td>7331 Peritonitis, tuberculous, active or inactive</td>
<td>Slight infrequent, fecal discharge</td>
</tr>
<tr>
<td>7332 Rectum and anus, stricture of</td>
<td>Copious and frequent, fecal discharge</td>
</tr>
<tr>
<td>7333 Rectum and anus, stenosis of</td>
<td>Moderate reduction of lumen, or moderate constant leakage</td>
</tr>
<tr>
<td>7334 Rectum, prolapse of</td>
<td>Severe (or complete), persistent</td>
</tr>
<tr>
<td>7335 Ano, fistula in</td>
<td>Moderate, persistent or frequently recurring</td>
</tr>
</tbody>
</table>

NOTE: Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.
<table>
<thead>
<tr>
<th>Diagnostic Description</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health</td>
<td>60</td>
</tr>
<tr>
<td>Persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health</td>
<td>30</td>
</tr>
<tr>
<td>With two or more of the symptoms for the 30 percent evaluation of less severity</td>
<td>10</td>
</tr>
<tr>
<td>With frequently recurrent disabling attacks of abdominal pain with few pain free intermissions and with steatorrhea, malabsorption, diarrhea and severe malnutrition</td>
<td>100</td>
</tr>
<tr>
<td>With frequent attacks of abdominal pain, loss of normal body weight and other findings showing continuing pancreatic insufficiency between acute attacks</td>
<td>60</td>
</tr>
<tr>
<td>Moderately severe; with at least 4–7 typical attacks of abdominal pain per year with good remission between attacks</td>
<td>30</td>
</tr>
<tr>
<td>With at least one recurring attack of typical severe abdominal pain in the past year</td>
<td>10</td>
</tr>
<tr>
<td>Note 1: Abdominal pain in this condition must be confirmed as resulting from pancreatitis by appropriate laboratory and clinical studies.</td>
<td></td>
</tr>
<tr>
<td>Note 2: Following total or partial pancreatic resection, rate under above, symptoms, minimum rating 30 percent.</td>
<td></td>
</tr>
<tr>
<td>Vagotomy with pyloroplasty or gastro-enterostomy:</td>
<td></td>
</tr>
<tr>
<td>Followed by demonstrably confirmative post-operative complications of stricture or continuing gastric retention</td>
<td>40</td>
</tr>
<tr>
<td>With symptoms and confirmed diagnosis of alkaline gastritis, or of confirmed persisting diarrhea</td>
<td>30</td>
</tr>
<tr>
<td>Recurrent ulcer with incomplete vagotomy</td>
<td>20</td>
</tr>
<tr>
<td>Note: Rate recurrent ulcer following complete vagotomy under diagnostic code 7305, minimum rating 20 percent; and rate dumping syndrome under diagnostic code 7308.</td>
<td></td>
</tr>
</tbody>
</table>

**THE GENITOURINARY SYSTEM**

## § 4.115 Nephritis.

Albuminuria alone is not nephritis, nor will the presence of transient albumin and casts following acute febrile illness be taken as nephritis. The glomerular type of nephritis is usually preceded by or associated with severe infectious disease; the onset is sudden, and the course marked by red blood cells, salt retention, and edema; it may clear up entirely or progress to a chronic condition. The nephrosclerotic type, originating in hypertension or atherosclerosis, develops slowly, with minimum laboratory findings, and is
Department of Veterans Affairs

§ 4.115a Ratings of the genitourinary system—dysfunctions.

Diseases of the genitourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these. The following section provides descriptions of various levels of disability in each of these symptom areas. Where diagnostic codes refer the decisionmaker to these specific areas dysfunction, only the predominant area of dysfunction shall be considered for rating purposes. Since the areas of dysfunction described below do not cover all symptoms resulting from genitourinary diseases, specific diagnoses may include a description of symptoms assigned to that diagnosis.

<table>
<thead>
<tr>
<th>Renal dysfunction:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rating</td>
</tr>
<tr>
<td>Renal dysfunction:</td>
</tr>
<tr>
<td>Requiring regular dialysis, or precluding more than sedentary activity from one of the following: persistent edema and albuminuria; or, BUN more than 80mg%; or, creatinine more than 8mg%; or, markedly decreased function of kidney or other organ systems, especially cardiovascular.</td>
</tr>
<tr>
<td>Persistent edema and albuminuria with BUN 40 to 80mg%; or, creatinine 4 to 8mg%; or, generalized poor health characterized by lethargy, weakness, anorexia, weight loss, or limitation of exertion.</td>
</tr>
<tr>
<td>Rating</td>
</tr>
<tr>
<td>Rating</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Urinary tract infection:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rating</td>
</tr>
<tr>
<td>Urinary tract infection:</td>
</tr>
<tr>
<td>Poor renal function: Rate as renal dysfunction.</td>
</tr>
<tr>
<td>Recurrent symptomatic infection requiring drainage/frequent hospitalization (greater than two times/year), and/or requiring continuous intensive management.</td>
</tr>
<tr>
<td>Long-term drug therapy, 1-2 hospitalizations per year and/or requiring intermittent intensive management.</td>
</tr>
<tr>
<td>Rating</td>
</tr>
<tr>
<td>Rating</td>
</tr>
</tbody>
</table>

[59 FR 2527, J an. 18, 1994; 59 FR 10676, Mar. 7, 1994]
### § 4.115b Ratings of the genitourinary system—diagnoses.

<table>
<thead>
<tr>
<th>Diagnosis</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7500 Kidney, removal of one: Minimum evaluation</td>
<td>30</td>
</tr>
<tr>
<td>Or rate as renal dysfunction if there is nephritis, infection, or pathology of the other.</td>
<td></td>
</tr>
<tr>
<td>7501 Kidney, abscess of: Rate as urinary tract infection</td>
<td>30</td>
</tr>
<tr>
<td>7502 Nephritis, chronic: Rate as renal dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7504 Pyelonephritis, chronic: Rate as renal dysfunction or urinary tract infection, whichever is predominant.</td>
<td></td>
</tr>
<tr>
<td>7505 Kidney, tuberculosis of: Rate in accordance with §§4.88b or 4.89, whichever is appropriate.</td>
<td></td>
</tr>
<tr>
<td>7507 Nephrosclerosis, arteriolar: Rate according to predominant symptoms as renal dysfunction, hypertension or heart disease. If rated under the cardiovascular schedule, however, the percentage rating which would otherwise be assigned will be elevated to the next higher evaluation.</td>
<td></td>
</tr>
<tr>
<td>7508 Nephrolithiasis: Rate as hydronephrosis, except for recurrent stone formation requiring one or more of the following: 1. diet therapy 2. drug therapy 3. invasive or non-invasive procedures more than two times/year.</td>
<td></td>
</tr>
<tr>
<td>7509 Hydronephrosis: Severe; Rate as renal dysfunction. Frequent attacks of colic with infection (pyonephrosis), kidney function impaired.</td>
<td></td>
</tr>
<tr>
<td>Frequent attacks of colic, requiring catheter drainage. Only an occasional attack of colic, not infected and not requiring catheter drainage.</td>
<td></td>
</tr>
<tr>
<td>7510 Ureterolithiasis: Rate as hydronephrosis, except for recurrent stone formation requiring one or more of the following: 1. diet therapy 2. drug therapy 3. invasive or non-invasive procedures more than two times/year.</td>
<td></td>
</tr>
<tr>
<td>7511 Ureter, stricture of: Rate as hydronephrosis, except for recurrent stone formation requiring one or more of the following: 1. diet therapy 2. drug therapy 3. invasive or non-invasive procedures more than two times/year.</td>
<td></td>
</tr>
<tr>
<td>7512 Cystitis, chronic, includes interstitial and all etiologies, infectious and non-infectious: Rate as urinary tract infection, whichever is predominant.</td>
<td></td>
</tr>
<tr>
<td>7513 Bladder, injury of: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7514 Urethra, stricture of: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7515 Bladder, calculus in, with symptoms interfering with function: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7516 Bladder, fistula of: Rate as voiding dysfunction or urinary tract infection, whichever is predominant.</td>
<td></td>
</tr>
<tr>
<td>7517 Bladder, injury of: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7518 Urethra, stricture of: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7519 Urethra, fistula of: Rate as voiding dysfunction. Multiple urethroleperineal fistulae.</td>
<td></td>
</tr>
<tr>
<td>7520 Penis, removal of half or more: Rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>Or rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7521 Penis removal of glans: Or rate as voiding dysfunction.</td>
<td></td>
</tr>
<tr>
<td>7522 Penis, deformity, with loss of erectile power—20.</td>
<td></td>
</tr>
<tr>
<td>7523 Testis, atrophy complete: Both—20. One—0.</td>
<td></td>
</tr>
<tr>
<td>7524 Testis, removal:</td>
<td>30</td>
</tr>
</tbody>
</table>

Note: When evaluating any claim involving loss or loss of use of one or more creative organs, refer to §3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.
Both—30
One—0

Note: In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an undescended or congenitally undeveloped testis, with the absence or nonfunctioning of the other testis unrelated to service, an evaluation of 30 percent will be assigned for the service-connected testicular loss. Tests, undescended, or congenitally undeveloped is not a ratable disability.

7525 Epididymo-orchitis, chronic only:
Rate as urinary tract infection.
For tubercular infections: Rate in accordance with §§4.88b or 4.89, whichever is appropriate.

7527 Prostate gland injuries, infections, hypertrophy, postoperative residuals:
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.

7528 Malignant neoplasms of the genitourinary system

Note—Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals as voiding dysfunction or renal dysfunction, whichever is predominant.

7529 Benign neoplasms of the genitourinary system:
Rate as voiding dysfunction or renal dysfunction, whichever is predominant.

7530 Chronic renal disease requiring regular dialysis:
Rate as renal dysfunction.

7531 Kidney transplant:
Following transplant surgery
Thereafter: Rate on residuals as renal dysfunction, minimum rating

Note—The 100 percent evaluation shall be assigned as of the date of hospital admission for transplant surgery and shall continue with a mandatory VA examination one year following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

7532 Renal tubular disorders (such as renal glycosurias, aminoacidurias, renal tubular acidosis, Fanconi’s syndrome, Bartter’s syndrome, related disorders of Henle’s loop and proximal or distal nephron function, etc.):
Minimum rating for symptomatic condition
Or rate as renal dysfunction.

7533 Cystic diseases of the kidneys (polycystic disease, uremic medullary cystic disease, Medullary sponge kidney, and similar conditions):
Rate as renal dysfunction.

7534 Atherosclerotic renal disease (renal artery stenosis or atheroembolic renal disease):
Rate as renal dysfunction.

7535 Toxic nephropathy (antibiotics, radiocontrast agents, nonsteroidal anti-inflammatory agents, heavy metals, and similar agents):
Rate as renal dysfunction.

7536 Glomerulonephritis:
Rate as renal dysfunction.

7537 Interstitial nephritis:
Rate as renal dysfunction.

7538 Papillary necrosis:
Rate as renal dysfunction.

7539 Renal amyloid disease:
Rate as renal dysfunction.

7540 Disseminated intravascular coagulation with renal cortical necrosis:
Rate as renal dysfunction.

7541 Renal involvement in diabetes mellitus, sickle cell anemia, systemic lupus erythematosus, vasculitis, or other systemic disease processes.
Rate as renal dysfunction.

7542 Neurogenic bladder:
Rate as voiding dysfunction.

1 Review for entitlement to special monthly compensation under §3.350 of this chapter.
§ 4.116 Schedule of ratings—gynecological conditions and disorders of the breast.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td>100</td>
</tr>
<tr>
<td>100</td>
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<tr>
<td>30</td>
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<tr>
<td>10</td>
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<tr>
<td>50</td>
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<tr>
<td>80</td>
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<tr>
<td>60</td>
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<tr>
<td>40</td>
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<tr>
<td>30</td>
</tr>
<tr>
<td>50</td>
</tr>
<tr>
<td>30</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
</table>

Note 1: Natural menopause, primary amenorrhea, and pregnancy and childbirth are not disabilities for rating purposes. Chronic residuals of medical or surgical complications of pregnancy may be disabilities for rating purposes.

Note 2: When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, almost any condition in this section might, under certain circumstances, establish entitlement to special monthly compensation.

§ 4.116 Gynecological conditions and disorders of the breast.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

§ 4.116 Malignant neoplasms of gynecological system or breast.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

Note: Lesions involving bowel or bladder confirmed by laparoscopy, pelvic pain or heavy or irregular bleeding not controlled by treatment, and bowel or bladder symptoms are not disabilities for rating purposes.

§ 4.116 Endometriosis.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
<tr>
<td>60</td>
</tr>
<tr>
<td>30</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
</table>

Lesions involving bowel or bladder confirmed by laparoscopy, pelvic pain or heavy or irregular bleeding not controlled by treatment, and bowel or bladder symptoms.
The Department of Veterans Affairs

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

7700 Anemia, hypochromic-microcytic and megaloblastic, such as iron-deficiency and pernicious anemia:
- Hemoglobin 5gm/100ml or less, with findings such as high output congestive heart failure or dyspnea at rest
  - Rating: 100
- Hemoglobin 7gm/100ml or less, with findings such as dyspnea on mild exertion, cardiomegaly, tachycardia (100 to 120 beats per minute) or syncope (three episodes in the last six months)
  - Rating: 70
- Hemoglobin 8gm/100ml or less, with findings such as weakness, easy fatigability, headaches, lightheadedness, or shortness of breath
  - Rating: 30
- Hemoglobin 10gm/100ml or less, asymptomatic
  - Rating: 10
- Hemoglobin 10gm/100ml or less, asymptomatic
  - Rating: 0

Note: Evaluate complications of pernicious anemia, such as dementia or peripheral neuropathy, separately.

7702 Agranulocytosis, acute:
- Requiring bone marrow transplant, or requiring transfusion of platelets or red cells at least once every six weeks, or infections recurring at least once every six weeks
  - Rating: 100
- Requiring transfusion of platelets or red cells at least once every three months, or infections recurring at least once every three months
  - Rating: 60
- Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or infections recurring at least once per year but less than once every three months
  - Rating: 30
- Requiring continuous medication for control
  - Rating: 10

7703 Leukemia:
- With active disease or during a treatment phase
  - Rating: 100
- Otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit.

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no recurrence, rate on residuals.

7704 Polycythemia vera:
- During periods of treatment with myelosuppressants and for three months following cessation of myelosuppressant therapy
  - Rating: 100
- Requiring phlebotomy
  - Rating: 40
- Stable, with or without continuous medication
  - Rating: 10

Note: Rate complications such as hypertension, gout, stroke or thrombotic disease separately.

7705 Thrombocytopenia, primary, idiopathic or immune:
- Platelet count of less than 20,000, with active bleeding, requiring treatment with medication and transfusions
  - Rating: 100
- Platelet count between 20,000 and 70,000, not requiring treatment, without bleeding
  - Rating: 70
- Stable platelet count between 70,000 and 100,000, without bleeding
  - Rating: 30
- Stable platelet count of 100,000 or more, without bleeding
  - Rating: 0

Note: Rate complications such as systemic infections with encapsulated bacteria separately.
§ 4.118 Schedule of ratings—skin.

7800 Scars, disfiguring, head, face or neck:
   Complete or exceptionally repugnant deformity of one side of face or marked or repugnant bilateral disfigurement ........................................... 50
   Severe, especially if producing a marked and unsightly deformity of eyelids, lips, or auricles ...... 30
   Moderate; disfiguring ............................................ 10
   Slight ..................................................................... 0

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7816 Aplastic anemia:
   Requiring bone marrow transplant, or requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks ...... 100
   Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months .................. 60
   Requiring transfusion of platelets or red cells at least once per year but less than once every three months .......... 30
   Requiring continuous medication for control ....................... 10

Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

60 FR 46227, Sept. 22, 1995

THE SKIN

7707 Spleen, injury of, healed.
Rating
   Rate for any residuals.

7709 Hodgkin's disease:
With active disease or during a treatment phase .................... 100

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7710 Adenitis, tuberculous, active or inactive.
Rate under §§4.88c or 4.89 of this part, whichever is appropriate.

7714 Sickle cell anemia:
   With repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells, with anemia, thrombosis and infarction, with symptoms precluding even light manual labor .......... 100
   With painful crises several times a year or with symptoms precluding other than light manual labor .................. 60
   Following repeated hemolytic sickling crises with continuing impairment of health ............... 30
   Asymptomatic, established case in remission, but with identifiable organ impairment ............... 10

Note: Sickle cell trait alone, without a history of directly attributable pathological findings, is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.

7715 Non-Hodgkin's lymphoma:
   With active disease or during a treatment phase .................... 100

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.
### Department of Veterans Affairs § 4.119

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7801 Scars, burns, third degree:</td>
<td></td>
</tr>
<tr>
<td>Area or areas exceeding 1 square foot (0.1 m²)</td>
<td>40</td>
</tr>
<tr>
<td>Area or areas exceeding one-half square foot (0.05 m²)</td>
<td>30</td>
</tr>
<tr>
<td>Area or areas exceeding 12 square inches (77.4 cm²)</td>
<td>20</td>
</tr>
<tr>
<td>Area or areas exceeding 6 square inches (38.7 cm²)</td>
<td>10</td>
</tr>
<tr>
<td>NOTE (1): Actual third degree residual involvement required to the extent shown under 7801.</td>
<td></td>
</tr>
<tr>
<td>NOTE (2): Ratings for widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7802 Scars, burns, second degree:</td>
<td></td>
</tr>
<tr>
<td>Area or areas exceeding 1 square foot (0.1 m²)</td>
<td>40</td>
</tr>
<tr>
<td>NOTE: See Note (2) under diagnostic code 7801.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7803 Scars, superficial, poorly nourished, with repeated ulceration</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7804 Scars, superficial, tender and painful on objective demonstration</td>
<td>20</td>
</tr>
<tr>
<td>NOTE: The 10 percent rating will be assigned, when the requirements are met, even though the location may be on tip of finger or toe, and the rating may exceed the amputation value for the limited involvement.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7805 Scars, other.</td>
<td>10</td>
</tr>
<tr>
<td>NOTE: Rate on limitation of function of part affected.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7806 Eczema:</td>
<td></td>
</tr>
<tr>
<td>With ulceration or extensive exfoliation or crusting, and systemic or nervous manifestations, or exceptionally repugnant</td>
<td>100</td>
</tr>
<tr>
<td>With exfoliation or itching constant, extensive lesions, or marked disfigurement</td>
<td>60</td>
</tr>
<tr>
<td>With exfoliation, exudation or itching, if involving an exposed surface or extensive area</td>
<td>30</td>
</tr>
<tr>
<td>With slight, if any, exfoliation, exudation or itching, if on a nonexposed surface or small area</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7807 Leishmaniasis, americana (mucocutaneous, espadilla).</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7808 Leishmaniasis, old world (cutaneous, oriental sore)</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7809 Lupus erythematosus, discoid.</td>
<td>10</td>
</tr>
<tr>
<td>NOTE: Not to be combined with ratings under diagnostic code 6350.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7810 Pinta</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7811 Tuberculosis luposa (lupus vulgaris), active or inactive:</td>
<td></td>
</tr>
<tr>
<td>Active</td>
<td>100</td>
</tr>
<tr>
<td>Inactive: See §§ 4.88b and 4.89.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7812 Dermatophytosis.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7814 Tinea barbae.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7816 Psoriasis.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7817 Dermatitis exfoliativa.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7818 New growths, malignant, skin.</td>
<td>10</td>
</tr>
<tr>
<td>NOTE: When in addition to tissue loss and cicatization there is marked discoloration, color contrast, or the like, the 50 percent rating under Code 7800 may be increased to 80 percent, the 30 percent to 50 percent, and the 10 percent to 30 percent. The most repugnant, disfiguring conditions, including scars and diseases of the skin, may be submitted for central office rating, with several unretouched photographs.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7819 New growths, benign, skin.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7820 New growths, malignant, skin.</td>
<td>10</td>
</tr>
</tbody>
</table>

### The Endocrine System § 4.119 Schedule of ratings—endocrine system.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7900 Hyperthyroidism</td>
<td>Rating</td>
</tr>
<tr>
<td>Thyroid enlargement, tachycardia (more than 100 beats per minute), eye involvement, muscular weakness, loss of weight, and sympathetic nervous system, cardiovascular, or gastrointestinal symptoms</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7901 Thyroid gland, toxic adenoma of</td>
<td>Rating</td>
</tr>
<tr>
<td>Thyroid enlargement, tachycardia (more than 100 beats per minute), eye involvement, muscular weakness, loss of weight, and sympathetic nervous system, cardiovascular, or gastrointestinal symptoms</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7902 Thyroid gland, nontoxic adenoma of</td>
<td>Rating</td>
</tr>
<tr>
<td>With disfigurement of the head or neck</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>7903 Thyroid gland, nontoxic adenoma of</td>
<td>Rating</td>
</tr>
<tr>
<td>Without disfigurement of the head or neck</td>
<td>0</td>
</tr>
<tr>
<td>Condition</td>
<td>Rating</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>7903 Hypothyroidism</td>
<td></td>
</tr>
<tr>
<td>Cold intolerance, muscular weakness, cardiovascular involvement, mental disturbance (dementia, slowing of thought, depression), bradycardia (less than 60 beats per minute), and sleepiness</td>
<td>100</td>
</tr>
<tr>
<td>Muscular weakness, mental disturbance, and weight gain</td>
<td>60</td>
</tr>
<tr>
<td>Fatigability, constipation, and mental sluggishness</td>
<td>30</td>
</tr>
<tr>
<td>Gastrointestinal symptoms and weakness</td>
<td>10</td>
</tr>
<tr>
<td>Continuous medication required for control (Continued)</td>
<td></td>
</tr>
<tr>
<td>Generalized decalcification of bones, kidney stones, gastrointestinal symptoms (nausea, vomiting, anorexia, constipation, weight loss, or peptic ulcer), and weakness</td>
<td>60</td>
</tr>
<tr>
<td>Gastrointestinal symptoms and weakness</td>
<td>60</td>
</tr>
<tr>
<td>Gastrointestinal symptoms and weakness</td>
<td>10</td>
</tr>
<tr>
<td>As active, progressive disease including loss of muscle strength, areas of osteoporosis, hypertension, weakness, and enlargement of pituitary or adrenal gland</td>
<td>100</td>
</tr>
<tr>
<td>With striae, obesity, moon face, glucose intolerance, and vascular fragility</td>
<td>60</td>
</tr>
<tr>
<td>NOTE: With recovery or control, evaluate as residuals of adrenal insufficiency or cardiovascular, psychiatric, skin, or skeletal complications under appropriate diagnostic code</td>
<td>10</td>
</tr>
<tr>
<td>Evidence of increased intracranial pressure (such as visual field defect), arthropathy, glucose intolerance, and either hypertension or cardiomegaly</td>
<td>100</td>
</tr>
<tr>
<td>Arthropathy, glucose intolerance, and hypertension</td>
<td>60</td>
</tr>
<tr>
<td>Polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year</td>
<td>30</td>
</tr>
<tr>
<td>Polyuria with near-continuous thirst, and one or more documented episodes of dehydration requiring parenteral hydration in the past year</td>
<td>20</td>
</tr>
<tr>
<td>Polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year</td>
<td>10</td>
</tr>
<tr>
<td>7911 Addison's disease (Adrenal Cortical Hypofunction)</td>
<td></td>
</tr>
<tr>
<td>Four or more crises during the past year</td>
<td></td>
</tr>
</tbody>
</table>

NOTE: If there are symptoms due to pressure on adjacent organs such as the trachea, larynx, or esophagus, evaluate under the diagnostic code for disability of that organ, if doing so would result in a higher evaluation than using this diagnostic code.

NOTE (1): An Addisonian “crisis” consists of the rapid onset of peripheral vascular collapse (with acute hypotension and shock), with findings that may include: anorexia; nausea; vomiting; dehydration; profound weakness; pain in abdomen, legs, and back; fever; apathy; and depressed mental function with possible progression to coma, renal shutdown, and death.

NOTE (2): An Addisonian episode, for VA purposes, is a less acute and less severe event than an Addisonian crisis and may consist of anorexia, nausea, vomiting, diarrhea, dehydration, weakness, malaise, orthostatic hypotension, or hypoglycemia, but no peripheral vascular collapse.

NOTE (3): Tuberculous Addison’s will be evaluated as active or inactive tuberculosis. If inactive, these evaluations are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis specified under §4.88b. Assign the higher rating.

7912 Pluriglandular syndrome Evaluate according to major manifestations. 7913 Diabetes mellitus

Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hyperglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated | 100 |

Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hyperglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated | 60 |

Requiring insulin, restricted diet, and regulation of activities | 40 |

Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet | 20 |

Manageable by restricted diet only | 10 |

NOTE (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation.

Noncompensable complications are considered part of the diabetic process under diagnostic code 7913.

NOTE (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.

7914 Neoplasm, malignant, any specified part of the endocrine system

NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7915 Neoplasm, benign, any specified part of the endocrine system rate as residuals of endocrine dysfunction | 60 |

7916 Hyperpituitarism (prolactin secreting pituitary dysfunction) | 40 |
§ 4.122 Psychomotor epilepsy.

The term psychomotor epilepsy refers to a condition that is characterized by seizures and not uncommonly by a chronic psychiatric disturbance as well.

(a) Psychomotor seizures consist of episodic alterations in conscious control that may be associated with automatic states, generalized convulsions, random motor movements (chewing, lip smacking, fumbling), hallucinatory phenomena (involving taste, smell, sound, vision), perceptual illusions (deja vu, feelings of loneliness, strangeness, macropsia, micropsia, dreamy states), alterations in thinking (not open to reason), alterations in memory, abnormalities of mood or affect (fear, alarm, terror, anger, dread, well-being), and autonomic disturbances (sweating, pallor, flushing of the face, visceral phenomena such as nausea, vomiting, defecation, a rising feeling of warmth in the abdomen). Automatic states or automatism are characterized by episodes of irrational, irrelevant, disjointed, unconventional, asocial, purposeless though seemingly coordinated and purposeful, confused or inappropriate activity of one to several minutes (or, infrequently, hours) duration with subsequent amnesia for the seizure. Examples: A person of high social standing remained seated, muttered angrily, and rubbed the arms of his chair while the National Anthem was being played; an apparently normal person suddenly disrobed in public; a man traded an expensive automobile for an antiquated automobile in poor mechanical condition and after regaining conscious control, discovered that he had signed an agreement to pay an additional sum of money in the trade.

(b) A chronic mental disorder is not uncommon as an interseizure manifestation of psychomotor epilepsy and may include psychiatric disturbances extending from minimal anxiety to severe personality disorder (as distinguished from developmental) or almost complete personality disintegration (psychosis). The manifestations of a chronic mental disorder associated
with psychomotor epilepsy, like those of the seizures, are protean in character.

§ 4.123  Neuritis, cranial or peripheral.

Neuritis, cranial or peripheral, characterized by loss of reflexes, muscle atrophy, sensory disturbances, and constant pain, at times excruciating, is to be rated on the scale provided for injury of the nerve involved, with a maximum equal to severe, incomplete, paralysis. See nerve involved for diagnostic code number and rating. The maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate, or with sciatic nerve involvement, for moderately severe, incomplete paralysis.

§ 4.124  Neuralgia, cranial or peripheral.

Neuralgia, cranial or peripheral, characterized usually by a dull and intermittent pain, of typical distribution so as to identify the nerve, is to be rated on the same scale, with a maximum equal to moderate incomplete paralysis. See nerve involved for diagnostic code number and rating. Tic douloureux, or trifacial neuralgia, may be rated up to complete paralysis.

§ 4.124a  Schedule of ratings—neurological conditions and convulsive disorders.

[With the exceptions noted, disability from the following diseases and their residuals may be rated from 10 percent to 100 percent in proportion to the impairment of motor, sensory, or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, etc., referring to the appropriate bodily system of the schedule. With partial loss of use of one or more extremities from neurological lesions, rate by comparison with the mild, moderate, severe, or complete paralysis of peripheral nerves]

ORGANIC DISEASES OF THE CENTRAL NERVOUS SYSTEM

<table>
<thead>
<tr>
<th>Rate residuals, minimum</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brain, new growth of:</td>
<td>10</td>
</tr>
<tr>
<td>8002 Malignant</td>
<td>100</td>
</tr>
</tbody>
</table>

NOTE: The rating in code 8002 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8004 Paralysis agitans: Minimum rating</td>
<td>30</td>
</tr>
<tr>
<td>8005 Bulbar palsy</td>
<td>100</td>
</tr>
<tr>
<td>8007 Brain, vessels, embolism of.</td>
<td>Rate residuals, thereafter, minimum</td>
</tr>
<tr>
<td>8008 Brain, vessels, thrombosis of.</td>
<td>Rate residuals, minimum</td>
</tr>
<tr>
<td>8009 Brain, vessels, hemorrhage from: Rate the vascular conditions under Codes 8007 through 8009, for 6 months</td>
<td>100</td>
</tr>
<tr>
<td>Rate residuals, thereafter, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8010 Myelitis: Minimum rating</td>
<td>10</td>
</tr>
<tr>
<td>8011 Poliomyelitis, anterior: As active febrile disease</td>
<td>100</td>
</tr>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8012 Hematomyelia: For 6 months</td>
<td>100</td>
</tr>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8013 Syphilis, cerebrospinal.</td>
<td>Rate residuals, thereafter, minimum</td>
</tr>
<tr>
<td>8014 Syphilis, meningovascular.</td>
<td>Rate residuals, thereafter, minimum</td>
</tr>
<tr>
<td>8015 Tabes dorsalis. Rate upon the severity of convulsions, paralysis, visual impairment or psychotic involvement, etc.</td>
<td>Rate residuals, thereafter, minimum</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>8017 Amyotrophic lateral sclerosis: Minimum rating</td>
<td>30</td>
</tr>
<tr>
<td>8018 Multiple sclerosis: Minimum rating</td>
<td>30</td>
</tr>
<tr>
<td>8019 Meningitis, cerebrospinal, epidemic: As active febrile disease</td>
<td>100</td>
</tr>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8020 Brain, abscess of: Rate residuals, thereafter, minimum</td>
<td>10</td>
</tr>
<tr>
<td>As active disease</td>
<td>100</td>
</tr>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>Spinal cord, new growths of: Rate residuals, thereafter, minimum</td>
<td>100</td>
</tr>
<tr>
<td>8021 Malignant</td>
<td>Minimum rating</td>
</tr>
</tbody>
</table>

NOTE: The rating in code 8021 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate residuals, minimum</td>
<td>10</td>
</tr>
<tr>
<td>8022 Benign, minimum rating</td>
<td>60</td>
</tr>
<tr>
<td>8023 Progressive muscular atrophy: Minimum rating</td>
<td>30</td>
</tr>
<tr>
<td>8024 Syringomyelia: Minimum rating</td>
<td>30</td>
</tr>
<tr>
<td>8025 Myasthenia gravis: Minimum rating</td>
<td>30</td>
</tr>
</tbody>
</table>
NOTE: It is required for the minimum ratings for residuals under diagnostic codes 8000–8025, that there be ascertainable residuals. Determinations as to the presence of residuals not capable of objective verification, i.e., headaches, dizziness, fatigability, must be approached on the basis of the diagnosis recorded; subjective residuals will be accepted when consistent with the disease and not more likely attributable to other disease or no disease. It is of exceptional importance that when ratings in excess of the prescribed minimum ratings are assigned, the diagnostic codes utilized as bases of evaluation be cited, in addition to the codes identifying the diseases.

8045 Brain disease due to trauma:

Purely neurological disabilities, such as hemiplegia, epilepsy, seizures, facial nerve paralysis, etc., following trauma to the brain, will be rated under the diagnostic codes specifically dealing with such disabilities, with citation of a hyphenated diagnostic code (e.g., 8045–8207).

Purely subjective complaints such as headache, dizziness, insomnia, etc., recognized as symptomatic of brain trauma, will be rated 10 percent and no more under diagnostic code 9304. This 10 percent rating will not be combined with any other rating for a disability due to brain trauma. Ratings in excess of 10 percent for brain disease due to trauma under diagnostic code 9304 are not assignable in the absence of a diagnosis of multi-infarct dementia associated with brain trauma.

8046 Cerebral arteriosclerosis:

Purely neurological disabilities, such as hemiplegia, cranial nerve paralysis, etc., due to cerebral arteriosclerosis will be rated under the diagnostic codes specifically dealing with such specific disabilities, with citation of a hyphenated diagnostic code (e.g., 8046–8207).

Purely subjective complaints such as headache, dizziness, insomnia and irritability, recognized as symptomatic of a properly diagnosed cerebral arteriosclerosis, will be rated 10 percent and no more under diagnostic code 9305. This 10 percent rating will not be combined with any other rating for a disability due to cerebral or generalized arteriosclerosis. Ratings in excess of 10 percent for cerebral arteriosclerosis under diagnostic code 9305 are not assignable in the absence of a diagnosis of multi-infarct dementia associated with cerebral arteriosclerosis.

NOTE: The ratings under code 8046 apply only when the diagnosis of cerebral arteriosclerosis is substantiated by the entire clinical picture and not solely on findings of retinal arteriosclerosis.

### MISCELLANEOUS DISEASES

8100 Migraine:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability</td>
</tr>
<tr>
<td></td>
<td>With characteristic prostrating attacks occurring on an average once a month over last several months</td>
</tr>
<tr>
<td></td>
<td>With characteristic prostrating attacks averaging one in 2 months over last several months</td>
</tr>
<tr>
<td></td>
<td>With less frequent attacks</td>
</tr>
<tr>
<td>8103 Tic, convulsive:</td>
<td></td>
</tr>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Mild</td>
<td>0</td>
</tr>
<tr>
<td>NOTE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Depending upon frequency, severity, muscle groups involved.</td>
</tr>
<tr>
<td>8104 Paramyoclonus multiplex (convulsive state, myoclonic type):</td>
<td></td>
</tr>
<tr>
<td>Rate as tic; convulsive; severe cases</td>
<td>60</td>
</tr>
<tr>
<td>8105 Chorea, Sydenham’s:</td>
<td></td>
</tr>
<tr>
<td>Pronounced, progressive grave types</td>
<td>100</td>
</tr>
<tr>
<td>Severe</td>
<td>80</td>
</tr>
<tr>
<td>Moderately severe</td>
<td>50</td>
</tr>
<tr>
<td>Moderate</td>
<td>30</td>
</tr>
<tr>
<td>Mild</td>
<td>10</td>
</tr>
<tr>
<td>NOTE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consider rheumatic etiology and complications.</td>
</tr>
<tr>
<td>8106 Chorea, Huntington’s:</td>
<td></td>
</tr>
<tr>
<td>Rate as Sydenham’s chorea. This, though a familial disease, has its onset in late adult life, and is considered a ratable disability.</td>
<td></td>
</tr>
<tr>
<td>8107 Athetosis, acquired.</td>
<td></td>
</tr>
<tr>
<td>Rate as chorea.</td>
<td></td>
</tr>
<tr>
<td>8108 Narcolepsy.</td>
<td></td>
</tr>
<tr>
<td>Rate as for epilepsy, petit mal.</td>
<td></td>
</tr>
</tbody>
</table>

### DISEASES OF THE CRANIAL NERVES

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Disability from lesions of peripheral portions of first, second, third, fourth, sixth, and eighth nerves will be rated under the Organs of Special Sense. The ratings for the cranial nerves are for unilateral involvement; when bilateral, combine but without the bilateral factor.</td>
</tr>
<tr>
<td>8205 Paralysis of:</td>
<td></td>
</tr>
<tr>
<td>Complete</td>
<td>50</td>
</tr>
<tr>
<td>Incomplete, severe</td>
<td>30</td>
</tr>
<tr>
<td>Incomplete, moderate</td>
<td>10</td>
</tr>
<tr>
<td>NOTE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dependent upon relative degree of sensory manifestation or motor loss.</td>
</tr>
<tr>
<td>8305 Neuritis.</td>
<td></td>
</tr>
<tr>
<td>8405 Neuralgia.</td>
<td></td>
</tr>
<tr>
<td>NOTE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tic douloureux may be rated in accordance with severity, up to complete paralysis.</td>
</tr>
<tr>
<td>8207 Paralysis of:</td>
<td></td>
</tr>
<tr>
<td>Complete</td>
<td>30</td>
</tr>
<tr>
<td>Incomplete, severe</td>
<td>20</td>
</tr>
<tr>
<td>Incomplete, moderate</td>
<td>10</td>
</tr>
<tr>
<td>NOTE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dependent upon relative loss of innervation of facial muscles.</td>
</tr>
<tr>
<td>8307 Neuritis.</td>
<td></td>
</tr>
<tr>
<td>8407 Neuralgia.</td>
<td></td>
</tr>
<tr>
<td>Ninth (glossopharyngeal) cranial nerve.</td>
<td></td>
</tr>
<tr>
<td>8209 Paralysis of:</td>
<td></td>
</tr>
<tr>
<td>Complete</td>
<td>30</td>
</tr>
<tr>
<td>Incomplete, severe</td>
<td>20</td>
</tr>
<tr>
<td>Incomplete, moderate</td>
<td>10</td>
</tr>
</tbody>
</table>
### DISEASES OF THE CRANIAL NERVES—Continued

**NOTE:** Dependent upon relative loss of ordinary sensation in mucous membrane of the pharynx, faucets, and tonsils.

- **8309** Neuritis.
- **8409** Neuralgia.
- **8210** Paralysis of:
  - Complete .............................................................. 50
  - Incomplete, severe ............................................... 30
  - Incomplete, moderate ........................................... 10

**NOTE:** Dependent upon extent of sensory and motor loss to organs of voice, respiration, pharynx, stomach and heart.

- **8310** Neuritis.
- **8410** Neuralgia.
- **8211** Paralysis of:
  - Complete .............................................................. 30
  - Incomplete, severe ............................................... 20
  - Incomplete, moderate ........................................... 10

**NOTE:** Dependent upon loss of motor function of sternomastoid and trapezius muscles.

- **8311** Neuritis.
- **8411** Neuralgia.
- **8212** Paralysis of:
  - Complete .............................................................. 50
  - Incomplete, severe ............................................... 30
  - Incomplete, moderate ........................................... 10

**NOTE:** Dependent upon loss of motor function of tongue.

- **8312** Neuritis.
- **8412** Neuralgia.

---

### DISEASES OF THE PERIPHERAL NERVES

**Schedule of ratings**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>8610</td>
<td>Neuritis.</td>
<td></td>
</tr>
<tr>
<td>8710</td>
<td>Neuralgia.</td>
<td></td>
</tr>
<tr>
<td><strong>Middle radicular group</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8511</td>
<td>Paralysis of:</td>
<td></td>
</tr>
<tr>
<td>Complete; all shoulder and elbow movements lost or severely affected</td>
<td>70</td>
<td>60</td>
</tr>
<tr>
<td>Incomplete</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severe</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>Moderate</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Mild</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

**Lower radicular group**

- **8512** Paralysis of:
  - Complete; all intrinsic muscles of hand, and some or all of flexors of wrist and fingers, paralyzed (substantial loss of use of hand) | 70 | 60 |
  - Incomplete:
    - Severe | 50 | 40 |
    - Moderate | 40 | 30 |
    - Mild | 20 | 20 |

- **8513** Paralysis of:
  - Complete | 90 | 80 |
  - Incomplete:
    - Severe | 70 | 60 |
    - Moderate | 40 | 30 |
    - Mild | 20 | 20 |

- **8514** Paralysis of:
  - Complete; drop of hand and fingers, wrist and fingers perpetually flexed, the thumb adducted falling within the line of the outer border of the index finger; can not extend hand at wrist, extend proximal phalanges of fingers, extend thumb, or make lateral movement of wrist; supination of hand, extension and flexion of elbow weakened, the loss of synergic motion of extensors impairs the hand grip seriously; total paralysis of the triceps occurs only as the greatest rarity | 70 | 60 |
  - Incomplete:
    - Severe | 50 | 40 |
    - Moderate | 30 | 20 |
    - Mild | 20 | 20 |

**The musculospiral nerve (radial nerve)**

- **8515** Paralysis of:
  - Complete; all shoulder and elbow movements lost or severely affected, hand and wrist movements not affected | 70 | 60 |
  - Incomplete:
    - Severe | 50 | 40 |
    - Moderate | 40 | 30 |
    - Mild | 20 | 20 |

---

The term "incomplete paralysis," with this and other peripheral nerve injuries, indicates a degree of lost or impaired function substantially less than the type picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. The ratings for the peripheral nerves are for unilateral involvement; when bilateral, combine with application of the bilateral factor.
### DISEASES OF THE PERIPHERAL NERVES—Continued

<table>
<thead>
<tr>
<th>Schedule of ratings</th>
<th>Rating Major</th>
<th>Rating Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>8614 Neuritis.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8714 Neuralgia.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** Lesions involving only "dissociation of extensor communis digitorum" and "paralysis below the extensor communis digitorum," will not exceed the moderate rating under code 8514.

### The median nerve

**8515 Paralysis of:**
- Complete: the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (apex hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanges of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances ...
- Incomplete:
  - Severe ............................................. 50 40
  - Moderate ......................................... 30 20
  - Mild ............................................... 10 10

**Musculocutaneous nerve**

8516 Paralysis of:
- Complete: weakness but not loss of flexion of elbow and supination of forearm
- Incomplete:
  - Severe ............................................. 30 20
  - Moderate ......................................... 20 20
  - Mild ............................................... 10 10

8617 Neuritis.
8717 Neuralgia.

### Sciatric nerve

8520 Paralysis of:
- Complete: the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost ......... 80
- Incomplete:
  - Severe, with marked muscular atrophy ............... 60
  - Moderately severe .................................. 40
  - Moderate ........................................... 20
  - Mild ................................................ 10

8620 Neuritis.
8720 Neuralgia.

### External popliteal nerve (common peroneal)

8521 Paralysis of:
- Complete: foot drop and slight droop of first phalanges of toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes ............ 40
- Incomplete:
  - Severe ............................................. 30
  - Moderate ........................................... 20
  - Mild ................................................ 10

8621 Neuritis.
8721 Neuralgia.

### Musculocutaneous nerve (superficial peroneal)

8522 Paralysis of:
- Complete: eversion of foot weakened .... 30
- Incomplete:
  - Severe ............................................. 20
  - Moderate .......................................... 10
  - Mild ............................................... 0
§ 4.124a

Rating

8622 Neuritis.
8722 Neuralgia.

Anterior tibial nerve (deep peroneal)
8523 Paralysis of:
Complete; dorsal flexion of foot lost .......... 30
Incomplete:
Severe .................................................. 20
Moderate .............................................. 10
Mild ....................................................... 0
8623 Neuritis.
8723 Neuralgia.

Internal popliteal nerve (tibial)
8524 Paralysis of:
Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa, plantar flexion of foot is lost ................. 40
Incomplete:
Severe .................................................. 30
Moderate .............................................. 20
Mild ....................................................... 10
8624 Neuritis.
8724 Neuralgia.

Posterior tibial nerve
8525 Paralysis of:
Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired ................. 30
Incomplete:
Severe .................................................. 20
Moderate .............................................. 10
Mild ....................................................... 10
8625 Neuritis.
8725 Neuralgia.

Anterior crural nerve (femoral)
8526 Paralysis of:
Complete; paralysis of quadriceps extensor muscles ........................................ 40
Incomplete:
Severe .................................................. 30
Moderate .............................................. 20
Mild ....................................................... 10
8626 Neuritis.
8726 Neuralgia.

Internal saphenous nerve
8527 Paralysis of:
Severe to complete ..................................... 10
Mild to moderate ........................................ 0
8627 Neuritis.
8727 Neuralgia.

Obturator nerve
8528 Paralysis of:
Severe to complete ..................................... 10
Mild or moderate ........................................ 0
8628 Neuritis.
8728 Neuralgia.

External cutaneous nerve of thigh
8529 Paralysis of:
Severe to complete ..................................... 10
Mild or moderate ........................................ 0
8629 Neuritis.
8729 Neuralgia.

Ilio-inguinal nerve
8530 Paralysis of:
Severe to complete ..................................... 10
Mild or moderate ........................................ 0
8630 Neuritis.
8730 Neuralgia.

8540 Soft-tissue sarcoma (of neurogenic origin) ....................................................... 100
NOTE: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

THE EPILEPSIES

Rating

8910 Epilepsy, grand mal.
Rate under the general rating formula for major seizures.

8911 Epilepsy, petit mal.
Rate under the general rating formula for minor seizures.

NOTE (1): A major seizure is characterized by the generalized tonic-clonic convolution with unconsciousness.

NOTE (2): A minor seizure consists of a brief interruption in consciousness or conscious control associated with staring or rhythmic blinking of the eyes or nodding of the head (“pure” petit mal), or sudden jerking movements of the arms, trunk, or head (myoclonic type) or sudden loss of postural control (akinetic type).

General Rating Formula for Major and Minor Epileptic Seizures:
Averaging at least 1 major seizure per month over the last year ................. 100
Averaging at least 1 major seizure in 3 months over the last year; or more than 10 minor seizures weekly ......................... 80
Averaging at least 1 major seizure in 4 months over the last year; or 9–10 minor seizures per week ......................... 60
At least 1 major seizure in the last 6 months or 2 in the last year; or averaging at least 5 to 8 minor seizures weekly ......................... 40
At least 1 major seizure in the last 2 years; or at least 2 minor seizures in the last 6 months .................................................. 20
A confirmed diagnosis of epilepsy with a history of seizures .................................................. 10
Mental Disorders in Epilepsies: A nonpsychotic organic brain syndrome will be rated separately under the appropriate diagnostic code (e.g., 3304 or 3307). In the absence of a diagnosis of nonpsychotic organic psychiatric disturbance (psychotic, psychoneurotic or personality disorder) if diagnosed and shown to be secondary to or directly associated with epilepsy, the epileptic will be rated separately. The psychotic or psychoneurotic disorder will be rated under the appropriate diagnostic code (e.g., diagnostic code 3004 or 3007).

Major seizures: Psychomotor seizures will be rated as major seizures under the general rating formula when characterized by automatic states and/or generalized convulsions with unconsciousness.

Minor seizures: Psychomotor seizures will be rated as minor seizures under the general rating formula when characterized by brief transient episodes of random motor movements, hallucinations, perceptual illusions, abnormalities of thinking, memory or mood, or autonomic disturbances.

3. The assent of the claimant should first be obtained for permission to conduct this economic and social survey. The purpose of this survey is to secure all the relevant facts and data necessary to permit of a true judgment as to the reason for his or her unemployment and should include information as to:
   (a) Education;
   (b) Occupations prior and subsequent to service;
   (c) Places of employment and reasons for termination;
   (d) Wages received;
   (e) Number of seizures;

4. Upon completion of this survey and current examination, the case should have rating board consideration. Where in the judgment of the rating board the veteran’s unemployability is due to epilepsy and jurisdiction is not vested in that body by reason of schedular evaluations, the case should be submitted to the Director, Compensation and Pension Service.

(a) When evaluating a mental disorder, the rating agency shall consider the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the veteran’s capacity for adjustment during periods of remission. The rating agency shall assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner’s assessment of the level of disability at the moment of the examination.

(b) When evaluating the level of disability from a mental disorder, the rating agency will consider the extent of social impairment, but shall not assign an evaluation solely on the basis of social impairment.

(c) Delirium, dementia, and amnestic and other cognitive disorders shall be evaluated under the general rating formula for mental disorders; neurologic deficits or other impairments stemming from the same etiology (e.g., a head injury) shall be evaluated separately and combined with the evaluation for delirium, dementia, or amnestic or other cognitive disorder (see §4.25).

(d) When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating
§ 4.127

agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition (see §4.14).

(Authority: 38 U.S.C. 1155)

[61 FR 52700, Oct. 8, 1996]

§ 4.127 Mental retardation and personality disorders.

Mental retardation and personality disorders are not diseases or injuries for compensation purposes, and, except as provided in §3.310(a) of this chapter, disability resulting from them may not be service-connected. However, disability resulting from a mental disorder that is superimposed upon mental retardation or a personality disorder may be service-connected.

(Authority: 38 U.S.C. 1155)

[61 FR 52700, Oct. 8, 1996]

§ 4.128 Convalescence ratings following extended hospitalization.

If a mental disorder has been assigned a total evaluation due to a continuous period of hospitalization lasting six months or more, the rating agency shall continue the total evaluation indefinitely and schedule a mandatory examination six months after the veteran is discharged or released to nonbed care. A change in evaluation based on that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

(Authority: 38 U.S.C. 1155)

[61 FR 52700, Oct. 8, 1996]

§ 4.129 Mental disorders due to traumatic stress.

When a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran’s release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six month period following the veteran’s discharge to determine whether a change in evaluation is warranted.

(Authority: 38 U.S.C. 1155)

[61 FR 52700, Oct. 8, 1996]

§ 4.130 Schedule of ratings—mental disorders.

The nomenclature employed in this portion of the rating schedule is based upon the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, of the American Psychiatric Association (DSM-IV). Rating agencies must be thoroughly familiar with this manual to properly implement the directives in §4.125 through §4.129 and to apply the general rating formula for mental disorders in §4.130. The schedule for rating for mental disorders is set forth as follows:

<table>
<thead>
<tr>
<th>Schizophrenia and Other Psychotic Disorders</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>9201 Schizophrenia, disorganized type</td>
<td></td>
</tr>
<tr>
<td>9202 Schizophrenia, catatonic type</td>
<td></td>
</tr>
<tr>
<td>9203 Schizophrenia, paranoid type</td>
<td></td>
</tr>
<tr>
<td>9204 Schizophrenia, undifferentiated type</td>
<td></td>
</tr>
<tr>
<td>9205 Schizophrenia, residual type; other and unspecified types</td>
<td></td>
</tr>
<tr>
<td>9208 Delusional disorder</td>
<td></td>
</tr>
<tr>
<td>9210 Psychotic disorder, not otherwise specified (atypical psychosis)</td>
<td></td>
</tr>
<tr>
<td>9211 Schizoaffective disorder</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Delirium, Dementia, and Amnestic and Other Cognitive Disorders</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>9300 Delirium</td>
<td></td>
</tr>
<tr>
<td>9301 Dementia due to infection (HIV infection, syphilis, or other systemic or intracranial infections)</td>
<td></td>
</tr>
<tr>
<td>9304 Dementia due to head trauma</td>
<td></td>
</tr>
<tr>
<td>9305 Vascular dementia</td>
<td></td>
</tr>
<tr>
<td>9310 Dementia of unknown etiology</td>
<td></td>
</tr>
<tr>
<td>9312 Dementia of the Alzheimer’s type</td>
<td></td>
</tr>
<tr>
<td>9326 Dementia due to other neurologic or general medical conditions (endocrine disorders, metabolic disorders, Pick’s disease, brain tumors, etc.) or that are substance-induced (drugs, alcohol, poisons)</td>
<td></td>
</tr>
<tr>
<td>9327 Organic mental disorder, other (including personality change due to a general medical condition)</td>
<td></td>
</tr>
</tbody>
</table>

412
### Anxiety Disorders

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9400</td>
<td>Generalized anxiety disorder</td>
<td></td>
</tr>
<tr>
<td>9403</td>
<td>Specific (simple) phobia; social phobia</td>
<td></td>
</tr>
<tr>
<td>9404</td>
<td>Obsessive compulsive disorder</td>
<td></td>
</tr>
<tr>
<td>9410</td>
<td>Other and unspecified neurosis</td>
<td></td>
</tr>
<tr>
<td>9411</td>
<td>Post-traumatic stress disorder</td>
<td></td>
</tr>
<tr>
<td>9412</td>
<td>Panic disorder and/or agoraphobia</td>
<td></td>
</tr>
<tr>
<td>9413</td>
<td>Anxiety disorder, not otherwise specified</td>
<td></td>
</tr>
</tbody>
</table>

### Dissociative Disorders

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9416</td>
<td>Dissociative amnesia; dissociative fugue; dissociative identity disorder (multiple personality disorder)</td>
<td></td>
</tr>
<tr>
<td>9417</td>
<td>Depersonalization disorder</td>
<td></td>
</tr>
</tbody>
</table>

### Somatoform Disorders

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9421</td>
<td>Somatization disorder</td>
<td></td>
</tr>
<tr>
<td>9422</td>
<td>Pain disorder</td>
<td></td>
</tr>
<tr>
<td>9423</td>
<td>Undifferentiated somatoform disorder</td>
<td></td>
</tr>
<tr>
<td>9424</td>
<td>Conversion disorder</td>
<td></td>
</tr>
<tr>
<td>9425</td>
<td>Hypochondriasis</td>
<td></td>
</tr>
</tbody>
</table>

### Mood Disorders

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9431</td>
<td>Cyclothymic disorder</td>
<td></td>
</tr>
<tr>
<td>9432</td>
<td>Bipolar disorder</td>
<td></td>
</tr>
<tr>
<td>9433</td>
<td>Dysthymic disorder</td>
<td></td>
</tr>
<tr>
<td>9434</td>
<td>Major depressive disorder</td>
<td></td>
</tr>
<tr>
<td>9435</td>
<td>Mood disorder, not otherwise specified</td>
<td></td>
</tr>
</tbody>
</table>

### Chronic Adjustment Disorder

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9440</td>
<td>Chronic adjustment disorder</td>
<td></td>
</tr>
</tbody>
</table>

---

**General Rating Formula for Mental Disorders:**

Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name ................................................................. 100

Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships ................................................................. 70

Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships ................................................................. 50

Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events) ................................................................. 30

Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication ............................................................................................................. 10

A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication ............................................................................................................. 0

### Eating Disorders

<table>
<thead>
<tr>
<th>Rating</th>
<th>Code</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>9520</td>
<td>Anorexia nervosa</td>
<td></td>
</tr>
<tr>
<td>9521</td>
<td>Bulimia nervosa</td>
<td></td>
</tr>
</tbody>
</table>
§ 4.149 Rating diseases of the teeth and gums.

Treatable curable teeth, replaceable missing teeth, dental or alveolar abscesses, periodontal disease (pyorrhea), and Vincent’s stomatitis are not disabling conditions, and may be considered service-connected solely for the purpose of determining entitlement to dental examinations or outpatient dental treatment under the provisions of §17.120 or §17.123 of this chapter.

[59 FR 2530, Jan. 18, 1994]

§ 4.150 Schedule of ratings—dental and oral conditions.

9900 Maxilla or mandible, chronic osteomyelitis or osteoradionecrosis of:

Rating Formula for Eating Disorders:

Rating

Rating

Range of lateral excursion:

21 to 30 mm .......................................................... 20
31 to 40 mm .......................................................... 10

NOTE—Ratings for limited inter-incisal movement shall not be combined with ratings for limited lateral excursion.

50
30

Bilateral ............................................................. 30
Unilateral ........................................................... 20

9906 Ramus, loss of whole or part of:
Not involving temporomandibular articulation
Bilateral ............................................................. 50
Unilateral ........................................................... 30

9907 Ramus, loss of less than one-half of the substance of, not involving loss of continuity:
Bilateral ............................................................. 20
Unilateral ........................................................... 10

9908 Condylid process, loss of, one or both sides:

20
30

9909 Coronid process, loss of:
Bilateral ............................................................. 20
Unilateral ........................................................... 10

9911 Hard palate, loss of half or more:
Not replaceable by prosthesis ........................................ 30
Replaceable by prosthesis .......................................... 10

9912 Hard palate, loss of less than half of:
Not replaceable by prosthesis ........................................ 20

9913 Teeth, loss of, due to loss of substance of body of maxilla or mandible without loss of continuity:
Where the lost masticatory surface cannot be restored by suitable prosthesis:
Loss of all teeth ...................................................... 40
Loss of all upper teeth ............................................ 30
Loss of all lower teeth ............................................ 30

All upper and lower posterior teeth missing .......... 20
All upper and lower anterior teeth missing .......... 20
All upper anterior teeth missing ......................... 10
All lower anterior teeth missing ......................... 10

All upper and lower teeth on one side missing ...... 10

Where the loss of masticatory surface can be restored by suitable prosthesis ........................................ 0

11 to 20 mm .......................................................... 30

NOTE: An incapacitating episode is a period during which bed rest and treatment by a physician are required.

(Authority: 38 U.S.C. 1155)

[61 FR 52700, Oct. 8, 1996]
NOTE—These ratings apply only to bone loss through trauma or disease such as osteomyelitis, and not to the loss of the alveolar process as a result of periodontal disease, since such loss is not considered disabling.

9914 Maxilla, loss of more than half:
Not replaceable by prosthesis .................................. 100
Replaceable by prosthesis .................................. 50

9915 Maxilla, loss of half or less:
Loss of 25 to 50 percent:
Not replaceable by prosthesis .................................. 40
Replaceable by prosthesis .................................. 30
Loss of less than 25 percent:
Not replaceable by prosthesis .................................. 20
Replaceable by prosthesis .................................. 0

9916 Maxilla, malunion or nonunion of:
Severe displacement .................................. 30
Moderate displacement .................................. 10
Slight displacement .................................. 0

[59 FR 2530, J an. 18, 1994]

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.16</td>
<td>Last sentence; March 1, 1963.</td>
</tr>
<tr>
<td>4.17</td>
<td>October 7, 1948.</td>
</tr>
<tr>
<td>4.17a</td>
<td>March 1, 1963.</td>
</tr>
<tr>
<td>4.29</td>
<td>Introductory portion preceding paragraph (a); paragraph (a)(1); June 9, 1952.</td>
</tr>
<tr>
<td>4.29a</td>
<td>Paragraph (a) “first day of continuous hospitalization”; April 8, 1959.</td>
</tr>
<tr>
<td>4.30</td>
<td>Introductory portion of paragraph (a) preceding subparagraph (1); July 6, 1950.</td>
</tr>
<tr>
<td>4.30a</td>
<td>Paragraph (a)(1); June 9, 1952.</td>
</tr>
<tr>
<td>4.30b</td>
<td>Paragraph (a)(2); June 9, 1952.</td>
</tr>
<tr>
<td>4.30c</td>
<td>Paragraph (a)(3); June 9, 1952. Effective as to outpatient treatment March 10, 1976.</td>
</tr>
<tr>
<td>4.30d</td>
<td>Paragraph (b)(1); March 1, 1963.</td>
</tr>
<tr>
<td>4.30e</td>
<td>Paragraph (b)(2); August 9, 1976.</td>
</tr>
<tr>
<td>4.30f</td>
<td>Paragraph (b) first sentence; March 1, 1963.</td>
</tr>
<tr>
<td>4.55</td>
<td>June 17, 1948.</td>
</tr>
<tr>
<td>4.64</td>
<td>October 1, 1956.</td>
</tr>
<tr>
<td>4.71a</td>
<td>Diagnostic Code 5000—60 percent; February 1, 1962.</td>
</tr>
<tr>
<td>4.71c</td>
<td>Last sentence; July 6, 1950.</td>
</tr>
<tr>
<td>4.72</td>
<td>Diagnostic Code 5002—100 percent, 60 percent, 40 percent, 20 percent; March 1, 1963.</td>
</tr>
<tr>
<td>4.72a</td>
<td>Diagnostic Code 5002—Note; March 10, 1976.</td>
</tr>
<tr>
<td>4.73</td>
<td>In sentence following DC 5054: “except gout which will be rated under 5002”; March 1, 1963.</td>
</tr>
<tr>
<td>4.74</td>
<td>Diagnostic Code 5051; Diagnostic Code 5052; Diagnostic Code 5053;</td>
</tr>
</tbody>
</table>
### APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Diagnostic Code</th>
<th>Effective Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.115a</td>
<td>Diagnostic Code 7101; October 1, 1961.</td>
<td></td>
</tr>
<tr>
<td>4.115b</td>
<td>Diagnostic Code 7102; October 1, 1961.</td>
<td></td>
</tr>
<tr>
<td>4.116a</td>
<td>Diagnostic Code 7103—Evaluations; February 17, 1955.</td>
<td></td>
</tr>
</tbody>
</table>

#### APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES

**[ACUTE, SUBACUTE, OR CHRONIC DISEASES]**

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5000</td>
<td>Osteomyelitis, acute, subacute, or chronic.</td>
</tr>
<tr>
<td>5001</td>
<td>Bones and Joints, tuberculosis of.</td>
</tr>
<tr>
<td>5002</td>
<td>Arthritis, rheumatoid (atrophic).</td>
</tr>
<tr>
<td>5003</td>
<td>Arthritis, degenerative, hypertrophic, or osteoarthritis.</td>
</tr>
<tr>
<td>5004</td>
<td>Arthritis, gonorrheal.</td>
</tr>
<tr>
<td>5005</td>
<td>Arthritis, pneumococcic.</td>
</tr>
<tr>
<td>5006</td>
<td>Arthritis, typhoid.</td>
</tr>
<tr>
<td>5007</td>
<td>Arthritis, syphilitic.</td>
</tr>
<tr>
<td>5008</td>
<td>Arthritis, streptococcic.</td>
</tr>
</tbody>
</table>
### ACUTE, SUBACUTE, OR CHRONIC DISEASES

#### Diagnosis Code

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>5009</td>
<td>Arthritis, other types.</td>
</tr>
<tr>
<td>5010</td>
<td>Arthritis, due to trauma.</td>
</tr>
<tr>
<td>5011</td>
<td>Bones, causson disease of.</td>
</tr>
<tr>
<td>5012</td>
<td>Bones, new growths of, malignant.</td>
</tr>
<tr>
<td>5013</td>
<td>Osteoporosis, with joint manifestations.</td>
</tr>
<tr>
<td>5014</td>
<td>Osteomalacia.</td>
</tr>
<tr>
<td>5015</td>
<td>Bones, new growths of, benign.</td>
</tr>
<tr>
<td>5016</td>
<td>Osteitis deformans.</td>
</tr>
<tr>
<td>5017</td>
<td>Gout.</td>
</tr>
<tr>
<td>5018</td>
<td>Hydrarthrosis, intermittent.</td>
</tr>
<tr>
<td>5019</td>
<td>Bursitis.</td>
</tr>
<tr>
<td>5020</td>
<td>Synovitis.</td>
</tr>
<tr>
<td>5021</td>
<td>Myositis.</td>
</tr>
<tr>
<td>5022</td>
<td>Periostitis.</td>
</tr>
<tr>
<td>5023</td>
<td>Myositis ossificans.</td>
</tr>
<tr>
<td>5024</td>
<td>Tenosynovitis.</td>
</tr>
</tbody>
</table>

#### COMBINATIONS OF DISABILITIES

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5100</td>
<td>Anatomical loss of both hands and both feet.</td>
</tr>
<tr>
<td>5101</td>
<td>Loss of use of both hands and both feet.</td>
</tr>
<tr>
<td>5102</td>
<td>Anatomical loss of both hands and one hand.</td>
</tr>
<tr>
<td>5103</td>
<td>Loss of use of both hands and one hand.</td>
</tr>
<tr>
<td>5104</td>
<td>Loss of use of both hands and one hand.</td>
</tr>
<tr>
<td>5105</td>
<td>Loss of use of both hands and one hand.</td>
</tr>
<tr>
<td>5106</td>
<td>Anatomical loss of both hands.</td>
</tr>
<tr>
<td>5107</td>
<td>Anatomical loss of both feet.</td>
</tr>
<tr>
<td>5108</td>
<td>Anatomical loss of one hand and one foot.</td>
</tr>
<tr>
<td>5109</td>
<td>Loss of use of both hands.</td>
</tr>
<tr>
<td>5110</td>
<td>Loss of use of both feet.</td>
</tr>
<tr>
<td>5111</td>
<td>Loss of use of one hand and one foot.</td>
</tr>
</tbody>
</table>

#### AMPUTATIONS: UPPER EXTREMITY

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5120</td>
<td>Arm, amputation of:</td>
</tr>
<tr>
<td>5121</td>
<td>Disarticulation.</td>
</tr>
<tr>
<td>5122</td>
<td>Above insertion of deltoid.</td>
</tr>
<tr>
<td>5123</td>
<td>Below insertion of deltoid.</td>
</tr>
<tr>
<td>5124</td>
<td>Forearm, amputation of:</td>
</tr>
<tr>
<td>5125</td>
<td>Above insertion of pronator teres.</td>
</tr>
<tr>
<td>5126</td>
<td>Five digits of one hand, amputation of:</td>
</tr>
<tr>
<td>5127</td>
<td>Thumb, index, middle and ring.</td>
</tr>
<tr>
<td>5128</td>
<td>Thumb, index, middle and little.</td>
</tr>
<tr>
<td>5129</td>
<td>Thumb, index, ring and little.</td>
</tr>
<tr>
<td>5130</td>
<td>Thumb, middle, ring and little.</td>
</tr>
<tr>
<td>5131</td>
<td>Index, middle, ring and little.</td>
</tr>
<tr>
<td>5132</td>
<td>Three digits of one hand, amputation of:</td>
</tr>
<tr>
<td>5133</td>
<td>Thumb, index and middle.</td>
</tr>
<tr>
<td>5134</td>
<td>Thumb, index and ring.</td>
</tr>
<tr>
<td>5135</td>
<td>Thumb, middle and ring.</td>
</tr>
<tr>
<td>5136</td>
<td>Thumb, middle and little.</td>
</tr>
<tr>
<td>5137</td>
<td>Thumb, ring and little.</td>
</tr>
<tr>
<td>5138</td>
<td>Index, middle and ring.</td>
</tr>
<tr>
<td>5139</td>
<td>Index, middle and little.</td>
</tr>
<tr>
<td>5140</td>
<td>Index, ring and little.</td>
</tr>
<tr>
<td>5141</td>
<td>Middle, ring and little.</td>
</tr>
<tr>
<td>5142</td>
<td>Two digits of one hand, amputation of:</td>
</tr>
<tr>
<td>5143</td>
<td>Thumb and middle.</td>
</tr>
<tr>
<td>5144</td>
<td>Thumb and ring.</td>
</tr>
<tr>
<td>5145</td>
<td>Thumb and little.</td>
</tr>
</tbody>
</table>

#### AMPUTATIONS: LOWER EXTREMITY

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5146</td>
<td>Leg, amputation of:</td>
</tr>
<tr>
<td>5147</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5148</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5149</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5150</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5151</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5152</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5153</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5154</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5155</td>
<td>Thigh, amputation of:</td>
</tr>
<tr>
<td>5156</td>
<td>Thigh, amputation of:</td>
</tr>
</tbody>
</table>

#### THE SHOULDER AND ARM

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5200</td>
<td>Scapulohumeral articulation, anklyosis of.</td>
</tr>
<tr>
<td>5201</td>
<td>Arm, limitation of motion of.</td>
</tr>
<tr>
<td>5202</td>
<td>Humerus, other impairment of.</td>
</tr>
<tr>
<td>5203</td>
<td>Clavicle or scapula, impairment of.</td>
</tr>
</tbody>
</table>

#### THE ELBOW AND FOREARM

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5205</td>
<td>Elbow, anklyosis of.</td>
</tr>
<tr>
<td>5206</td>
<td>Forearm, limitation of flexion of.</td>
</tr>
<tr>
<td>5207</td>
<td>Forearm, limitation of extension of.</td>
</tr>
<tr>
<td>5208</td>
<td>Forearm, flexion limited to 10° and extension to 45°.</td>
</tr>
<tr>
<td>5209</td>
<td>Elbow, other impairment of.</td>
</tr>
<tr>
<td>5210</td>
<td>Radius and ulna, nonunion of, with false joint.</td>
</tr>
<tr>
<td>5211</td>
<td>Ulna, impairment of.</td>
</tr>
<tr>
<td>5212</td>
<td>Radius, impairment of.</td>
</tr>
<tr>
<td>5213</td>
<td>Supination and pronation, impairment of.</td>
</tr>
</tbody>
</table>

#### THE WRIST AND HAND

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5214</td>
<td>Wrist, anklyosis of.</td>
</tr>
<tr>
<td>5215</td>
<td>Wrist, limitation of motion of.</td>
</tr>
<tr>
<td>5216</td>
<td>Five digits of one hand, unfavorable anklyosis of.</td>
</tr>
<tr>
<td>5217</td>
<td>Three digits of one hand, unfavorable anklyosis of.</td>
</tr>
<tr>
<td>5218</td>
<td>Two digits of one hand, unfavorable anklyosis of.</td>
</tr>
<tr>
<td>5219</td>
<td>One digit of one hand, unfavorable anklyosis of.</td>
</tr>
<tr>
<td>5220</td>
<td>Five digits of one hand, favorable anklyosis of.</td>
</tr>
<tr>
<td>5221</td>
<td>Four digits of one hand, favorable anklyosis of.</td>
</tr>
<tr>
<td>5222</td>
<td>Three digits of one hand, favorable anklyosis of.</td>
</tr>
<tr>
<td>5223</td>
<td>Two digits of one hand, favorable anklyosis of.</td>
</tr>
<tr>
<td>5224</td>
<td>Thumb, anklyosis of.</td>
</tr>
<tr>
<td>5225</td>
<td>Index finger, anklyosis of.</td>
</tr>
<tr>
<td>5226</td>
<td>Middle finger, anklyosis of.</td>
</tr>
</tbody>
</table>
# Appendix B to Part 4—Numerical Index of Disabilities—Continued

## Acute, Subacute, or Chronic Diseases

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5227</td>
<td>Finger, any other, ankylosis of.</td>
</tr>
</tbody>
</table>

### The Hip and Thigh

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5250</td>
<td>Hip, ankylosis of.</td>
</tr>
<tr>
<td>5251</td>
<td>Thigh, limitation of extension of.</td>
</tr>
<tr>
<td>5252</td>
<td>Thigh, limitation of flexion of.</td>
</tr>
<tr>
<td>5253</td>
<td>Thigh, impairment of.</td>
</tr>
<tr>
<td>5254</td>
<td>Hip, flexion joint.</td>
</tr>
<tr>
<td>5255</td>
<td>Femur, impairment of.</td>
</tr>
</tbody>
</table>

### The Knee and Leg

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5256</td>
<td>Knee, ankylosis of.</td>
</tr>
<tr>
<td>5257</td>
<td>Knee, other impairment of.</td>
</tr>
<tr>
<td>5258</td>
<td>Patella, dislocated.</td>
</tr>
<tr>
<td>5259</td>
<td>Patellar tendon, rupture of.</td>
</tr>
<tr>
<td>5260</td>
<td>Leg, limitation of flexion of.</td>
</tr>
<tr>
<td>5261</td>
<td>Leg, limitation of extension of.</td>
</tr>
<tr>
<td>5262</td>
<td>Tibia and fibula, impairment of.</td>
</tr>
<tr>
<td>5263</td>
<td>Genu recurvatum.</td>
</tr>
</tbody>
</table>

### The Ankle

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5270</td>
<td>Ankle, ankylosis of.</td>
</tr>
<tr>
<td>5271</td>
<td>Ankle, limited motion of.</td>
</tr>
<tr>
<td>5272</td>
<td>Talonavicular or tarsal joint, ankylosis of.</td>
</tr>
<tr>
<td>5273</td>
<td>Os calcis or astragalus, malunion of.</td>
</tr>
<tr>
<td>5274</td>
<td>Aastragalotomy.</td>
</tr>
</tbody>
</table>

### Shorenting of the Lower Extremity

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5275</td>
<td>Bones, of the lower extremity, shortening of.</td>
</tr>
</tbody>
</table>

### The Foot

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5276</td>
<td>Flatfoot, acquired.</td>
</tr>
<tr>
<td>5277</td>
<td>Weak foot, bilateral.</td>
</tr>
<tr>
<td>5278</td>
<td>Claw foot (pes cavus), acquired.</td>
</tr>
<tr>
<td>5279</td>
<td>Metatarsalgia, anterior (Morton's disease).</td>
</tr>
<tr>
<td>5280</td>
<td>Hallux valgus.</td>
</tr>
<tr>
<td>5281</td>
<td>Hallux rigidus.</td>
</tr>
<tr>
<td>5282</td>
<td>Hammer toe.</td>
</tr>
<tr>
<td>5283</td>
<td>Tarsal, or metatarsal bones, malunion of, or nonunion of.</td>
</tr>
<tr>
<td>5284</td>
<td>Foot injuries, other.</td>
</tr>
</tbody>
</table>

### The Spine

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5285</td>
<td>Vertebra, fracture of, residuals.</td>
</tr>
<tr>
<td>5286</td>
<td>Spine, complete bony fixation (ankylosis) of.</td>
</tr>
<tr>
<td>5287</td>
<td>Spine, ankylosis of, cervical.</td>
</tr>
<tr>
<td>5288</td>
<td>Spine, ankylosis of, dorsal.</td>
</tr>
<tr>
<td>5289</td>
<td>Spine, ankylosis of, lumbar.</td>
</tr>
<tr>
<td>5290</td>
<td>Spine, limitation of motion of, cervical.</td>
</tr>
<tr>
<td>5291</td>
<td>Spine, limitation of motion of, dorsal.</td>
</tr>
<tr>
<td>5292</td>
<td>Spine, limitation of motion of, lumbar.</td>
</tr>
<tr>
<td>5293</td>
<td>Intervertebral disc syndrome.</td>
</tr>
<tr>
<td>5294</td>
<td>Sacroiliac injury and weakness.</td>
</tr>
<tr>
<td>5295</td>
<td>Lumbosacral strain.</td>
</tr>
</tbody>
</table>

### Diseases of the Eye

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6000</td>
<td>Uveitis.</td>
</tr>
<tr>
<td>6001</td>
<td>Keratitis.</td>
</tr>
<tr>
<td>6002</td>
<td>Scleritis.</td>
</tr>
<tr>
<td>6003</td>
<td>Iritis.</td>
</tr>
<tr>
<td>6004</td>
<td>Cyclitis.</td>
</tr>
<tr>
<td>6005</td>
<td>Choroiditis.</td>
</tr>
<tr>
<td>6006</td>
<td>Retinitis.</td>
</tr>
<tr>
<td>6007</td>
<td>Hemorrhage, intra-ocular, recent.</td>
</tr>
<tr>
<td>6008</td>
<td>Retina, detachment of.</td>
</tr>
<tr>
<td>6009</td>
<td>Eye, injury of, unhealed.</td>
</tr>
<tr>
<td>6010</td>
<td>Eye, tuberculosis of.</td>
</tr>
<tr>
<td>6011</td>
<td>Retina, localized scars.</td>
</tr>
<tr>
<td>6012</td>
<td>Glaucoma, congestive or inflammatory.</td>
</tr>
<tr>
<td>6013</td>
<td>Glaucoma, simple, primary, noncongestive.</td>
</tr>
<tr>
<td>6014</td>
<td>New growths, malignant, eyelid.</td>
</tr>
<tr>
<td>6015</td>
<td>New growths, benign, eyelid and adnexa.</td>
</tr>
<tr>
<td>6016</td>
<td>Nystagmus, central.</td>
</tr>
<tr>
<td>6017</td>
<td>Conjunctivitis, trachomatous, chronic.</td>
</tr>
</tbody>
</table>
Appendix B to Part 4—Numerical Index of Disabilities—Continued

[Absolute, Subacute, or Chronic Diseases]

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6018</td>
<td>Conjunctivitis, other, chronic.</td>
</tr>
<tr>
<td>6019</td>
<td>Ptosis, eyelids.</td>
</tr>
<tr>
<td>6020</td>
<td>Entropion.</td>
</tr>
<tr>
<td>6021</td>
<td>Lagophthalmos.</td>
</tr>
<tr>
<td>6022</td>
<td>Eyelashes, loss of.</td>
</tr>
<tr>
<td>6023</td>
<td>Ectropion.</td>
</tr>
<tr>
<td>6024</td>
<td>Entropion.</td>
</tr>
<tr>
<td>6025</td>
<td>Lagophthalmos.</td>
</tr>
<tr>
<td>6026</td>
<td>Epiphora.</td>
</tr>
<tr>
<td>6027</td>
<td>Neuritis, optic.</td>
</tr>
<tr>
<td>6028</td>
<td>Cataract, traumatic.</td>
</tr>
<tr>
<td>6029</td>
<td>Cataract, senile, and others.</td>
</tr>
<tr>
<td>6030</td>
<td>Aphakia.</td>
</tr>
<tr>
<td>6031</td>
<td>Dacryocystitis.</td>
</tr>
<tr>
<td>6032</td>
<td>Eyelids, loss of portion of.</td>
</tr>
<tr>
<td>6033</td>
<td>Lens, crystalline, dislocation of.</td>
</tr>
<tr>
<td>6034</td>
<td>Pterygium.</td>
</tr>
</tbody>
</table>

Combinations of Disabilities

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6050</td>
<td>Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.</td>
</tr>
<tr>
<td>6051</td>
<td>Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.</td>
</tr>
<tr>
<td>6052</td>
<td>Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.</td>
</tr>
<tr>
<td>6053</td>
<td>Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.</td>
</tr>
<tr>
<td>6054</td>
<td>Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.</td>
</tr>
<tr>
<td>6055</td>
<td>Blindness in both eyes having only light perception and anatomical loss of use of both hands.</td>
</tr>
<tr>
<td>6056</td>
<td>Blindness in both eyes having only light perception and anatomical loss of use of both feet.</td>
</tr>
<tr>
<td>6057</td>
<td>Blindness in both eyes having only light perception and anatomical loss of use of one hand and one foot.</td>
</tr>
<tr>
<td>6058</td>
<td>Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.</td>
</tr>
<tr>
<td>6059</td>
<td>Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.</td>
</tr>
<tr>
<td>6060</td>
<td>Blindness in both eyes having only light perception and anatomical loss of use of one hand and one foot.</td>
</tr>
<tr>
<td>6061</td>
<td>Blindness in both eyes having only light perception and anatomical loss of use of one hand and one foot.</td>
</tr>
<tr>
<td>6062</td>
<td>Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.</td>
</tr>
</tbody>
</table>

Impairment of Central Visual Acuity

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6063</td>
<td>Blindness, anatomical loss, one eye.</td>
</tr>
<tr>
<td>6064</td>
<td>Other blind (5/200 or less).</td>
</tr>
<tr>
<td>6065</td>
<td>Other impaired (20/200 or less).</td>
</tr>
<tr>
<td>6066</td>
<td>Other normal.</td>
</tr>
<tr>
<td>6067</td>
<td>Blindness, light perception only one eye.</td>
</tr>
<tr>
<td>6068</td>
<td>Other blind (5/200 or less).</td>
</tr>
<tr>
<td>6069</td>
<td>Other impaired (20/200 or less).</td>
</tr>
<tr>
<td>6070</td>
<td>Other normal.</td>
</tr>
<tr>
<td>6071</td>
<td>Blindness, total (5/200 or less).</td>
</tr>
<tr>
<td>6072</td>
<td>Both eyes.</td>
</tr>
<tr>
<td>6073</td>
<td>Other impaired (20/200 or less).</td>
</tr>
<tr>
<td>6074</td>
<td>Other normal.</td>
</tr>
<tr>
<td>6075</td>
<td>Blindness, partial (20/200 or less).</td>
</tr>
</tbody>
</table>

Impairment of Auditory Acuity

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6100</td>
<td>0% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6101</td>
<td>10% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6102</td>
<td>20% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6103</td>
<td>30% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6104</td>
<td>40% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6105</td>
<td>50% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6106</td>
<td>60% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6107</td>
<td>70% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6108</td>
<td>80% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6109</td>
<td>90% evaluation based on Table VII.</td>
</tr>
<tr>
<td>6110</td>
<td>100% evaluation based on Table VII.</td>
</tr>
</tbody>
</table>

Diseases of the Ear

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6200</td>
<td>Otitis media, suppurative, chronic.</td>
</tr>
<tr>
<td>6201</td>
<td>Otitis media, catarrhal, chronic.</td>
</tr>
<tr>
<td>6202</td>
<td>Otitis externa.</td>
</tr>
<tr>
<td>6203</td>
<td>Otitis interna.</td>
</tr>
<tr>
<td>6204</td>
<td>Labyrinthitis.</td>
</tr>
<tr>
<td>6205</td>
<td>Meniere's syndrome.</td>
</tr>
<tr>
<td>6206</td>
<td>Mastoiditis.</td>
</tr>
<tr>
<td>6207</td>
<td>Auricle, loss or deformity.</td>
</tr>
<tr>
<td>6208</td>
<td>New growths, malignant, ear.</td>
</tr>
<tr>
<td>6209</td>
<td>New growths, benign, ear.</td>
</tr>
<tr>
<td>6210</td>
<td>Auditory canal, disease of.</td>
</tr>
<tr>
<td>6211</td>
<td>Tympanic membrane, perforation of.</td>
</tr>
<tr>
<td>6212</td>
<td>Tinnitus.</td>
</tr>
</tbody>
</table>

Other Sense Organs

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6275</td>
<td>Smell, loss of sense of.</td>
</tr>
<tr>
<td>6276</td>
<td>Taste, loss of sense of.</td>
</tr>
</tbody>
</table>

Systemic Diseases

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>6300</td>
<td>Cholera, Asiatic.</td>
</tr>
<tr>
<td>6301</td>
<td>Kala-azar (visceral leishmaniasis).</td>
</tr>
<tr>
<td>6302</td>
<td>Leprosy.</td>
</tr>
<tr>
<td>6303</td>
<td>Malaria.</td>
</tr>
<tr>
<td>6305</td>
<td>Filariasis.</td>
</tr>
<tr>
<td>6306</td>
<td>Oroya fever.</td>
</tr>
<tr>
<td>6307</td>
<td>Plague.</td>
</tr>
<tr>
<td>6308</td>
<td>Relapsing fever.</td>
</tr>
<tr>
<td>6309</td>
<td>Rheumatic fever.</td>
</tr>
<tr>
<td>6310</td>
<td>Syphilis, unspecified.</td>
</tr>
<tr>
<td>6311</td>
<td>Tuberculosis, military.</td>
</tr>
<tr>
<td>6312</td>
<td>Avitaminosis.</td>
</tr>
<tr>
<td>6314</td>
<td>Beriberi.</td>
</tr>
<tr>
<td>6315</td>
<td>Pellagra.</td>
</tr>
</tbody>
</table>
### RESPIRATORY SYSTEM

- **THE NOSE AND THROAT**
  - 6501 Rhinitis, atrophic, chronic.
  - 6502 Septum, nasal, deflection of.
  - 6504 Nose, loss of part of, or scars.
  - 6510 Sinusitis, pansinusitis, chronic.
  - 6511 Sinusitis, ethmoid, chronic.
  - 6512 Sinusitis, frontal, chronic.
  - 6513 Sinusitis, maxillary, chronic.
  - 6514 Sinusitis, sphenoid, chronic.
  - 6515 Laryngitis, tuberculous.
  - 6516 Laryngitis, chronic.
  - 6517 Larynx, injuries of, healed.
  - 6518 Laryngectomy.
  - 6519 Aphonia, organic.
  - 6520 Larynx, stenosis of.

- **THE TRACHEA AND BRONCHI**
  - 6600 Bronchitis, chronic.
  - 6601 Bronchiectasis.
  - 6602 Bronchitis, subacute.

- **THE LUNGS AND PLEURA**
  - 6700 Tuberculosis, pulmonary, chronic, far advanced, active.
  - 6702 Tuberculosis, pulmonary, chronic, moderately advanced, active.
  - 6703 Tuberculosis, pulmonary, chronic, minimal, active.
  - 6704 Tuberculosis, pulmonary, chronic, active, advance- ment unspecified.
  - 6707 Tuberculosis, pulmonary, chronic, far advanced, active.
  - 6708 Tuberculosis, pulmonary, chronic, moderately advanced, active.
  - 6709 Tuberculosis, pulmonary, chronic, minimal, active.
  - 6710 Tuberculosis, pulmonary, chronic, advance- ment unspecified.
  - 6721 Tuberculosis, pulmonary, chronic, far advanced, inactive.
  - 6722 Tuberculosis, pulmonary, chronic, moderately advanced, inactive.
  - 6723 Tuberculosis, pulmonary, chronic, minimal, inactive.
  - 6724 Tuberculosis, pulmonary, chronic, inactive, advance- ment unspecified.
  - 6725 Tuberculosis, pulmonary, chronic, far advanced, inactive.
  - 6726 Tuberculosis, pulmonary, chronic, moderately advanced, inactive.
  - 6727 Tuberculosis, pulmonary, chronic, minimal, inactive.
  - 6728 Tuberculosis, pulmonary, chronic, inactive, advance- ment unspecified.
  - 6732 Pleurisy, tuberculous.
  - 6800 Anthracosis.
  - 6801 Silicosis.
  - 6802 Pneumococcosis, unspecified.
  - 6803 Actinomycosis of lung.
  - 6804 Streptococcosis of lung.
  - 6805 Blastomycosis of lung.
  - 6806 Sporotrichosis of lung.
  - 6807 Aspergillosis of lung.
  - 6808 Mycosis of lung, unspecified.
  - 6809 Lung, abscess of.
  - 6810 Pleurisy, serofibrinous.
  - 6811 Pleurisy, purulent (empyema).
  - 6812 Fistula, bronchocutaneous, or bronchopleural.
  - 6813 Lung, permanent collapse of.
  - 6814 Pneumothorax, spontaneous.
  - 6815 Pneumonectomy.
  - 6816 Lobectomy.
  - 6817 Lung, chronic passive congestion of.
  - 6818 Pleural cavity, injuries, residuals of, including gunshot wounds.
  - 6819 New growths, malignant, any specified part of respir- tory system.
  - 6820 New growths, benign, any specified part of respiratory system.
  - 6821 Coccidioidomycosis.

### THE CARDIOVASCULAR SYSTEM

- **THE HEART**
  - 7000 Rheumatic heart disease.
  - 7001 Endocarditis, bacterial, subacute.
  - 7002 Pericarditis, bacterial or rheumatic, acute.
  - 7003 Adhesions, pericardial.
  - 7004 Syphilitic heart disease.
  - 7005 Arteriosclerotic heart disease.
  - 7006 Myocardium, infarction of, due to thrombosis or embol- ism.
  - 7007 Hypertensive heart disease.
  - 7008 Hyperthyroid heart disease.
  - 7009 Auricular flutter, paroxysmal.
  - 7011 Auricular fibrillation, paroxysmal.
  - 7012 Auricular fibrillation, permanent.
  - 7013 Tachycardia, paroxysmal.
  - 7014 Sinus tachycardia.
  - 7015 Auriculoventricular block.

### THE DIGESTIVE SYSTEM

- 7200 Mouth, injuries of.
- 7201 Lips, injuries of.
### APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

**[ACUTE, SUBACUTE, OR CHRONIC DISEASES]**

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7202</td>
<td>Tongue, loss of, whole or part.</td>
</tr>
<tr>
<td>7203</td>
<td>Esophagus, stricture of.</td>
</tr>
<tr>
<td>7204</td>
<td>Esophagus, spasm of (cardiospasm).</td>
</tr>
<tr>
<td>7205</td>
<td>Esophagus, diverticulum of, acquired.</td>
</tr>
<tr>
<td>7301</td>
<td>Peritoneum, adhesions of.</td>
</tr>
<tr>
<td>7304</td>
<td>Ulcer, gastric.</td>
</tr>
<tr>
<td>7305</td>
<td>Ulcer, duodenal.</td>
</tr>
<tr>
<td>7306</td>
<td>Ulcer, marginal (gastrojejunal).</td>
</tr>
<tr>
<td>7307</td>
<td>Gastritis, hypertrophic.</td>
</tr>
<tr>
<td>7308</td>
<td>Postgastrectomy syndromes.</td>
</tr>
<tr>
<td>7309</td>
<td>Stomach, stenosis of.</td>
</tr>
<tr>
<td>7310</td>
<td>Stomach, injury of, residuals.</td>
</tr>
<tr>
<td>7311</td>
<td>Liver, injury of.</td>
</tr>
<tr>
<td>7312</td>
<td>Liver, cirrhosis of.</td>
</tr>
<tr>
<td>7313</td>
<td>Liver, abscess of, residuals.</td>
</tr>
<tr>
<td>7314</td>
<td>Cholecytitis, chronic.</td>
</tr>
<tr>
<td>7315</td>
<td>Cholelithiasis, chronic.</td>
</tr>
<tr>
<td>7316</td>
<td>Cholangitis, chronic.</td>
</tr>
<tr>
<td>7317</td>
<td>Gall bladder, injury of.</td>
</tr>
<tr>
<td>7318</td>
<td>Gall bladder, removal of.</td>
</tr>
<tr>
<td>7319</td>
<td>Irritable colon syndrome (spastic colitis, mucous colitis, etc.).</td>
</tr>
<tr>
<td>7500</td>
<td>Kidney, removal of.</td>
</tr>
<tr>
<td>7501</td>
<td>Kidney, abscess of.</td>
</tr>
<tr>
<td>7502</td>
<td>Nephritis, chronic.</td>
</tr>
<tr>
<td>7503</td>
<td>Pyelitis.</td>
</tr>
<tr>
<td>7504</td>
<td>Pyelonephritis, chronic.</td>
</tr>
<tr>
<td>7505</td>
<td>Kidney, tuberculosis of, active.</td>
</tr>
<tr>
<td>7507</td>
<td>Nephrosclerosis, arteriolar.</td>
</tr>
<tr>
<td>7508</td>
<td>Nephrolithiasis.</td>
</tr>
<tr>
<td>7509</td>
<td>Hydro nephrosis.</td>
</tr>
<tr>
<td>7510</td>
<td>Ureterolithiasis.</td>
</tr>
<tr>
<td>7511</td>
<td>Ureter, stricture of.</td>
</tr>
<tr>
<td>7512</td>
<td>Cystitis, chronic.</td>
</tr>
<tr>
<td>7513</td>
<td>Cystitis, interstitial (Hunner), submucous or elusive ulcer.</td>
</tr>
<tr>
<td>7514</td>
<td>Bladder, tuberculosis of.</td>
</tr>
<tr>
<td>7515</td>
<td>Bladder, calculus in.</td>
</tr>
<tr>
<td>7516</td>
<td>Bladder, fistula of.</td>
</tr>
<tr>
<td>7517</td>
<td>Bladder, injury of.</td>
</tr>
<tr>
<td>7518</td>
<td>Urethra, stricture of.</td>
</tr>
<tr>
<td>7519</td>
<td>Urethra, fistula of.</td>
</tr>
<tr>
<td>7520</td>
<td>Penis, removal of half or more.</td>
</tr>
<tr>
<td>7521</td>
<td>Penis, removal of glans.</td>
</tr>
<tr>
<td>7522</td>
<td>Penis, deformity, with loss of erectile power.</td>
</tr>
<tr>
<td>7523</td>
<td>Testis, atrophy, complete.</td>
</tr>
<tr>
<td>7524</td>
<td>Testis, removal of.</td>
</tr>
<tr>
<td>7525</td>
<td>Epididymo-orchitis (tuberculous).</td>
</tr>
<tr>
<td>7526</td>
<td>Prostate gland, resection or removal.</td>
</tr>
<tr>
<td>7527</td>
<td>Prostate gland injuries, infectious hypertrophy, post-operative residuals.</td>
</tr>
<tr>
<td>7528</td>
<td>New growths, malignant, any specified part of genitourinary system.</td>
</tr>
<tr>
<td>7529</td>
<td>New growths, benign, any specified part of genitourinary system.</td>
</tr>
</tbody>
</table>

#### GYNECOLOGICAL CONDITIONS

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7610</td>
<td>Vulvovaginitis.</td>
</tr>
<tr>
<td>7611</td>
<td>Vaginitis.</td>
</tr>
<tr>
<td>7612</td>
<td>Cervicitis.</td>
</tr>
<tr>
<td>7613</td>
<td>Menitis.</td>
</tr>
<tr>
<td>7614</td>
<td>Salpingitis.</td>
</tr>
<tr>
<td>7615</td>
<td>Oophoritis.</td>
</tr>
<tr>
<td>7617</td>
<td>Uterus and ovaries, removal of, complete.</td>
</tr>
<tr>
<td>7618</td>
<td>Uterus, removal of, including corpus.</td>
</tr>
<tr>
<td>7619</td>
<td>Ovaries, removal of.</td>
</tr>
<tr>
<td>7620</td>
<td>Ovaries, atrophy of both.</td>
</tr>
<tr>
<td>7621</td>
<td>Uterus, prolapse.</td>
</tr>
<tr>
<td>7622</td>
<td>Uterus, displacement of.</td>
</tr>
<tr>
<td>7623</td>
<td>Pregnancy, surgical complications of.</td>
</tr>
<tr>
<td>7624</td>
<td>Fistula, rectovaginal.</td>
</tr>
<tr>
<td>7625</td>
<td>Fistula, urethrovaginal.</td>
</tr>
<tr>
<td>7626</td>
<td>Mammary glands, removal of.</td>
</tr>
<tr>
<td>7627</td>
<td>New growth, malignant, gynecological system, or mammary glands.</td>
</tr>
</tbody>
</table>

#### THE HEMIC AND LYMPHATIC SYSTEMS

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7700</td>
<td>Anemia, pernicious.</td>
</tr>
<tr>
<td>7701</td>
<td>Anemia, secondary.</td>
</tr>
<tr>
<td>7702</td>
<td>Agranulocytosis, acute.</td>
</tr>
<tr>
<td>7703</td>
<td>Leukemia.</td>
</tr>
<tr>
<td>7704</td>
<td>Polycythemia, primary.</td>
</tr>
<tr>
<td>7705</td>
<td>Purpura hemorrhagica.</td>
</tr>
<tr>
<td>7706</td>
<td>Splenectomy.</td>
</tr>
<tr>
<td>7707</td>
<td>Spleen, injury of, healed.</td>
</tr>
<tr>
<td>7709</td>
<td>Lymphogranulomatosis (Hodgkin's disease).</td>
</tr>
<tr>
<td>7710</td>
<td>Adenitis, cervical, tuberculous.</td>
</tr>
<tr>
<td>7711</td>
<td>Adenitis, axillary, tuberculous.</td>
</tr>
<tr>
<td>7712</td>
<td>Adenitis, inguinal, tuberculous.</td>
</tr>
<tr>
<td>7713</td>
<td>Adenitis, secondary.</td>
</tr>
</tbody>
</table>

#### THE SKIN

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7800</td>
<td>Scars, disfiguring, head, face or neck.</td>
</tr>
<tr>
<td>7801</td>
<td>Scars, burns, third degree.</td>
</tr>
<tr>
<td>7802</td>
<td>Scars, burns, second degree.</td>
</tr>
<tr>
<td>7803</td>
<td>Scars, superficial, poorly nourished.</td>
</tr>
</tbody>
</table>

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APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7804</td>
<td>Scars, superficial, tender and painful.</td>
</tr>
<tr>
<td>7805</td>
<td>Scars, others.</td>
</tr>
<tr>
<td>7806</td>
<td>Eczema.</td>
</tr>
<tr>
<td>7807</td>
<td>Leishmaniasis, americana (mucocutaneous, espondila).</td>
</tr>
<tr>
<td>7808</td>
<td>Leishmaniasis, old world (cutaneous, oriental sore).</td>
</tr>
<tr>
<td>7809</td>
<td>Lupus erythematosus, discoid.</td>
</tr>
<tr>
<td>7810</td>
<td>Pinta.</td>
</tr>
<tr>
<td>7811</td>
<td>Tuberculosis luposa (lupus vulgaris).</td>
</tr>
<tr>
<td>7812</td>
<td>Verruga peruana.</td>
</tr>
<tr>
<td>7813</td>
<td>Dermatophytosis.</td>
</tr>
<tr>
<td>7814</td>
<td>Tinea barbae.</td>
</tr>
<tr>
<td>7815</td>
<td>Pemphigus.</td>
</tr>
<tr>
<td>7816</td>
<td>Psoriasis.</td>
</tr>
<tr>
<td>7817</td>
<td>Dermatitis exfoliativa.</td>
</tr>
<tr>
<td>7818</td>
<td>New growths, malignant, skin.</td>
</tr>
<tr>
<td>7819</td>
<td>New growths, benign, skin.</td>
</tr>
</tbody>
</table>

THE ENDOCRINE SYSTEM

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7900</td>
<td>Hyperthyroidism.</td>
</tr>
<tr>
<td>7901</td>
<td>Thyroid gland, toxic adenoma of.</td>
</tr>
<tr>
<td>7902</td>
<td>Thyroid gland, non-toxic adenoma of.</td>
</tr>
<tr>
<td>7903</td>
<td>Hypothyroidism.</td>
</tr>
<tr>
<td>7904</td>
<td>Hyperparathyroidism (osteitis fibrosa cystica).</td>
</tr>
<tr>
<td>7905</td>
<td>Hypoparathyroidism.</td>
</tr>
<tr>
<td>7907</td>
<td>Hyperpituitarism (pituitary basophilism, Cushings syndrome).</td>
</tr>
<tr>
<td>7908</td>
<td>Hyperpituitarism (acromegaly or gigantism).</td>
</tr>
<tr>
<td>7909</td>
<td>Hypopituitarism (diabetes insipidus).</td>
</tr>
<tr>
<td>7910</td>
<td>Hyperadrenia (adrenogenital syndrome).</td>
</tr>
<tr>
<td>7911</td>
<td>Addison's disease.</td>
</tr>
<tr>
<td>7912</td>
<td>Plagluandular syndromes.</td>
</tr>
<tr>
<td>7913</td>
<td>Diabetes melitus.</td>
</tr>
<tr>
<td>7914</td>
<td>New growths, malignant, endocrine system.</td>
</tr>
<tr>
<td>7915</td>
<td>New growths, benign, endocrine system.</td>
</tr>
</tbody>
</table>

THE CRANIAL NERVES

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8000</td>
<td>Encephalitis, epidemic, chronic.</td>
</tr>
<tr>
<td>8001</td>
<td>Brain, new growth of.</td>
</tr>
<tr>
<td>8002</td>
<td>Malignant.</td>
</tr>
<tr>
<td>8003</td>
<td>Benign.</td>
</tr>
<tr>
<td>8004</td>
<td>Paralysis agitans.</td>
</tr>
<tr>
<td>8005</td>
<td>Bulbar palsy.</td>
</tr>
<tr>
<td>8007</td>
<td>Brain, vessels, embolism of.</td>
</tr>
<tr>
<td>8008</td>
<td>Brain, vessels, thrombosis of.</td>
</tr>
<tr>
<td>8009</td>
<td>Brain, vessels, hemorrhage from.</td>
</tr>
<tr>
<td>8101</td>
<td>Myelitis.</td>
</tr>
<tr>
<td>8102</td>
<td>Poliomyelitis, anterior.</td>
</tr>
<tr>
<td>8103</td>
<td>Hematomyelitis.</td>
</tr>
<tr>
<td>8104</td>
<td>Syphilis, cerebrospinal.</td>
</tr>
<tr>
<td>8105</td>
<td>Syphilis, meningovascular.</td>
</tr>
<tr>
<td>8106</td>
<td>Tabes dorsalis.</td>
</tr>
<tr>
<td>8107</td>
<td>Amyotrophic lateral sclerosis.</td>
</tr>
<tr>
<td>8108</td>
<td>Multiple sclerosis.</td>
</tr>
<tr>
<td>8109</td>
<td>Meningitis, cerebrospinal, epidemic.</td>
</tr>
<tr>
<td>8120</td>
<td>Brain, abscess of. Spinal cord, new growths:</td>
</tr>
<tr>
<td>8201</td>
<td>Malignant.</td>
</tr>
<tr>
<td>8202</td>
<td>Benign.</td>
</tr>
<tr>
<td>8203</td>
<td>Progressive muscular atrophy.</td>
</tr>
<tr>
<td>8204</td>
<td>Syringomyelia.</td>
</tr>
<tr>
<td>8205</td>
<td>Myasthenia gravis.</td>
</tr>
<tr>
<td>8206</td>
<td>Brain disease due to trauma.</td>
</tr>
<tr>
<td>8207</td>
<td>Cerebral atherosclerosis.</td>
</tr>
</tbody>
</table>

PERIPHERAL NERVES: PARALYSIS

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8520</td>
<td>The sciotic nerve, paralysis of.</td>
</tr>
<tr>
<td>8521</td>
<td>External popliteal nerve (common peroneal), paralysis of.</td>
</tr>
<tr>
<td>8522</td>
<td>Musculocutaneous nerve (superficial peroneal), paralysis of.</td>
</tr>
<tr>
<td>8523</td>
<td>Anterior tibial nerve (deep peroneal), paralysis of.</td>
</tr>
<tr>
<td>8524</td>
<td>Internal popliteal nerve (tibial), paralysis of.</td>
</tr>
<tr>
<td>8525</td>
<td>Posterior tibial nerve, paralysis of.</td>
</tr>
<tr>
<td>8526</td>
<td>Anterior crural nerve (femoral), paralysis of.</td>
</tr>
<tr>
<td>8527</td>
<td>Internal sapheonous nerve, paralysis of.</td>
</tr>
<tr>
<td>8528</td>
<td>Obturator nerve, paralysis of.</td>
</tr>
<tr>
<td>8529</td>
<td>External cutaneous nerve of thigh, paralysis of.</td>
</tr>
<tr>
<td>8530</td>
<td>Ilio-inguinal nerve, paralysis of.</td>
</tr>
</tbody>
</table>

PERIPHERAL NERVES: NEURITIS

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8610</td>
<td>Upper radicular group (fifth and sixth cervicals), paralysis of.</td>
</tr>
<tr>
<td>8611</td>
<td>Middle radicular group, paralysis of.</td>
</tr>
</tbody>
</table>
### APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

#### [ACUTE, SUBACUTE, OR CHRONIC DISEASES]

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>9201</td>
<td>Schizophrenic reaction, hebephrenic type.</td>
</tr>
<tr>
<td>9202</td>
<td>Schizophrenic reaction, catatonic type.</td>
</tr>
<tr>
<td>9203</td>
<td>Schizophrenic reaction, paranoid type.</td>
</tr>
<tr>
<td>9204</td>
<td>Schizophrenic reaction, chronic undifferentiated type.</td>
</tr>
<tr>
<td>9205</td>
<td>Schizophrenic reaction, other.</td>
</tr>
<tr>
<td>9206</td>
<td>Manic depressive reaction.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>9200</td>
<td>Schizophrenic reaction, simple type.</td>
</tr>
</tbody>
</table>

#### PERIPHERAL NERVES: NEURALGIA

<table>
<thead>
<tr>
<th>Code</th>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>8612</td>
<td>Lower radicular group, neuritis.</td>
</tr>
<tr>
<td>8613</td>
<td>All radicular groups, neuritis.</td>
</tr>
<tr>
<td>8614</td>
<td>The musculocutaneous nerve (radial nerve), neuritis.</td>
</tr>
<tr>
<td>8615</td>
<td>The median nerve, neuritis.</td>
</tr>
<tr>
<td>8616</td>
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<td>Musculocutaneous nerve, neuritis.</td>
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<td>Circumflex nerve, neuritis.</td>
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<td>Long thoracic nerve, neuritis.</td>
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<td>External popliteal nerve (common peroneal), neuritis.</td>
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<td>Musculocutaneous nerve (superficial peroneal), neuritis.</td>
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<td>Anterior tibial nerve (deep peroneal), neuritis.</td>
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<td>Internal popliteal nerve (tibial) neuritis.</td>
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<td>Anterior tibial nerve (femoral), neuritis.</td>
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<td>Internal saphenous nerve, neuritis.</td>
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<td>Obturator nerve, neuritis.</td>
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<td>External cutaneous nerve of thigh, neuritis.</td>
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<td>Ilio-inguinal nerve, neuritis.</td>
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#### PSYCHOPHYSIOLOGIC DISORDERS

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<td>Dissociative reaction.</td>
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<td>9402</td>
<td>Conversion reaction.</td>
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<td>9403</td>
<td>Phobic reaction.</td>
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<td>9404</td>
<td>Obsessive compulsive reaction.</td>
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<td>Depressive reaction.</td>
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<td>Psychoneurotic reaction, other.</td>
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#### ORGANIC BRAIN DISORDERS

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<td>9300</td>
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<tr>
<td>9301</td>
<td>Chronic brain syndrome associated with central nervous system syphilis (all forms).</td>
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<tr>
<td>9302</td>
<td>Chronic brain syndrome associated with intracranial infections other than syphilis.</td>
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<tr>
<td>9303</td>
<td>Chronic brain syndrome associated with intoxication.</td>
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<tr>
<td>9304</td>
<td>Chronic brain syndrome associated with brain trauma.</td>
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<tr>
<td>9305</td>
<td>Chronic brain syndrome associated with cerebral arteriosclerosis.</td>
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<tr>
<td>9306</td>
<td>Chronic brain syndrome associated with circulatory disturbance other than cerebral arteriosclerosis.</td>
</tr>
<tr>
<td>9307</td>
<td>Chronic brain syndrome associated with convulsive disorder (idiopathic epilepsy).</td>
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<tr>
<td>9308</td>
<td>Chronic brain syndrome associated with disturbance of metabolism, growth or nutrition.</td>
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<tr>
<td>9309</td>
<td>Chronic brain syndrome associated with intracranial neoplasm.</td>
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<tr>
<td>9310</td>
<td>Chronic brain syndrome associated with diseases of unknown or uncertain cause.</td>
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<tr>
<td>9311</td>
<td>Chronic brain syndrome of unknown cause.</td>
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#### DENTAL AND ORAL CONDITIONS

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<td>9900</td>
<td>Maxilla or mandible, osteomyelitis of.</td>
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<td>9901</td>
<td>Mandible, loss of, complete, between angles.</td>
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<tr>
<td>9902</td>
<td>Mandible, loss of approximately one-half.</td>
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<tr>
<td>9903</td>
<td>Mandible, nonunion of.</td>
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<tr>
<td>9904</td>
<td>Mandible, malunion of.</td>
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<tr>
<td>9905</td>
<td>Temporomandibular articulation, limited motion of.</td>
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<tr>
<td>9906</td>
<td>Ramus, loss of whole or part of.</td>
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<tr>
<td>9907</td>
<td>Ramus, loss of less than one-half the substance of, not involving loss of continuity.</td>
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<td>9908</td>
<td>Condylar process, loss of, one or both sides.</td>
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<td>9909</td>
<td>Coronoid process, loss of.</td>
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<tr>
<td>9910</td>
<td>Maxilla, loss of whole or part of substance of, nonunion of, or malunion of.</td>
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<td>Hard palate, loss of half or more.</td>
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<tr>
<td>9912</td>
<td>Hard palate, loss of less than half of.</td>
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### APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

#### [ACUTE, SUBACUTE, OR CHRONIC DISEASES]

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<td>9913</td>
<td>Teeth, loss of, due to loss of substance of body of maxilla or mandible.</td>
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#### APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES

<table>
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<tr>
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#### APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued

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<td>Two, index, ring</td>
<td>5147</td>
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<tr>
<td>Two, index, little</td>
<td>5148</td>
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<td>Two, middle, ring</td>
<td>5149</td>
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<td>Below pronator teres</td>
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<tr>
<td>Forefoot</td>
<td>5166</td>
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<tr>
<td>Hand, one, and foot, one</td>
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<tr>
<td>Leg:</td>
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<tr>
<td>With defective stump</td>
<td>5163</td>
</tr>
<tr>
<td>With loss of natural knee action</td>
<td>5164</td>
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<tr>
<td>At lower level</td>
<td>5165</td>
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<tr>
<td>Thigh:</td>
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<tr>
<td>Thumb</td>
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### APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued

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**APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued**

<p>| Fistula: |
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| Bladder | 7516 |
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| Urethra | 7625 |
| Flail hip | 5254 |
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| Flutter, auricular | 7010 |
| Fracture, vertebra, residuals of | 5285 |
| Frozen feet | 7122 |
| Gastritis, atrophic (see DC 7307) | 7307 |
| Gastritis, hypertrophic | 5263 |
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| Gout | 6013 |
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| Bones, joints and muscles | 8015 |
| Brain | 8003 |
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| Endocrine system | 7915 |
| Eyeball and adnexa | 6015 |
| Genitourinary system | 7529 |
| Respiratory | 6820 |
| Skin | 7819 |
| Spinal cord | 8022 |
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| Bones | 5012 |
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| Endocrine system | 7914 |
| Eyeball and adnexa | 6014 |
| Genitourinary system | 7528 |
| Gynecological system or mammary glands | 7627 |
| Respiratory | 6819 |
| Skin | 7818 |
| Spinal cord | 8021 |
| Hallux rigidus | 7336 |
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| Hypertensive heart disease | 7007 |
| Hypertensive vascular disease | 7101 |
| Hyperthyroid heart disease | 7008 |</p>
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Department of Veterans Affairs

Pt. 4, App. C

APPENDIX C TO PART 4—ALPHABETICAL INDEX
OF DISABILITIES—Continued

APPENDIX C TO PART 4—ALPHABETICAL INDEX
OF DISABILITIES—Continued

Diagnostic
Code
No.

Diagnostic
Code
No.

Posterior tibial ............................................
Anterior crural ............................................
Internal saphenous ....................................
Obturator ...................................................
External cutaneous, thigh ..........................
Ilio-inguinal ................................................
Paramyoclonus multiplex .........................................
Pellagra ....................................................................
Pemphigus ...............................................................
Penis, deformity of ...................................................
Perforation: Tympanic membrane
Pericarditis ...............................................................
Periostitis .................................................................
Pes cavus ................................................................
Pes planus ...............................................................
Phlebitis ...................................................................
Pinta .........................................................................
Plague ......................................................................
Pleurisy:
Purulent (empyema) .........................................
Serofibrinous .....................................................
Pluriglandular syndrome ..........................................
Pneumoconiosis .......................................................
Pneumonectomy ......................................................
Pneumothorax, spontaneous ...................................
Poliomyelitis, anterior ...............................................
Polycythemia ............................................................
Pregnancy, surgical complications of ......................
Prolapse:
Rectum .............................................................
Uterus ...............................................................
Pronation, limitation of .............................................
Pruritis, ani ...............................................................
Psoriasis ..................................................................
Psychiatric disorders, see Disorders, mental.
Pterygium .................................................................
Ptosis, eyelid ............................................................
Purpura, hemorrhagica ............................................
Pyelitis ......................................................................
Pyelonephritis, chronic .............................................
Raynaud’s disease ..................................................
Removal:
Auricle or deformity ..........................................
Cartilage, semilunar ..........................................
Coccyx ..............................................................
Gall bladder ......................................................
Kidney ...............................................................
Mammary glands ..............................................
Ovaries, both ....................................................
Penis, half or more ...........................................
Penis, glans ......................................................
Prostate, or resection .......................................
Ribs ...................................................................
Testis ................................................................
Uterus ...............................................................
Uterus and ovaries ...........................................
Others, see Amputation, loss, etc.
Resection:
Intestine:
Large .........................................................
Small ..........................................................
Stomach ............................................................
Retina, detachment of .............................................
Retinitis ....................................................................
Rheumatic fever .......................................................
Rheumatic heart disease .........................................
Rhinitis: Atrophic ......................................................
Rupture, diaphragm .................................................

8525
8526
8527
8528
8529
8530
8104
6315
7815
7522
6211
7002
5022
5278
5276
7121
7810
6307
6811
6810
7912
6802
6815
6814
8011
7704
7623
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7621
5213
7337
7816
6034
6019
7705
7503
7504
7117
6207
5259
5298
7318
7500
7626
7619
7520
7521
7526
5297
7524
7618
7617

7329
7328
7308
6008
6006
6309
7000
6501
5324

Salpingitis .................................................................
Scars:
Burns, second degree ......................................
Burns, third degree ...........................................
Head, etc., disfiguring .......................................
Retina ...............................................................
Superficial, tender .............................................
Superficial, with ulceration ................................
Others ...............................................................
Scleritis ....................................................................
Sclerosis:
Amyotrophic, lateral ..........................................
Multiple .............................................................
Scotoma, pathological .............................................
Shortening, leg .........................................................
Silicosis ....................................................................
Sinusitis:
Ethmoid .............................................................
Frontal ...............................................................
Maxillary ............................................................
Pansinusitis .......................................................
Sphenoid ...........................................................
Spasm, esophagus ..................................................
Splenectomy ............................................................
Sporotrichosis, lung .................................................
Stenosis:
Larynx ...............................................................
Stomach ............................................................
Strain, lumbosacral ..................................................
Streptotrichosis, lung ...............................................
Stricture:
Esophagus ........................................................
Rectum, anus ...................................................
Ureter ................................................................
Urethra ..............................................................
Supination, limitation of ...........................................
Symblepharon ..........................................................
Syndrome:
Cushing’s ..........................................................
Intervertebral disc .............................................
Meniere’s ..........................................................
Pluriglandular ....................................................
Postgastrectomy ...............................................
Synovitis ...................................................................
Syphilis:
Cerebrospinal ...................................................
Meningovascular ...............................................
Unspecified .......................................................
Syphilitic heart disease ............................................
Syringomyelia ..........................................................
Tabes dorsalis .........................................................
Tachycardia:
Paroxysmal .......................................................
Sinus .................................................................
Tenosynovitis ...........................................................
Thrombo-anglitis obliterans .....................................
Thrombophlebitis .....................................................
Thrombosis, brain ....................................................
Tic, convulsive .........................................................
Tinea barbae ............................................................
Tinnitus ....................................................................
Tuberculosis:
Adenitis, tuberculous:
Axillary .......................................................
Cervical ......................................................
Inguinal ......................................................
Bladder .............................................................
Bones and joints ...............................................

429

7614
7802
7801
7800
6011
7804
7803
7805
6002
8017
8018
6081
5275
6801
6511
6512
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7004
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7014
5024
7115
7121
8008
8103
7814
6260

7711
7710
7712
7514
5001


APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued

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PART 5—[RESERVED]

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

AGE

Sec.
6.1 Misstatement of age.

PREMIUMS
6.2 Premium rate.

38 CFR Ch. I (7-1-98 Edition)

POLICIES

6.3 Incontestability of United States Government life insurance.

BENEFICIARY OF UNITED STATES GOVERNMENT LIFE INSURANCE

6.4 Proof of age, relationship and marriage.
6.5 Conditional designation of beneficiary.
6.6 Change of beneficiary.
6.7 Claims of creditors, taxation.

OPTIONAL SETTLEMENT

6.8 Selection, revocation and election.
6.9 Election of optional settlement by beneficiary.
6.10 Options.

DIVIDENDS

6.11 How dividends are paid.
6.12 Special dividends.

LOANS

6.13 Policy loans.

CASH VALUE

6.14 Cash value; other than special endowment at age 96 plan policy.
6.15 Cash value; special endowment at age 96 plan policy.
6.16 Payment of cash value in monthly installments.

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6.17 Collection of any indebtedness.

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6.18 Other disabilities deemed to be total and permanent.

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6.19 Evidence to establish death of the insured.

DETERMINATION OF LIABILITY UNDER SECTIONS 302 AND 333, WORLD WAR VETERANS’ ACT, 1924, SECTIONS 607 AND 602(V)(2), NATIONAL SERVICE LIFE INSURANCE ACT, 1940, AS AMENDED, AND SECTIONS 1921 AND 1957 OF TITLE 38, UNITED STATES CODE

6.20 Jurisdiction.

APPEALS

6.21 Guardian: definition and authority.


AGE

§ 6.1 Misstatement of age.

If the age of the insured under a United States Government life insurance policy has been understated, the amount of the insurance payable under
the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Department of Veterans Affairs at any time upon satisfactory proof.

§ 6.6 Change of beneficiary.

The insured under United States Government life insurance shall have the right at any time and from time to time and without the consent or knowledge of the beneficiary to change the beneficiary. A change of beneficiary must be made by written notice to the Department of Veterans Affairs over the signature of the insured and shall not be binding on the United States unless received by the Department of Veterans Affairs. A change of beneficiary must be forwarded to the Department of Veterans Affairs by the insured or his or her agent and must contain sufficient information to identify the insured. Whenever practicable, such notices shall be given on forms prescribed by the Department of Veterans Affairs. Upon receipt by the Department of Veterans Affairs, a change of beneficiary shall be deemed effective as of the date the insured signed the written notice. The United States shall be protected in all payments made to the beneficiary last of record and before receipt of notice of a change of beneficiary, and no payments so made shall be paid again to the changed beneficiary. The insured may exercise any right or privilege given under the provisions of a United States Government life insurance policy without the consent of the beneficiary. An original designation of a beneficiary may be made.

§ 6.5 Conditional designation of beneficiary.

If the insured by notice in writing to the Department of Veterans Affairs during his or her lifetime has provided that a designated beneficiary shall be entitled to the proceeds of United States Government life insurance only if such beneficiary shall survive him or her for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary fails to survive the specified period, payment of the proceeds of United States Government life insurance will be made as if the beneficiary had predeceased the insured.

§ 6.4 Proof of age, relationship and marriage.

Whenever it is necessary for a claimant to prove age, relationship or marriage, the provisions of 38 U.S.C. 103(c) and Part 3 this chapter will be followed.

§ 6.3 Incontestability of United States Government life insurance.

Discharge or release of an insured from military or naval service for the reason of fraudulent enlistment shall not invalidate United States Government life insurance issued on the basis of such service unless the Secretary determines that the insured was mentally or legally incapable of entering into a contract of enlistment. In such case the United States Government life insurance so issued will be canceled as of the effective date of such insurance.

§ 6.2 Premium rate.

Effective January 1, 1983, United States Government Life Insurance policies, and total disability income provisions, on a premium paying status are paid-up and no premiums are required to maintain such policies and provisions in force.

§ 6.1 Policies.

[13 FR 7089, Nov. 27, 1948. Redesignated at 61 FR 29024, June 7, 1996]

§ 6.0 Premiums.


§ 6.0 Beneficiary of United States Government Life Insurance.

§ 6.7 Claims of creditors, taxation.

(a) Effective January 1, 1958, payments of insurance to a beneficiary under a United States Government life insurance policy shall be subject to levy for taxes due the United States by such beneficiary.

(b) The provisions of 38 U.S.C. 5301(b) which entitle the United States to collect by setoff out of benefits payable to any beneficiary under a United States Government life insurance policy do not apply to dividends being held to the credit of the insured for the payment of premiums under the provisions of section 1946 of title 38 U.S.C.

(Authority: 38 U.S.C. 5301)

§ 6.8 Selection, revocation and election.

The insured under a United States Government Life Insurance policy may, upon written notice, select an optional settlement. Such optional settlement may be revoked by written notice. If the insured does not select one of the optional settlements, as set out under the provisions of the policy, the insurance shall be payable in 240 monthly installments unless the beneficiary elects in writing a different option.

(Authority: 38 U.S.C. 5301)

§ 6.9 Election of optional settlement by beneficiary.

If the insured has selected an optional settlement then at the death of the insured the designated beneficiary may elect to receive the proceeds of insurance in installments spread over a greater period of time than that selected by the insured and in accordance with the following provisions.

(Authority: 38 U.S.C. 1952)

(a) If the insured has selected Option 1, the beneficiary may elect to receive payment under Option 2, 3, or 4.

(b) If the insured has selected Option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3 or 4.

(c) If the insured has selected Option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3.

(d) If the insured has selected Option 3, and named no contingent beneficiary, the beneficiary may elect to receive payment under Option 4.

(e) If the insured has selected Option 4, the beneficiary may elect to receive payment under Option 3.

If the insured has selected settlement under Option 1, a beneficiary who has elected to receive payment under Option 2, 3, or 4 may elect to receive the commuted value of any remaining unpaid installments certain (240 less the number paid in case of Option 3, or 120 less the number paid in the case of Option 4): Provided. That where the commutation is elected under Option 3 or 4 after payment under such option has commenced, and the beneficiary survives the period certain, such beneficiary shall be entitled to the resumption of monthly installments payable for life in accordance with the monthly income option previously selected by such beneficiary. The entitlement to the resumption of monthly installments will be effective as of the monthly payment date next following the expiration of the period certain. Settlement under any one of the options or payment to the beneficiary of said commuted value under Option 2 or payment of said commuted value under Options 3 and 4 to the beneficiary who does not survive the period certain shall be in full and complete discharge of all liability under the contract.
other change in the mode of settlement may, within the limitations set forth in paragraphs (a) through (e) of this section, be made by a beneficiary after payment has commenced, provided the change is made within 1 year of the original election and in those instances where Option 3 is changed to Option 1 or 2; or Option 4 is changed to Option 1, 2, or 3, satisfactory proof is submitted to establish that the beneficiary's state of health is the same as it was at time of original election. The effective date of the original election for this purpose will be the date it was delivered to the Department of Veterans Affairs. If such election was forwarded by mail, properly addressed to the Department of Veterans Affairs, the postmark date will be taken as the date of delivery. Such change will be made on the premise that the new election was made initially, and the account will be adjusted accordingly. A condition precedent to any such change will be the repayment of any amount received by the beneficiary in excess of that which would have been due had the new election been made initially.

§ 6.10 Options.

Insurance will be payable in one sum only when selected by the insured during his or her lifetime or by his or her last will and testament.

§ 6.11 How dividends are paid.

(a) Regular annual dividends becoming payable on or after December 31, 1958, shall be payable on the date preceding the anniversary of the policy unless the Secretary shall declare them payable on some other date.

(b) If the insured has a National Service Life Insurance policy or policies in force, dividends used to pay premiums in advance will be held to the credit of the insured, unless otherwise directed by the insured.

(c) In the event premiums on more than one policy having the same premium due date are unpaid and the dividend credit of the insured for application to payment of premiums is not sufficient to keep all policies in force, in the absence of instructions to the contrary by the insured, such dividend credit will be applied to pay premiums in such manner as will provide the maximum amount of insurance protection.

(d) Dividend credit of the insured held for payment of premiums as provided in section 1946 of title 38 U.S.C., may not be used to satisfy any indebtedness due the United States without the insured's consent. If the insured requests payment of such dividend credit, or any unused portion thereof, in cash, or requests that such credit be left to accumulate on deposit, then any indebtedness due the United States, such as described in § 6.7 will be recovered therefrom.

(e) Dividend credit of the insured held for payment of premiums or dividends left to accumulate on deposit may be applied to the payment of premiums in advance on any National Service Life Insurance policy upon written request of the insured made before default in payment of premium. Upon maturity of the policy, any unpaid dividend will be paid to the person(s) currently entitled to receive payments under the policy.

(Authority: 38 U.S.C. 1944)

§ 6.12 Special dividends.

Any special U.S. Government Life Insurance dividend that may be declared shall be paid in cash. Such special dividends shall not be accepted to accumulate on deposit or as a dividend credit.

(Authority: 38 U.S.C. 1944)

§ 6.13 Policy loans.

At any time after the first policy year and upon the execution of a loan agreement satisfactory to the Secretary the United States will lend to the insured on the sole security of his/
§ 6.14 Cash value; other than special endowment at age 96 plan policy.

Provisions for cash value shall become effective at the completion of the first policy year on any plan of United States Government Life Insurance other than the special endowment at age 96 plan policy; all values and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3½ percent per annum. The cash value shall be the reserve together with any dividend accumulations. For each month after the first policy year the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(Authority: 38 U.S.C. 1944)


§ 6.15 Cash value; special endowment at age 96 plan policy.

Provisions for cash value shall become effective at the completion of the first policy year; all values and net single premiums are as prescribed by the Secretary and published in VA Pamphlet 90-2A. The cash value at the end of the first policy year and at the end of any policy year thereafter shall be the reserve as set forth in the policy together with any dividend accumulations. For each month after the first policy year the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(Authority: 38 U.S.C. 1944)


§ 6.16 Payment of cash value in monthly installments.

Effective January 1, 1971, in lieu of payment of cash value in one sum, the insured may elect to receive payment in monthly installments under option 2 as set forth in the insurance contract or as a refund life income option. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable to the designated beneficiary in one sum, unless
the insured or such beneficiary has elected to continue the installments under the option selected by the insured. If no designated beneficiary survives, the present value of any remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat.

[61 FR 29025, June 7, 1996]

DEATH BENEFITS

§ 6.19 Evidence to establish death of the insured.

Whenever a claim is filed on account of the death of a person insured under yearly renewable term insurance or United States Government life insurance, the proof of death shall be established in accordance with the provisions of Part 3 of this chapter.


DETERMINATION OF LIABILITY UNDER SECTIONS 302 AND 313, WORLD WAR VETERANS’ ACT, 1924, SECTIONS 607 AND 602 (V)(2), NATIONAL SERVICE LIFE INSURANCE ACT, 1940, AS AMENDED, AND SECTIONS 1921 AND 1957 OF TITLE 38 UNITED STATES CODE.

§ 6.20 Jurisdiction.

The Insurance Claims Sections are vested with exclusive jurisdiction in determining the liability of the United States and the United States Government Life Insurance Fund for waiver of payment of premiums, payment of total, total permanent disability, and death insurance benefits under United States Government life insurance and to determine the liability of the United States and the National Service Life Insurance Fund for waiver of payment of premiums due to total disability, payment of total disability insurance benefits, and death insurance benefits under National Service life insurance.

(Authority: 38 U.S.C. 1944)


APPEALS

§ 6.21 Guardian: definition and authority.

(a) Definition. For the purpose of this section, the term guardian includes any fiduciary certified by the appropriate Veterans Services Officer under §13.55 of this title to receive benefits in a fiduciary capacity for an insured or beneficiary.
(b) Authority. For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums; select or change the settlement option for beneficiaries; assign a beneficiary’s interest as provided under section 1953 of title 38 U.S.C.

(Authority: 38 U.S.C. 1944)


§ 7.3 The policy.

(a) Any provision in a policy that may limit or eliminate a benefit other than the primary death benefit will not, because of such provision, place the policy outside the protection of the Act if it is otherwise eligible for protection.

(b) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the Act if otherwise eligible. Group insurance will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the Act as a policy.

(c) The phrase face amount of insurance as used in the regulations in this part will mean the amount of insurance payable as a death benefit; Provided, That any indebtedness, or any accruals (such as paid-up additions, dividend accumulations, etc.) that may be added to or taken from the amount payable as the death benefit will not be used in calculating the face amount of a policy.


§ 7.4 The premium.

The term premium as defined under 50 U.S.C. app. 540(b) shall include membership dues and assessments in an association.

(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3½ percent, subject to approval by the Department of Veterans Affairs.

(b) Premiums will not be guaranteed for benefits additional to the primary death benefit if, when combined with the amount of the primary death benefit, the total benefit would result in a
payment in excess of $10,000 or if liability for such benefits is excluded or restricted by military service or any activity which the insured may be called upon to perform in connection with military service. In the event that premiums for the primary and additional benefits are not separable under the terms of the policy the entire policy will be guaranteed, if the policy is otherwise eligible for protection under the law.

\[13 \text{ FR } 7103, \text{ Nov. } 27, 1948, \text{ Redesignated and amended at } 61 \text{ FR } 29026, \text{ June } 7, 1996\]

§ 7.7 Maturity.

(a) The phrase maturity of a policy as a death claim or otherwise (SSCRA, as amended) will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the Act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(b) Upon the expiration of the period of protection, the insurer will submit to the Department of Veterans Affairs a complete statement of the account on each policy, which will show the amount of indebtedness by reason of the premiums with interest and the credits, if any, then available and will

\[13 \text{ FR } 7103, \text{ Nov. } 27, 1948, \text{ as amended at } 27 \text{ FR } 2287, \text{ Mar. } 9, 1962, \text{ Redesignated and amended at } 61 \text{ FR } 29026, \text{ June } 7, 1996\]
§ 7.8

be subject to audit and approval by the Department of Veterans Affairs. The statement of account will include the rate of interest charged on all indebtedness, the date of debit and credit entries, and such other information as may be deemed necessary in making an audit of the account.


§ 7.8 Beneficiary or assignee.

The consent of a beneficiary, assignee, or any other person who may have a right or interest in the proceeds of the policy is not a prerequisite for placing a policy under the protection of the Act.

[61 FR 29026, June 7, 1996]

PART 8—NATIONAL SERVICE LIFE INSURANCE

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OPTIONAL SETTLEMENTS

8.29 Options.

RENEWAL OF TERM INSURANCE

8.30 Renewal of National Service Life Insurance on the 5-year level premium term plan.
§ 8.5 Revival of insurance.

(a) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered

and tender of premium are made: Provided, That there be paid an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and the full premium on the amount of insurance for the month in which application is made.

[61 FR 29291, June 10, 1996]

§ 8.3 Correction of errors.

Where timely tender of the required premium is made by check or draft which is not paid on presentation for payment, but it is shown by satisfactory evidence that such nonpayment was due to an error on the part of the bank on which such check or draft was drawn, or was the result of an error in the instrument or in the execution thereof, and not for the lack of funds, the insured will be given an additional 31 days from the date of the letter that gives notice of such nonpayment in which to tender an amount sufficient to pay all premiums through the current month.

[61 FR 29291, June 10, 1996]

§ 8.4 Acceptance of a late premium.

Where a premium on National Service life insurance is not paid within the grace period but payment is tendered during the lifetime of the insured and within 61 days of the due date, such tender may be regularly applied as a timely premium payment.

§ 8.5

in force under premium-paying conditions on the date of death or the date of commencement of total disability if,

(1) On the date of lapse there were accrued dividends, not then payable, resulting from premiums paid since the last anniversary date of the policy and such dividends were equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability, and/or

(2) At the end of the grace period for the unpaid premium causing lapse there were due and payable to the policyholder unpaid dividends, refundable premiums, pure insurance risk credits, other refundable credits or total disability benefit payments arising from the policyholder’s U.S. Government or National Service life insurance which are equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability.

(3) For purposes of this section amounts under paragraphs (a)(1) and (2) of this section may be combined. In that case, the amount, if any, of dividend accrued under paragraph (a)(1) of this section will first be determined and the amount available under paragraph (a)(2) of this section, if any, will be added thereto for the purpose of determining if the total amount thus available is equal to or greater than the total of monthly premiums which have become due.

(4) In determining the amount of monthly premiums which have become due under paragraphs (a)(1) and (2) of this section a shortage of 10 percent per monthly premium may be allowed for a period not to exceed 3 months.

(5) In determining the monthly premiums which have become due for adjustment purposes under paragraphs (a)(1) and (2) of this section, the premium for the monthly due date immediately preceding the date of death or date of commencement of total disability may be omitted because of the coverage provided by the allowable grace period (§8.9) and if the conditions of paragraph (b) of this section are met, the premium for the second due date immediately preceding the date of death or date of commencement of total disability may be omitted.

(6) When a policy is deemed in force under premium-paying conditions by operation of this section, the amount of any shortage included in the calculation and the premium for any monthly due date omitted in the calculation will become a lien against the policy.

(7) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§8.17) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

(8) If accrued dividends under paragraph (a)(1) of this section and/or amounts due and payable under paragraph (a)(2) of this section exist in connection with more than one policy of the same veteran and one or more policies lapsed prior to the date of death or date of commencement of total disability, the amounts available will be related first to the policy or policies on which they arose if such policy or policies are lapsed. Any amount available under paragraphs (a)(1) and (2) of this section which is not required to place in force the policy upon which it arose or which is insufficient to place in force the policy upon which it arose, may be combined with similar amounts available on any other policy whenever the total of such amounts is sufficient to place another policy in force.

(9) Where more than one policy is involved and credits are not needed or are insufficient to revive the policy on which the credits arose, the credits will be used insofar as they are sufficient to revive the policy or policies under which the most insurance is payable.

(10) No total disability income provision will be considered in force under this section unless it lapsed at the same time as the life insurance contract and both the life insurance and total disability income provision can be considered in force through the same date and benefits are payable under the total disability income provision. An exception will be a paid-in-full limited pay contract on which total disability income provision premiums are due and payable to age 65.
(11) When a total disability income provision lapsed at the same time as the life insurance, the premium for the provision will be considered separately in determining if the amounts available are equal to or in excess of the monthly premiums which have become due. In such a case if the amounts available are sufficient, both the life insurance and the provision will be revived. If the amounts are insufficient for that purpose, they will be applied to revive the policy or policies with the greatest amount payable in death cases or the policy or policies providing the greatest life insurance and total disability benefit in total disability cases.

(12) Accrued dividends and/or credits on any policy of National Service or U.S. Government life insurance held by the policyholder may be considered for the purpose of this section.

(b) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force on the date of death or date of commencement of total disability if:

(1) The policyholder died or became totally disabled within 61 days of the due date of the unpaid premiums, and

(2) The policy prior to the lapse had been in force for 5 years or more. In determining in-force status under this subparagraph if the original effective date of the insurance (when necessary, include predecessor contracts involving renewal, conversion or replacement/reinstatement under 38 U.S.C. 1981) is 5 years or more earlier than the date of death or date of total disability and during the 5 years immediately preceding the date of lapse the insurance has not been lapsed at any one time in excess of 6 months, the requirement will be satisfied. When insurance is considered in force under this section the amount of the monthly premium due on the date of lapse and the following monthly premium(s) will become a lien against the policy.

(3) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§8.17) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

§ 8.6 Deduction of insurance premiums from compensation, retirement pay, or pension.

The insured under a National Service life insurance policy which is not lapsed may authorize the monthly deduction of premiums from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension that may be due and payable to him under any laws administered by the Department of Veterans Affairs in accordance with the following provisions.

(a) The authorization may be made by an insured or the insured’s legal representative. If the authorization is made by the insured’s legal representative, it must be in writing over the signature of the representative and forwarded to the Department of Veterans Affairs along with a copy of the document which evidences the individual’s authority to act on behalf of the insured. If an insured is incompetent and has no legal representative and has a spouse to whom benefits are being paid pursuant to Part 13 of this chapter, the spouse may authorize payment of insurance premiums through the deduction system. If an insured is incompetent and has no legal representative and has an institutional award has been made in his or her behalf, the authorization may be executed by the Director of the field facility in which the insured is hospitalized or receiving domiciliary care, and in appropriate cases by the chief officers of State hospitals.
§ 8.7 Authorization for deduction of premiums from compensation, retirement pay, or pension.

Deductions from benefits for the payment of premiums shall be effective on the month the authorization for such deduction is received by the Department of Veterans Affairs or on any successive month specified by the insured. Such deduction shall be applied to the premium due in the succeeding calendar month and shall continue monthly so long as the benefit payments are due and payable to the insured and the amount is sufficient to pay the premium or until such authorization is revoked by the veteran or otherwise terminated. When premium deductions are authorized by the insured, the premium will be treated as paid for purposes of preventing lapse of the insurance, so long as there is due and payable to the insured a benefit amount sufficient to provide the premium payment. If authorization was executed by the Director of a VA hospital or domiciliary or chief officer of a State hospital or other institution to make deductions from an institutional award, the authorization will cease and terminate at the termination of the institutional award and the insurance shall lapse unless another authorization for deduction from monthly benefit payments is executed by the insured. The insured will be notified by letter directed to the last address of record of the termination of the authorization to deduct premiums, but failure to give such notice shall not prevent lapse.

[61 FR 29291, June 10, 1996]

§ 8.8 Calculation of time period.

If the last day of a time period specified in §§ 8.3, 8.4 or 8.5 or allowed for filing an application for National Service Life Insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.


§ 8.9 Establishment of grace period.

For the payment of any premium under a National Service Life Insurance policy, a grace period of 31 days from and after the date on which the premium was due will be allowed without interest during which time the policy will remain in force. When a payment of premium is mailed, the postmark date will be accepted as the date on which the payment was tendered.
§ 8.10 Reinstatement of National Service Life Insurance except insurance issued pursuant to section 1925 of title 38 U.S.C.

(a) Any policy which lapses and which is not surrendered for a cash value or for paid-up insurance, may be reinstated upon written application signed by the applicant, payment of all premiums in arrears, and evidence of good health as required under § 8.11 (a) or (b), whichever is applicable. If a policy is not reinstated within 6 months from the due date of the premium in default, interest must be paid in addition to premiums for all months in arrears from their respective due dates at the rate of 5 percent per annum, compounded annually. The payment or reinstatement of any indebtedness against a policy must be made upon application for reinstatement, and any excess of indebtedness and interest over the reserve of the policy must be paid at that time. A lapsed National Service Life Insurance policy which is in force under extended term insurance may be reinstated within 5 years from the date extended insurance would expire upon application and payment of all premiums in arrears with the required interest. In any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period, the policy may be reinstated at any time before maturity upon application and payment of the premiums with the required interest. A policy on the level term premium plan may be reinstated within 5 years of the date of lapse upon written application signed by the insured, evidence of insurability and payment of two monthly premiums, one for the month of the lapse, the other for the month of reinstatement.

(b) Reinstatement of insurance issued under section 1925, title 38 U.S.C. Any policy of insurance issued under 38 U.S.C. 1925 which has been lapsed for not more than 5 years shall be reinstated under the same provisions of paragraph (a) of this section.

(c) Effective date of reinstatements. Reinstatement is effected on the date an acceptable application and the required monetary payments are delivered to the Department of Veterans Affairs. If application for reinstatement is submitted by mail, properly addressed to the Department of Veterans Affairs, the postmark date shall be the date of delivery. The effective date of reinstatement of the insurance shall be the last monthly premium due date prior to the delivery or postmark date of the application for reinstatement, except where reinstatement is effected on the due date of a premium, then in such case that date shall be the reinstatement date.

(d) Inquiry during the grace period. When the insured makes inquiry prior to the expiration of the grace period disclosing a clear intent to continue insurance protection, such as a request for information concerning premium rates or conversion privileges, etc., an additional reasonable period not exceeding 60 days may be granted for payment of premiums due; but the premiums in any such case must be paid during the lifetime of the insured.

[61 FR 29291, June 10, 1996]

§ 8.11 Health requirements.

National Service life insurance on any plan may be reinstated if application and tender of premiums are made:

(a) Within 6 premium months including the premium month for which the unpaid premium was due, provided the applicant be in as good health on the date of application and tender of premiums as he or she was on the last day of the grace period of the premium in default and furnishes satisfactory evidence. If the insurance to be reinstated was issued...
§ 8.12 Application and medical evidence.

The applicant for reinstatement of National Service Life Insurance, during his or her lifetime, and within 5 years after the date of lapse if the insurance was issued under 38 U.S.C. 1925, must submit a written application signed by him or her and furnish satisfactory evidence of health as required in §8.11 at the time of application. Applicant's own statement of comparative health may be accepted as proof of insurability for the purpose of reinstatement under §8.11(a), but, whenever deemed necessary in any such case, report of physical examination may be required. Applications for reinstatement submitted after expiration of the applicable period mentioned in §8.11(a) must be accompanied by satisfactory evidence of good health. If the insurance becomes a claim after the tender of the amount necessary to meet reinstatement requirements but before full compliance with the requirements of this section, and the applicant was in a required state of health at the date that he or she made the tender of the amount necessary to meet reinstatement requirements, and that there is satisfactory reason for his or her non-compliance, the Assistant Director for Insurance, VA Center, Philadelphia, Pennsylvania may, if the applicant be dead, waive any or all requirements of this section (except payment of the necessary premiums) or, if the applicant be living, allow compliance with this section as of the date the required amount necessary to reinstate was received by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1925)


DIVIDENDS

§ 8.13 How paid.

(a) Except as hereinafter provided in this paragraph, a National Service Life Insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Secretary of Veterans Affairs. Dividends becoming payable after January 1, 1952, shall be payable on the date preceding the anniversary of the policy unless the Secretary shall declare them payable on some other date. Dividends are not payable on insurance:

1. Issued or reinstated under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended, where the requirements of good health were waived at the time of such issue or reinstatement;

2. Issued under sections 620 and 621 of the National Service Life Insurance Act, as amended;

3. Issued under sections 1904(c) and 1922(a) of title 38 U.S.C.;

(Authority: 38 U.S.C. 1923(b) and 725)

4. Issued on the ordinary life plan under section 1904(d) of title 38 U.S.C., to replace the amount of insurance reduced under a modified life plan policy issued under 38 U.S.C. 1904(c); and

5. On which premiums are waived, in whole or in part, under the provisions of section 622 of the National Service Life Insurance Act, as amended, and 38 U.S.C. 1924 for the period during which such premium waiver is in effect.

(b) Unless and until VA receives a written request from the insured that National Service Life Insurance dividends be paid in cash, or that they be used to pay an insurance indebtedness, or that they be placed on deposit or be used to pay premiums in advance, or that they be used to pay the premiums
on a particular policy or policies, or
that they be used to purchase paid-up
additions, any such dividends shall be
held to the credit of the insured to be
applied to pay monthly premiums be-
coming due and unpaid after the date
such dividends are payable on any Na-
tional Service or United States Gov-
ernment Life Insurance policy or poli-
cies held by the insured. Provided, That
such dividend credits will be applied as
of the due date of any unpaid premium.
Dividend credits will earn interest at
such rate and in such manner as the
Secretary may determine.
(Authority: 38 U.S.C. 1907(a))

(c) In the event premiums on more
than one policy having the same pre-
mium due date are unpaid and the divi-
dend credit of the insured for applica-
tion to payment of premiums is not
sufficient to keep all policies in force,
in the absence of instructions to the
contrary by the insured, such dividend
credit will be applied to pay premiums
in such manner as will provide the
maximum amount of insurance protec-
tion.

(d) At the expiration of any term pe-
riod, dividend credit of the insured held
for payment of premiums will be ap-
plied to pay the required premium for
renewal of term insurance unless the
insured requests otherwise in writing
prior to the expiration of the term pe-
riod.

(e) A request for payment of divi-
dends in cash or for other disposition
will be effective as of the date the re-
quest is delivered to the Department of
Veterans Affairs: If forwarded by mail,
properly addressed, the postmark date
will be taken as the date of delivery: If
forwarded through military channels
by the insured while in military serv-
ence, the date the request is placed in
military channels will be accepted as
the date of delivery. Unless otherwise
stipulated by the insured, such request
will remain in force until revoked in
writing signed by the insured and de-
ivered to the Department of Veterans
Affairs.

(f) Dividend credit of the insured held
for payment of premiums may not be
used to satisfy any indebtedness due
the United States without the in-
sured’s consent. If the insured requests
payment of such dividend credit, or
any unused portion thereof, in cash, or
requests that such credit be left to ac-
cumulate on deposit, as provided in
paragraph (g) of this section, then any
indebtedness due the United States,
such as described in §5301 of title 38
U.S.C. will be recovered therefrom.

(g) At the written request of the in-
sured, National Service life insurance
dividends may be left to accumulate on
deposit at interest which will be cred-
ited in such manner and at such rate as
the Secretary may determine: Provided,
That the policy is in force on a basis
other than extended term insurance or
level premium term insurance. Divi-
dend credit of the insured held for pay-
ment of premiums or dividends left to
accumulate on deposit as provided in
this paragraph may be applied to the
payment of premiums in advance upon
written request of the insured made be-
fore default in payment of a premium.
Dividends on deposit under the provi-
sions of this paragraph will be used in
addition to the reserve on the policy
for the purpose of computing the period
of extended term insurance or the
amount of paid-up insurance as pro-
vided in §§8.17 and 8.18, respectively.
Any dividend credit of a person who no
longer has insurance in force by pay-
ment or waiver of premiums will be
paid in cash to such person. If a person
has a dividend credit option on a lapsed
level premium term policy or a perma-
nent plan policy on which extended
term insurance has expired and such
person has another policy in force by
payment or waiver of premiums, any
dividend credit or unpaid dividends on
the lapsed policy, in the absence of in-
structions from the insured to the con-
trary, will be transferred to the policy
which is in force and will be held on
such policy as a dividend credit. Such
dividend credit will be deemed to have
accrued on the policy which is in force.

Upon maturity of the policy, any divi-
dend on deposit, any unpaid dividend
payable in cash, and any dividend cred-
it accruing from such policy which can-
not be used to pay premiums will be
paid to the person currently entitled to
receive payments under the policy. If
the policy is not in force at death, any
such unpaid dividends and dividend
§ 8.14 Credits will be paid to the insured's estate.

(h) Any insured receiving an annual dividend in cash may return such dividend check or an equivalent amount of money in order to have the dividend retained under the deposit or credit option. The return of such dividend must be made during the lifetime of the insured and before the end of the calendar year during which the dividend was paid. Dividends returned under this provision are not available for the payment of premiums, receipt of interest, or calculation of cash value prior to the postmark date of the returned check.


CASH VALUE AND POLICY LOAN

§ 8.14 Cash value and policy loan.

(a) Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in §8.17(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the 5-year level premium term plan. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve with any dividend accumulations, where applicable.

(b) Upon written request and upon complete surrender of the insurance and all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Paid-up additions do not have to be in force for 1 year before they have cash values. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(c) All values, reserves and net single premiums on participating National Service Life Insurance, other than as provided in paragraph (e) of this section, shall be based on the American Experience Table of Mortality, with interest at the rate of 3 percent per annum. For each month after the first policy year for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year.

(Authority: 38 U.S.C. 1902, 1906)

(d) All values on insurance, reserves, and net single premiums issued under the provisions of section 1922(a) of title 38 U.S.C., and on modified life and ordinary life plans of insurance issued under section 1904(c), (d), and (e), respectively, shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 2 1/4 percent per annum. Values between policy years shall be proportionally adjusted.

(Authority: 38 U.S.C. 1904, 1906)

(e) All values on insurance, reserves, and net single premiums issued under the provisions of section 1923(b) of title 38 U.S.C., and on modified life and ordinary life plans of such insurance issued under section 1904 (c), (d), and (e), respectively, shall be based on table X–18 (1950-54 Intercompany Table of Mortality) with interest at the rate of 2 1/2 percent per annum. Values between policy years shall be proportionally adjusted.

(Authority: 38 U.S.C. 1904, 1923)

(f) All values, reserves, and net single premiums on nonparticipating insurance on which the requirements of good health were waived under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended (“H” Insurance), and on the modified life and ordinary life plans of such “H” insurance issued under section 1904 (c), (d), and (e), respectively,
of title 38 U.S.C. shall be based on the American Experience Table of Mortality, with interest at the rate of 3 percent per annum. Values between policy years shall be proportionally adjusted. The provisions of the ‘Net Cash Value’ clause in National Service Life Insurance policies are hereby amended accordingly.

(g) All values, reserves, and net single premiums on participating modified life and ordinary life insurance plans of such insurance issued under section 1904 (b), (d), and (e), respectively, of title 38 U.S.C. shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 percent per annum. Values between policy years shall be proportionally adjusted.

(h) All values, reserves, and net single premiums on insurance issued under the provisions of section 1917(b) of title 38 U.S.C., and on modified life and ordinary life plans of such insurance issued under section 1904 (c), (d), and (e), respectively, shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3½ percent per annum. Values between policy years shall be proportionally adjusted.

(i) All values, reserves, and net single premiums on insurance issued under the provisions of section 1925(b) of title 38 U.S.C., and on modified life and ordinary life plans of such insurance issued under section 1904 (c), (d), and (e), respectively, shall be based on the American Experience Table of Mortality and interest at the rate of 3½ percent per annum. Values between policy years shall be proportionally adjusted.

(Authority: 38 U.S.C. 1906)


§ 8.16 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Secretary, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness equals or exceeds the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (November 2, 1987) and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (November 2, 1987) shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time

§ 8.15 Payment of the cash value of National Service Life Insurance in monthly installments under section 1917(e) of title 38 U.S.C.

(a) Effective January 1, 1971, in lieu of payment of the cash surrender value in one sum the insured may elect to receive payment in monthly installments under option 2 or as a refund life income. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in title 38 U.S.C. 1917. Unless otherwise requested by the insured, a surrender under this section will be deemed completed as of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the first check released thereunder, whichever is later.

(b) [Reserved]


§ 8.16 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Secretary, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness equals or exceeds the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (November 2, 1987) and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (November 2, 1987) shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time
the loan is made. Policyholders with existing variable rate loans will be forwarded reasonable advance notice of any increase in the rate. Reasonable advance notice of any change in the variable loan rate will be published in the Federal Register. A notice pertaining to variable loans which is sent to the policyholder's last address of record will constitute sufficient evidence of notice.

(c) Subject to the provisions of paragraph (d) of this section, loan rates established pursuant to paragraph (b) of this section shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage. Such loan rate shall be effective on the date on or after the first day of October on which the rate change is made in the insurance automatic data processing system, and shall remain in effect for not less than one year after the date of establishment. The prevailing variable loan rate shall apply to all loans granted under paragraph (b) of this section.

(d) Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(Authority: 38 U.S.C. 1906)

EXTENDED TERM AND PAID-UP INSURANCE

§ 8.17 Provision for extended term insurance—other than 5-year level premium term or limited convertible 5-year level premium term policies.

(a) After the expiration of the first policy year and upon default in the payment of a premium within the grace period, if a permanent plan National Service Life Insurance policy other than the modified life plan has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness and a charge for administrative cost for insurance issued under 38 U.S.C. 1925, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall not have a loan value, but shall have a cash value.

(b) Upon default in payment of a premium within the grace period on any permanent plan of National Service Life Insurance other than the modified life plan and any plan of insurance issued under 38 U.S.C. 1925, if the policy has been in force by payment or waiver of premiums for not less than 3 months nor more than 11 months, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the reserve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effective. Extended term insurance under this provision shall not have a cash or loan value. This paragraph shall be effective from and after August 2, 1948.

(c) Upon default in payment of a premium within the grace period, if a modified life plan of National Service Life Insurance has not been surrendered for cash or paid-up insurance and if the policy has been in force by payment or waiver of premiums for not less than 3 months, or for not less than 1 year for insurance issued under 38 U.S.C. 1925, the policy shall be extended automatically as of insurance equal to (1) the Initial Face Amount of Insurance (face amount of policy in force prior to insured's 65th birthday) less any indebtedness, for lapses which
§ 8.19
Conversion of a 5-year level premium term policy as provided for under § 1904 of title 38 U.S.C.

National Service Life Insurance on the level premium term plan which is in force may be exchanged for a permanent plan policy upon written application by the insured and the payment of the current monthly premium at the attained age for the plan of insurance selected (except where premium waiver under 38 U.S.C. 1912 is effective). The reserve (if any) on the policy will be allowed as a credit on the current monthly premium except where premium waiver is effective. Conversion to an endowment plan may not be made while the insured is totally disabled. The conversion will be made without medical examination, except when deemed necessary to determine whether an applicant for conversion to an endowment plan is totally disabled, and upon complete surrender of the term insurance while in force by payment or waiver of premium.

(Authority: 38 U.S.C. 1904)

[61 FR 29293, June 10, 1996]
§ 8.20 Discontinuance of premium waiver.

(a) The Secretary may require proof of continuance of total disability at any time the Secretary may deem same necessary. In the event it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding, and the insurance may be continued by payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy. The insurance shall not lapse prior to the date of expiration of the grace period allowed for the payment of such premium or prior to the expiration of 31 days after date of notice to the insured of the termination of the premium waiver, whichever is the later date. Such notice shall be sent by registered mail or by certified mail and sufficient notice will be deemed to have been given when such letter has been placed in the mails by the Department of Veterans Affairs: Provided, That the Secretary may grant an additional period of not more than 31 days for payment of the premiums in any case in which it is shown that the failure to make payment within 31 days after notice as defined in this paragraph was due to circumstances beyond the insured's control; but the premiums in any such case must be paid during the lifetime of the insured. The failure of the insured to furnish a correct current address at which mail will reach him or her promptly shall not be grounds for a further extension of time for payment of premiums under this section.

(b) In the event a finding that insured is no longer totally disabled is made at the same time a finding is made of total disability entitling the insured to a waiver of premiums while so disabled, the waiver of premiums shall cease as of the date on which total disability ceased and continuance of the insurance in such cases shall be subject to the timely payment of the premiums as they become or have become due and payable. The due date of the first premium payable subsequent to the date total disability ceased is the next regular due date of the premium under the policy, and if such premium was not paid within 31 days after the due date, the insurance lapsed.

(c) If the insured shall fail to cooperate with the Secretary in securing any evidence he may require to determine whether total disability has continued, the premium waiver shall cease effective as of the date finding is made of such failure to cooperate, and the insurance may be continued by payment of the premiums within 31 days after notice of termination as provided in paragraph (a) of this section.


§ 8.21 Total disability—speech.

The organic loss of speech shall be deemed to be total disability under National Service Life Insurance. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

[61 FR 29293, June 10, 1996]

§ 8.22 Beneficiary and optional settlement changes.

The insured shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel or change a beneficiary and/or optional settlement designation. A change of beneficiary or optional settlement to be effective must be made by notice in writing signed by the insured and forwarded to the Department of Veterans Affairs by the insured or designated agent, and must contain sufficient information to identify the insured. A beneficiary designation and an optional settlement selection, but not a change of beneficiary, may be made by last will and testament duly probated. Upon receipt by the Department of Veterans Affairs, a valid designation or change of beneficiary or option shall be deemed to be
effective as of the date of execution. Any payment made before proper notice of designation or change of beneficiary has been received in the Department of Veterans Affairs shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments.

[61 FR 29293, June 10, 1996]

§ 8.23 Proof of death, age, relationship and marriage.

Whenever it is necessary for a claimant to prove death, age, relationship or marriage, the provisions found in Part 3 of this chapter will be followed.


§ 8.24 Misstatement of age.

If the age of the insured under a National Service life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Department of Veterans Affairs at any time upon satisfactory proof.

[13 FR 7115, Nov. 27, 1948. Redesignated at 61 FR 29290, June 10, 1996]

§ 8.25 Examination of applicants for insurance or reinstatement.

Where physical or mental examination is required of an applicant for National Service Life Insurance or of an applicant for reinstatement of National Service Life Insurance, such examination may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made free of charge to him or her by a full-time or part-time salaried physician or a physician’s assistant at a regional office or medical facility of the Department of Veterans Affairs. Such examination may also be made, at the applicant’s own expense, by a physician duly licensed for the practice of medicine by a State, possession of the United States, Commonwealth of Puerto Rico, or the District of Columbia, or by a duly licensed osteopathic physician who is a graduate of a recognized and approved college of osteopathy and who is listed in the current directory of the American Osteopathic Association. Such examination may be made by a physician or osteopath who is not related to the applicant by blood or marriage, associated with him or her in business, or peculiarly interested in the insurance or reinstatement of the policy. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable may be accepted if submitted through the American consul. The Secretary of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

(Authority: 38 U.S.C. 1904 and 1905)


§ 8.26 Examination in connection with total disability benefits.

Physical examination in connection with claim for total disability benefits may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made at Government expense by a full-time or part-time salaried physician or physician’s assistant at a regional office or medical facility of the Department of Veterans Affairs. If an insured is unable to travel, because of physical or mental condition, the Director of a regional office or of a medical facility may, on his or her own initiative or at the request of the insurance activity concerned, authorize at Government expense examination at the residence of the insured. The Secretary of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to
§ 8.27 Expenses incident to examinations for insurance purposes.

Except as provided in §8.25, necessary transportation expenses incident to physical or mental examinations for insurance purposes at regional offices or medical facilities shall be furnished when the insured is ordered to report for examination at the specific request of the insurance activity concerned, or the Director of a regional office or of a medical facility. Such expenses will be borne by the United States and will be paid from the applicable appropriation of the Veterans Health Services and Research Administration. Transportation, meal and lodging requests in connection with reporting to and returning from the place of examination may be furnished the applicant, or the applicant may travel at his or her own expense and claim reimbursement for such travel on a mileage basis, provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Department of Veterans Affairs will be in accordance with the Federal Travel Regulations. If such an examination is made by a medical examiner on a fee basis, payment will be made at a fee not in excess of the schedule of fees in effect and approved by the Department of Veterans Affairs for medical and professional services in the State in which the examination is made. Where no approved State fee schedule is in effect or where a fee for the type of examination authorized is not listed in the approved State fee schedule in effect, such examinations will be furnished at a fee not in excess of what is reasonable and customarily charged in the community concerned may be allowed.


§ 8.28 Definition of “disease or injury traceable to the extra hazards of the military or naval service.”

A disease or injury may be found to be traceable to the extra hazards of the military or naval service when it appears from the evidence that the said disease or injury was in fact caused by, or is traceable to, the performance of duty in the active military, naval, or air service (as that term is defined in section 101 of title 38 U.S.C.).


§ 8.29 Options.

Insurance will be paid in a lump sum only when selected by the insured during his or her lifetime or by his or her last will and testament.

[61 FR 29293, June 10, 1996]

§ 8.30 Renewal of National Service Life Insurance on the 5-year level premium term plan.

(a) Effective July 23, 1953, all or any part of National Service Life Insurance on the 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: Provided, That on or after September 1, 1984, National Service Life Insurance “V” 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or that on or after the date the regulation is published as final, Veterans Special Life Insurance “RS” 5-year level premium term rates shall not exceed the renewal age 70 “RS” term premium rate: Provided further, That in any case
in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle the insured to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be the applicable level premium term rate on that day.

Provided further, That no insurance is subject to renewal if the policyholder has exercised the insured’s right to change to another plan of insurance.

(Authority: 38 U.S.C. 1905, 1906)

(b) Effective June 25, 1970, a 5-year level premium term policy which lapsed for nonpayment of the premium due and subsequently expired may be renewed subsequently to the expiration of the old term period provided the insured within 5 years of the date of lapse:

(1) Submits written application for reinstatement of the insurance.

(2) Tenders two monthly premiums, one for the month of lapse at the rate for the expired term and the other for the month of reinstatement at the rate for the new term.

(3)(i) If application for reinstatement is submitted and the premiums tendered within 6 premium months after lapse, including the premium month for which the unpaid premium was due, insurance will be reinstated provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.

(ii) If application for reinstatement is submitted and the premiums tendered after expiration of the 6-month period mentioned in subdivision (i) of this subparagraph, insurance will be reinstated provided applicant is in good health (§ 8.0) on the date of application and tender of premiums and furnishes satisfactory evidence thereof.


SETTLEMENT OF INSURANCE MATURING ON OR AFTER AUGUST 1, 1946

§ 8.31 Conditional designation of beneficiary.

If the insured by notice in writing to the Department of Veterans Affairs during his lifetime has provided that a designated beneficiary shall be entitled to the proceeds of National Service life insurance only if such beneficiary shall survive the insured for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary fails to survive the specified period, payment of the proceeds of National Service life insurance will be made as if the beneficiary had predeceased the insured.


§ 8.32 Application for reinstatement of total disability income provision.

A total disability income provision which is lapsed may be reinstated if the insured meets the same requirements as those for reinstatement of the policy to which the total disability income provision is attached; except that in no event shall the requirement of a health statement or other medical evidence be waived in connection with the reinstatement of the total disability income provision.

[61 FR 29293, June 10, 1996]

NATIONAL SERVICE LIFE INSURANCE POLICY

§ 8.33 Policy provisions.

Contracts of insurance authorized to be made in accordance with the terms and conditions set forth in the forms and policy plans are subject in all respects to the applicable provisions of
§ 8.34

Appeals to Board of Veterans Appeals.

(a) The provisions of Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals involving questions pertaining to the denial of applications for insurance, total disability income provision, or reinstatement; disallowance of claims for insurance benefits; and decisions holding fraud or imposing forfeiture. Notice to the applicant or claimant and his representative, if any, of the right to appeal will be sent by the insurance activity having jurisdiction over the case, at time action of denial, disallowance, or forfeiture is taken.

(b) When an appeal to the Board of Veterans Appeals is initiated by a notice of disagreement, any unpaid premiums, normally due under the policy from effective date of issue or reinstatement (as appropriate), will become an interest-bearing lien, enforceable as a legal debt due the United States and subject to all available collection procedures in the event of favorable action by the Board.

(c) Where the adverse action from which appeal is taken involves a change in or addition to insurance currently in force, premium payments must be continued on the existing contract.


§ 8.35

Total disability for twenty years or more.

Where the Disability Insurance Claims activity has made a finding of total disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total disability commenced, as determined by the Disability Insurance Claims activity.


§ 8.36

Guardian: definition and authority.

(a) Definition. For the purpose of this section, the term guardian includes any fiduciary certified by the appropriate Veterans Services Officer under §13.55 of this title to receive benefits in a fiduciary capacity for an insured or beneficiary.

(b) Authority. For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for insurance; apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums and total disability income benefits; select or change settlement options for beneficiaries; assign a beneficiary’s interest as provided under section 1918 of title 38 U.S.C.

(Authority: 38 U.S.C. 1906)

the necessary land therefor, that has been or will be purchased, constructed, or remodeled with a grant to meet the needs of an eligible veteran and of his or her family, and is or will be owned and occupied by the eligible veteran as his or her home, or a family dwelling or unit, including the necessary land therefor, acquired by an eligible veteran to be used as his or her residence after selling or otherwise disposing of title to the housing unit for which his or her grant was made.

The term Veterans Mortgage Life Insurance (VMLI) means the mortgage protection life insurance authorized for veterans under 38 U.S.C. 2106.

The term initial amount of insurance means the amount of insurance corresponding in amount to the unpaid principal of a mortgage loan outstanding on a housing unit owned or to be acquired by an eligible veteran on August 11, 1971, or on the date of approval of his or her grant made under chapter 21 of title 38 U.S.C., whichever is the later date.

The term mortgage loan means any loan, lien, or other indebtedness incurred by an eligible veteran to buy, build, remodel, or enlarge a housing unit, the payment of which loan, lien, or indebtedness is secured by a mortgage lien, or other equivalent security of record, on the housing unit in the usual legal form employed in the community in which the property is situated. The term also includes refinancing of such an indebtedness to avoid a default, to consolidate liens, to renew or extend the time for payment of the indebtedness, and in cases where the housing unit is being bought, built, remodeled, or enlarged by increasing the amount of such an indebtedness.

The term owned means the eligible veteran has or will acquire an interest in the housing unit which is:

1. A fee simple estate, or
2. A leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, or
3. An interest in a residential unit in a cooperative or a condominium type development which in the judgment of the Under Secretary for Benefits or the Director, Loan Guaranty Service, provides a right of occupancy for a period of not less than 50 years: Provided, The title to such estate or interest is or shall be such as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community.

§ 8a.2 Maximum amount of insurance.

(a) Each eligible veteran is authorized up to a maximum of $90,000 in VMLI to insure his or her life during periods he or she is obligated under a mortgage loan, except that, as to an individual housing unit, whenever there is a reduction in the actual amount of insurance in force as provided for in §8a.4(a) the amount of VMLI thereafter available to insure the life of the same veteran on the same housing unit is permanently reduced by a like amount.

(b) The maximum amount of insurance in force on any one life at one time shall not exceed the lesser of the following amounts:

1. $90,000.
2. For insurance issued prior to December 24, 1987, the reduced maximum amount of insurance then available to an eligible veteran.
3. The amount of the unpaid principal of the mortgage loan outstanding on the date of approval of the grant on a housing unit then owned and occupied by the eligible veteran, or on a housing unit being or to be constructed or remodeled for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of final settlement of the purchase, construction, or remodeling agreement, whichever date is the later date.
4. Where an eligible veteran ceases to own the housing unit which was subject to a mortgage loan that resulted in his or her life being insured under VMLI, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the amount of the unpaid principal outstanding on the mortgage loan on the newly acquired housing unit which was subject to such mortgage loan shall be limited to a maximum of $90,000 in VMLI, and the amount of VMLI thereafter available to insure the life of the same veteran on the newly acquired housing unit is permanently reduced by a like amount.

§ 8a.3 Effective date.

(a) Where the grant was approved prior to August 11, 1971, VMLI shall be effective August 11, 1971, if on that date, the eligible veteran was obligated under a mortgage loan, and any such eligible veteran is automatically insured, he or she may elect not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(b) Where the grant is approved on or after August 11, 1971, VMLI shall be effective upon a date agreed upon by the veteran and the Secretary.

(c) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(d) In any case in which an eligible veteran is automatically insured, he or she may elect not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(e) In any case in which a veteran would have been eligible for VMLI on August 11, 1971, or on the date of approval of his or her grant, whichever date is the later date, but such insurance did not become effective because he or she was not obligated under a mortgage loan on that date, or because he or she elected in writing not to be insured, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(f) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(g) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(h) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(i) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.

(j) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date agreed upon by the veteran and the Secretary.
§ 9.1 Definitions.

(a) The term policy means Group Policy No. G-32000, which was effective September 29, 1965, purchased from the insurer pursuant to 38 U.S.C. 1966, executed and attested on December 30, 1965, and amended thereafter.

(b) The term administrative office means the Office of Servicemembers’ Group Life Insurance located at 213 Washington Street, Newark, NJ 07102.

(c) The term insurer means the commercial life insurance company or companies selected under 38 U.S.C. 1966 to provide insurance coverage specified in the policy.
§ 9.2 Effective date; applications.

(a) The effective date of Servicemembers' Group Life Insurance will be in accordance with provisions set forth in 38 U.S.C. 1967.

(b) The effective date of Veterans' Group Life Insurance will be as follows:

(1) For members whose Servicemembers' Group Life Insurance coverage ceases under 38 U.S.C. 1968(a)(1)(A) and 38 U.S.C. 1968(a)(4), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty or separation from such assignment.

(2) For members whose Servicemembers' Group Life Insurance coverage was extended because of total disability, the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 1 year following termination of duty.

(3) For members who qualify for coverage under 38 U.S.C. 1967(b), the effective date shall be the 121st day after termination of duty.
the initial premium, and proof of disability must be received by the administrative office within 120 days following termination of duty.

(4) For members of the Individual Ready Reserve or the Inactive National Guard, the effective date shall be the date an application and the initial premium are received by the administrative office. The application and initial premium must be received by the administrative office within 120 days of becoming a member of either organization.

(Authority: 38 U.S.C. 1977(e))

(c) If either an application or the initial premium has not been received by the administrative office within the time limits set forth above, Servicemembers' Group Life Insurance or Veterans' Group Life Insurance coverage may still be granted if an application, the initial premium, and evidence of insurability are received by the administrative office within 1 year and 120 days following termination of duty.

(d) The effective date for Servicemembers' Group Life Insurance or Veterans' Group Life Insurance in any case not otherwise covered under this section or under 38 U.S.C. 1967(a) shall be the date an application and the initial premium are received by the administrative office.

(e) For purposes of this section, an application, an initial premium, and any evidence necessary to effect Servicemembers' Group Life Insurance or Veterans' Group Life Insurance coverage will be considered to have been received by the administrative office if:

(1) They are properly addressed to the administrative office, and

(2) The proper postage is affixed, and

(3) They are legibly postmarked within the time limit required for receipt by the administrative office.


§ 9.3 Waiver or reduction of coverage.

(a) Full-time coverage which is in effect will terminate or be reduced at midnight of the last day of the month a member's written notice requesting such termination or reduction is received by his or her uniformed service. In the case of a member paying premiums directly to the administrative office, full-time coverage will terminate or be reduced as of the last day of the month for which the last full premium was paid. Termination or reduction of coverage is effective for the entire remaining period of active duty unless the member reinstates his or her coverage under the provisions of 38 U.S.C. 1967(c). If, following termination of duty, a member reenters duty (in the same or another uniformed service), a waiver or reduction for the previous period of duty will not apply to the subsequent period of duty.

(b) Part-time coverage will terminate or be reduced at the end of the last day of the period of duty then being performed if the member is on active duty or active duty for training when the waiver or reduction is filed; at the end of the period of inactive duty training then being performed if the member is on inactive duty training when the waiver or reduction is filed; or on the date the waiver or reduction is received by his or her uniformed service if the member is not on active duty, active duty for training; or inactive duty training on the date the waiver or reduction is filed.

(1) When a member insured under part-time coverage waives his or her right to group coverage or elects a reduced amount of insurance, such waiver or election, unless changed, is effective throughout the period of the member's continuous reserve obligation in the same uniformed service. If, following termination of duty, the member reenters duty or resumes the obligation to perform duty (in the same or another uniformed service), the waiver or reduction will not apply to the subsequent period of duty or obligation.

(2) If a reservist insured under part-time coverage is called or ordered to active duty or active duty for training under a call or order that does not specify a period of less than 31 days and is separated or released from such duty and then resumes his or her reserve obligation, any waiver or election of reduced coverage made while eligible for part-time coverage, the active duty or active duty for training
§ 9.4 Beneficiaries and options.

Any designation of beneficiary or election of settlement options is subject to the provisions of 38 U.S.C. 1970 and 1977 and the following provisions:

(a) Any designation of beneficiary or settlement option election made by any member insured under Servicemembers’ Group Life Insurance for full-time coverage or part-time coverage will remain in effect until properly changed by the member or canceled automatically for any of the following reasons:

1. The insurance terminates following separation or release from all duty in a uniformed service.

2. The member enters on duty in another uniformed service.

3. The member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(b) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.

(c) Until and unless otherwise changed, a beneficiary designation and settlement option election of record on the date a statutory increase in coverage takes effect shall be considered to be a beneficiary and optional settlement election for the increased amount as well, and any beneficiary named therein shall be entitled to the same percentage (%) share of the new total coverage amount as that beneficiary was entitled to prior to the statutory increase in coverage.

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

§ 9.5 Payment of proceeds.

Proceeds shall be paid in accordance with provisions set forth in 38 U.S.C. 1970 and the following provisions:

(a) If proceeds are to be paid in installments, the first installment will be payable as of the date of death. The amount of each installment will be computed so as to include interest on the unpaid balance at the then effective rate.

(b) If, following the death of an insured member who has designated both principal and contingent beneficiaries and elected to have payment made in 36 equal monthly installments, the principal beneficiary dies before all 36 installments have been paid, the remaining installments will be paid as they fall due to the contingent beneficiary. At the death of such a contingent beneficiary, and in other instances of a beneficiary’s death, where there is no contingent beneficiary, the value of any unpaid installments, discounted to the date of his or her death at the same rate used for inclusion of interest in the computation of installments will be paid, without further accrual of interest, in one sum to the estate of the beneficiary or contingent beneficiary last receiving payment.

(c) In instances where payment in installments is made at the election of the beneficiary, upon his or her request, the value of such installments as remain unpaid will be discounted to the date of payment at the same rate used for inclusion of interest in the computation of installments and paid to him or her in one sum.

(d) If a member whose coverage is extended due to total disability converts the group insurance to an individual policy which is effective before he or she ceases to be totally disabled or before the end of 1 year following termination of duty, whichever is earlier, and dies while group insurance would be in effect, except for such conversion,
the group insurance will be payable, provided the individual policy is surrendered for a return of premiums and without further claim. When there is no such surrender, any amount of group insurance in excess of the amount of the individual policy will be payable.  
(Authority: 38 U.S.C. 501)  

§ 9.7 Administrative decisions.  
(a) Determinations of the Department of Veterans Affairs are conclusive under the policy with respect to the following:  
(1) The status of any person being within the term member and whether or not he or she is covered at any point of time under the policy including travel-time under 38 U.S.C. 1967(b) and death within 120 days thereafter from a disability incurred or aggravated while on duty.  
(2) The fact and date of a member's termination of active duty, or active duty for training, and the fact, date and hours of a member's performance of inactive duty training.  
(3) The fact and dates with respect to a member's absence without leave, confinement by civilian authorities under a sentence adjudged by a civil court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.  
(4) The operation of the forfeiture provision provided in 38 U.S.C. 1973 with respect to any member.  
(5) The existence of total disability or insurability at standard premium rates under 38 U.S.C. 1968.  
(b) When determination is required on a claim that a member who waived coverage, or whose coverage was forfeited for one of the offenses listed under 38 U.S.C. 1973 was in fact insured, or that a member who elected to be insured was insured for an amount greater than the amount shown in the record, and there is no record of an application to be insured or to increase the amount of insurance as required under 38 U.S.C. 1967(c):  
(1) The person making the claim will be required to submit all evidence available concerning the member's actions and intentions with respect to Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.  
(2) Request will be made to the member's uniformed service and any other likely source of information considered necessary, for whatever evidence in the form of copies of payroll or personnel records, statements of persons having knowledge of the facts, etc., is essential to a decision in the matter.  

Based on the evidence obtained, a formal determination will be made as to whether the member involved is deemed to have applied to be insured, or to be insured for an amount other than the amount shown in the record. The determination will include a finding as to the member's health status for insurance purposes based on the evidence available.  
(Authority: 38 U.S.C. 1967)

(c) In making the determination required under paragraph (b) of this section, the following will be considered:  
(1) The possibility that due to widespread geographic distribution, inadequate means of communication and the nature of the group insurance program, members may not be adequately and accurately informed, especially in time of war or military emergency, about the detailed requirements for obtaining insurance protection.  
(2) Payroll deductions made without objection by a member, following waiver or termination of coverage, representing premiums for insurance or additional insurance, may, by virtue of continuity or the circumstances surrounding their initiation, be indicative that the member did apply. Such deductions without a formal application of record may be considered as evidence that the member's application was not in proper form or misplaced. They may also be considered as evidence that an application was not
made solely because of erroneous or incomplete counseling or absence of counseling on the part of the responsible personnel of the uniformed service.

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Assistant Director for Insurance. Authority to make any determinations required under this section is delegated to the Under Secretary for Benefits and Assistant Director for Insurance.


§ 9.8 Termination of coverage.

Termination of coverage will be in accordance with the provisions of 38 U.S.C. 1968 and § 9.3 of this part and the following provisions:

(a) In the case of a member whose coverage is forfeited under 38 U.S.C. 1973, coverage terminates at the end of the day preceding the day on which the act or omission forming the basis for such forfeiture occurred.

(b) In the event of discontinuance of the group policy, coverage terminates at the end of the day preceding the date of the discontinuance of the policy except for those members who are insured under Veterans' Group Life Insurance in which event coverage terminates at the expiration of the day preceding the anniversary of the effective date of such insurance which first occurs, 90 days or more after the discontinuance of the group policy.


§ 9.9 Conversion privilege.

(a) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, and a member insured during inactive duty training scheduled in advance by competent authority there shall be no right of conversion unless the insurance is continued in force under 38 U.S.C. 1967(b) or 1968(a) for 120 days following a period of such duty, as the result of a disability incurred or aggravated during such a period of duty.

(b) The individual policy of life insurance to which an insured may convert under 38 U.S.C. 1968(b) or 1977(e) shall not have disability or other supplementary benefits and shall not be term insurance or any policy which does not provide for cash values. Term riders providing level or decreasing insurance for which an additional premium is charged may be attached to an eligible basic conversion policy, but the rider will be excluded from the conversion pool agreement under the policy.

(c) The insurer will establish a conversion pool in cooperation with the reinsurers and converters in accordance with the terms of the policy. Its purpose will be to provide for the determination and maintenance of appropriate charges arising from excess mortality under individual conversion policies issued in accordance with this section and provide for the appropriate distribution of the risk of loss due to such excess mortality among the reinsurers and converters.


§ 9.10 Health standards.

(a) For the purpose of determining if a member who incurred a disability or aggravated a preexisting disability during a period of active duty or active duty for training under a call to duty specifying a period of less than 31 days or during a period of inactive duty was rendered uninsurable at standard premium rates, the underwriting criteria used by the insurer in determining good health for persons applying to it for life insurance in amounts not exceeding the maximum amount of coverage then available under 38 U.S.C. 1967 will be used.

(Authority: 38 U.S.C. 1967)

(b) For all other purposes of determining if a member meets the necessary health requirements except paragraph (a) of this section, the underwriting criteria used by the insurer
in determining good health for group life insurance purposes will be used.

§ 9.11 Criteria for reinsurers and converters.

The following criteria will control eligibility for reinsuring and converting companies:

(a) The company must be a legal reserve life insurance company as classified by the insurance supervisory authorities of the State of domicile. Qualified fraternal organizations are included.

(b) The company must have been in the life insurance business for a continuous period of 5 years prior to October 1, 1965, or the December 31 preceding any redeterminations of the allocations. In the event of a merger, the 5-year requirement may be satisfied by either the surviving company or by one of the absorbed companies. Upon joint application by a subsidiary of a participating company, together with the parent company, the 5-year requirement may be waived provided such parent company owns more than 50 percent of the outstanding stock of the subsidiary and has been a legal reserve life insurance company for a period of 10 years or more.

(c) The company must be licensed to engage in life insurance in at least one State of the United States or the District of Columbia.

(d) The company will not be one: (1) Certified by the Department of Defense as being under suspension for cause for purpose of allotment or on-base solicitation privileges.

(2) That solicits life insurance by application as conversion or other replacement of Servicemembers’ Group Life Insurance or Veterans’ Group Life Insurance coverage in jurisdictions in which it is not licensed.

(3) That fails to take effective action to correct an improper practice followed by it or its agents within 30 days after written receipt of notice issued by the insurer or the Assistant Director for Insurance. Improper practice includes:

(i) The use for solicitation purposes of lists of names and addresses of former members without obtaining reasonable assurance that such lists have not been obtained contrary to regulations of the Department of Defense or other uniformed service;

(ii) Failure to reveal sources and copies of mailing lists upon proper request or to otherwise cooperate in an authorized investigation of a reported improper practice;

(iii) The use of written or oral representations which may mislead the person addressed as to the true role of the company or its representatives as one of the participating companies;

(iv) The use of written or oral representations which may mislead the person addressed as to rights, privileges, coverage, premiums, or similar matters under Servicemembers’ Group Life Insurance, Veterans’ Group Life Insurance, or any policy issued or proposed to be issued as a conversion or other replacement coverage;

(v) Violation of regulations of a uniformed service concerning solicitation of life insurance; and

(vi) The use of written or oral references to Servicemembers’ Group Life Insurance, Veterans’ Group Life Insurance or conversions of Servicemembers’ Group Life Insurance or Veterans’ Group Life Insurance in connection with the attempted sale of an insurance policy which would not be, in fact, a conversion policy or a policy issued in lieu of a conversion, if those references might lead a person addressed to believe there is a connection between the policy being sold and coverage under Servicemembers’ Group Life Insurance, Veterans’ Group Life Insurance or a conversion of it.

(e) Each reinsuring and converting company must agree to issue conversion policies to any qualified applicant regardless of race, color, religion, sex, or national origin, under terms and conditions established by the primary insurer.

§ 9.12 Reinsurance formula.

The allocation of insurance to the insurer and each reinsurer will be based upon the following:

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§ 9.13

(a) An amount of the total life insurance in force under the policy in proportion to the company's total life insurance in force in the United States where:

The first $100 million in force is counted in full,

The second $100 million in force is counted at 75 percent,

The third $100 million in force is counted at 50 percent,

The fourth $100 million in force is counted at 25 percent,

And any amount above $400 million in force is counted at 5 percent.

(b) The allocation will be redetermined at the beginning of each policy year for the primary insurer and the companies then reinsuring, with the portion as set forth in paragraph (a) of this section based upon the corresponding in force (excluding the Servicemembers’ Group Life Insurance in force) as of the preceding December 31.

(c) Any life insurance company, which is not initially participating in reinsurance or conversions, but satisfies the criteria set forth in § 9.11, may subsequently apply to the primary insurer to reinsure and convert, or to convert only. The participation of such company will be effective as of the beginning of the policy year following the date on which application is approved by the insurer.


§ 9.13 Actions on the policy.

The Assistant Director for Insurance will furnish the name and address of the insuring company upon written request of a member of the uniformed services or his or her beneficiary. Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurer.

PAYMENTS

10.50 Section 601 and section 603 payments made on first day of calendar quarter.

10.51 Payments to minor child.

10.52 Duplication of payments prohibited.

10.53 Payment on duplicate certificate.


SOURCE: 13 FR 7122, Nov. 27, 1948, unless otherwise noted.

ADJUSTED COMPENSATION; GENERAL

§ 10.0 Adjusted service pay entitlements.

A veteran entitled to adjusted service pay is one whose adjusted service credit does not amount to more than $50 as distinguished from a veteran whose adjusted service credit exceeds $50 and who therefore is entitled to an adjusted service certificate.

§ 10.1 Issuance of duplicate adjusted service certificate without bond.

If the veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, without bad faith, has not received such certificate, or if prior to receipt by the veteran such certificate was destroyed wholly or in part or was so defaced as to impair its value, or, if after delivery it was partially destroyed or defaced so as to impair its value but can be identified to the satisfaction of the Secretary, a duplicate adjusted service certificate will be issued upon application and a bond of indemnity will not be required: Provided, That if the adjusted service certificate was destroyed in part or so defaced as to impair its value, the veteran or person entitled to payment thereon will be required to surrender to the Department of Veterans Affairs the original certificate or so much thereof as may remain.

§ 10.2 Evidence required of loss, destruction or mutilation of adjusted service certificate.

The veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, or the person entitled to payment thereon will be required to furnish evidence of the nonreceipt of the adjusted service certificate, or of its receipt in a mutilated or defaced condition, or of the loss or destruction in whole or in part of defacement of the certificate after its receipt, as the case may be. The evidence must be sufficient to establish to the satisfaction of the Secretary that neither the veteran nor the person entitled to payment thereon, or any person for or on their behalf, received the adjusted service certificate, or that at the time of its receipt it was mutilated or defaced to such an extent as to impair its value, or that after receipt of the certificate it was lost or destroyed in whole or in part or defaced, but without bad faith on the part of the veteran, and that every effort has been made to recover the lost certificate. Unless determination is otherwise made by the Secretary the evidence must be in the form of a written statement sworn to by the veteran or person entitled to payment thereon and witnessed by at least two persons who shall state, under oath that they personally know the affiant, that they have read his or her statement and that it is true to the best of their knowledge and belief. These statements should be supplemented by affidavits of any persons having personal knowledge of additional facts and circumstances concerning the matter, and the Secretary may require any additional evidence deemed necessary.

§ 10.3 Issuance of duplicate adjusted service certificate with bond.

An indemnity bond will be required as a prerequisite to the issuance of a duplicate adjusted service certificate in all cases where the certificate was lost after receipt by the veteran, or after receipt by the veteran was defaced or mutilated and cannot be identified to the satisfaction of the Secretary, provided the loss, defacement, or mutilation was without bad faith on the part of the veteran or the person entitled to payment thereon. The bond must be in the manner and form prescribed by the Department of Veterans Affairs and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Secretary, with condition to indemnify
§ 10.4 Loss, destruction, or mutilation of adjusted service certificate while in possession of Department of Veterans Affairs.

A new adjusted service certificate will be issued without bond in lieu of the certificate which has been lost or destroyed, or has been mutilated, defaced or damaged so as to impair its value, while in possession of the Department of Veterans Affairs.

§ 10.15 Designation of more than one beneficiary under an adjusted service certificate.

A veteran to whom an adjusted service certificate has been issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act may name more than one beneficiary to receive the proceeds of his adjusted service certificate, and may from time to time with the approval of the Secretary change such beneficiaries. The designated beneficiaries shall share equally unless otherwise specified by the veteran. Wherever the word beneficiary appears in the law and Department of Veterans Affairs regulations it shall be interpreted to include beneficiaries.

§ 10.16 Conditions requisite for change in designation of beneficiary.

A change of beneficiary of an adjusted service certificate to be valid must be made:

(a) By notice signed by the veteran or his duly authorized agent, and delivered or properly mailed to the Department of Veterans Affairs during the lifetime of the veteran. Such change shall not take effect until approved by the Secretary and after such approval the change shall be deemed to have been made as of the date the veteran signed said written notice and change, whether the veteran be living at the time of said approval or not.

(b) Or by last will and testament of the veteran, duly probated. Such change shall not be effective until received by the Department of Veterans Affairs and approved by the Secretary and after such approval the change shall be deemed to have been made as of the date of death of the veteran.

Provided, That a change of beneficiary signed subsequent to the date upon which the will was executed and delivered in accordance with paragraph (a) of this section shall if approved in accordance with regulations take precedence over the designation by will.

Provided, however, That any payment made to a beneficiary of record, before notice of change of beneficiary has been received in the Department of Veterans Affairs and approved by the Secretary, shall not be made again to the changed beneficiary.

§ 10.17 Designation of beneficiary subsequent to cancellation of previous designation.

The designation of a beneficiary made subsequent to the cancellation of a previous designation of beneficiary, shall be considered as a change in beneficiary, and shall be subject to the approval of the Secretary and subject to the conditions and requirements respecting change in beneficiary as outlined in §10.16.

§ 10.18 Approval of application for change of beneficiary heretofore made.

Any application for a change of beneficiary heretofore made may be approved if it meets the requirements set out in §§10.16 and 10.17.

§ 10.20 “Demand for payment” certification.

Certification to the execution of demand for payment forms appearing on the reverse side of adjusted service certificates issued pursuant to the World War Adjusted Compensation Act, as amended, is required in accordance with instructions printed on said forms. Such certification if made in the United States or possessions will be accepted if made by and bearing the official seal of a United States postmaster, an executive officer of an incorporated bank or trust company, notary public, or any person who is legally authorized to administer oaths in
§ 10.22 Payment to estate of decedent.

Wherever the face value of an adjusted service certificate, issued pursuant to the World War Adjusted Compensation Act, as amended, becomes payable to the estate of any decedent and the amount thereof is not over $500 and an administrator has not been or is not to be appointed, such amount will be paid to such person or persons as would, under the laws of the State of residence of the decedent, be entitled to his personal property in case of intestacy.

§ 10.24 Payment of death claim on lost, destroyed or mutilated adjusted service certificate with bond.

If the veteran named in an adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, as amended, is deceased, and if, after receipt by the veteran, the adjusted service certificate was lost, destroyed, or so defaced as to impair its value and cannot be identified to the satisfaction of the Secretary of Veterans Affairs, the person entitled to payment thereon will be required to furnish an indemnity bond in the manner and form prescribed by the Department of Veterans Affairs and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Secretary of Veterans Affairs with condition to indemnify and save harmless the United States from any claim on account of such certificate, before payment will be made of the proceeds of the certificate and a duplicate adjusted service certificate will not be issued.

§ 10.25 Payment of death claim on adjusted service certificate without bond.

If the veteran named in the adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if the certificate was lost or destroyed wholly or in part or was so defaced as to impair its value prior to receipt by the veteran, or was partially destroyed or defaced after receipt by the veteran, but can be identified to the satisfaction of the Secretary of Veterans Affairs, payment will be made of the proceeds of the certificate, a bond of indemnity will not be required, and a duplicate adjusted service certificate will not be issued: Provided, The person entitled to payment thereon surrenders the defaced or mutilated certificate or so much thereof as may remain.

§ 10.27 Definitions.

For the purpose of §§ 10.28 to 10.47, the word Act as used herein refers to the World War Adjusted Compensation Act, as amended; the word Veteran refers to that term as defined in section 2 of title I of said Act; the word Director refers to the Secretary of Veterans Affairs.

§ 10.28 Proof of death evidence.

Evidence required in establishing proof of death under the act, as amended, shall conform with the requirements set forth in the regulations of the Department of Veterans Affairs.

§ 10.29 Claims for benefits because of elimination of preferred dependent.

A dependent, in subsequent position in the order of preference as defined in section 601 of title VI of the Act, as amended, who makes claim for the benefits of the Act in consequence of the death of a dependent who made application and who stood in preferential position as defined in section 601 of the Act, as amended, shall be required to furnish, in support of such claim, proof of death of said dependent. Proof of
death of said dependent shall be in accordance with the requirements for proof of death as outlined in the regulations of Department of Veterans Affairs. A dependent who makes claim for the benefits of the act because of remarriage of a widow who did not make and file application before remarriage shall be required to furnish in support of such claim proof of remarriage of said widow. Proof of remarriage of said widow shall be in accordance with the requirements for proof of marriage as outlined in regulations of the Department of Veterans Affairs.

§ 10.30 Proof of remarriage.
A dependent who is receiving payments under section 601 of title VI of the Act, as amended, and who remarries after making and filing application, shall be required to furnish proof of remarriage in accordance with the requirements for proof of remarriage as outlined in regulations of the Department of Veterans Affairs.

§ 10.31 Dependency of mother or father.
Claims of a mother or father for the benefits to which either may be entitled under the World War Adjusted Compensation Act, as amended, and who remarries after making and filing application, shall be required to furnish proof of remarriage in accordance with the requirements for proof of remarriage as outlined in regulations of the Department of Veterans Affairs.

§ 10.32 Evidence of dependency.
Evidence of a whole or entire dependency shall not be required. The mother or father shall be considered dependent for the purposes of the act when it is established as a fact that the mother or father of a deceased veteran did not have sufficient means from all sources for a reasonable livelihood at the time of the death of the veteran or at any time thereafter and before the expiration of such period.

§ 10.33 Determination of dependency.
A determination of the existence of the alleged dependency will be made upon consideration of all facts relating to dependency, and upon such investigation of such facts as may be warranted. The following facts as existing at the time of the death of the veteran, or at any time thereafter and on or before January 2, 1935, or where it is established that the veteran is deceased as provided in section 312(a), at the beginning of such 7-year period or at any time thereafter and before the expiration of such period, shall be taken into consideration in determining dependency in a given case:
(a) Claimant's age.
(b) Amount contributed to claimant by deceased veteran.
(c) Value of all real and personal property owned by claimant.
(d) Total monthly expenses of the claimant and total monthly income.
(e) Incapability of self-support by reason of mental or physical defect.
(f) Any other fact or facts pertinent to the determination of dependency.

§ 10.34 Proof of age of dependent mother or father.
The mother or father of a veteran to be entitled to the presumption of dependency within the meaning of section 602(c) or section 312(c) of the Act, as amended, shall be required to submit proof of age in accordance with the requirements as set forth in regulations of the Department of Veterans Affairs.

§ 10.35 Claim of mother entitled by reason of unmarried status.
Claim of a mother for the benefits to which she may be entitled by reason of her unmarried status as outlined in section 602(c) or section 312(c)3 of the Act, as amended, shall be supported by a statement of fact, under oath, of such status, together with one of the following:
§ 10.36 Proof of marital cohabitation under section 602 or section 312 of the Act.

In order to prove marital cohabitation within the meaning of that term as used in section 602(a) or section 312(c)1 of the Act, as amended, claimant shall be required to establish:

(a) A valid marriage, such marriage to be shown by the best evidence obtainable in accordance with the provisions of regulations of the Department of Veterans Affairs.

(b) The fact of living together as man and wife, with such fact to be established by:

(1) Statement of the widow or widower showing that he or she and the veteran lived together as man and wife and also showing the place or places of residence during such marital cohabitation and the approximate time of such residence; or

(2) Statement of two competent persons showing that they personally knew the claimant and veteran and that they had personal knowledge that said claimant and veteran lived together as man and wife and were recognized as such.

(c) The fact that the marital status existed at the time of the death of the veteran or where it is established that the veteran is deceased, as provided in section 312(a)1 of the Act, as amended, at the beginning of such 7-year period, such fact to be established by:

(1) Statement by claimant that he or she and the veteran had not been divorced and that there had been no annulment of the marriage.

(2) Statement of claimant that he or she was not remarried at the time of making and filing application.

§ 10.37 Claim of widow not living with veteran at time of veteran's death.

If a veteran and widow were not living together at the time of the death of the veteran the widow will be required to establish:

(a) That the living apart was not due to her willful act, and

(b) Actual dependency upon the veteran at the time of his death or at any time thereafter and before January 2, 1935.

(1) A determination of what shall constitute a willful act, as used in section 602(a) of the Act, as amended, will be made upon consideration of all facts relating to such act and upon such investigation of such facts as may be deemed warranted. For the purpose of this section, the fact that a veteran lived apart from the widow because of any act by the widow involving desertion or moral turpitude will be construed as the willful act of the widow. Cause of separation and time and duration of separation at the time of the death of the veteran shall be taken into consideration in determining a willful act.

(2) A determination of the existence of actual dependency will be made under the criteria set forth in §§ 10.32 and 10.33 with respect to dependency of a mother or father.

§ 10.38 Proof of age of veteran's child.

A child of a veteran shall be required to submit proof of age in accordance with the requirements set forth in the regulations of the Department of Veterans Affairs.

§ 10.39 Mental or physical defect of child.

If claim is made under section 602(b), (2), of title IV of the Act as amended, alleging that a child over 18 years of age was incapable of self-support at the death of the veteran or that he became incapable of self-support subsequent to the death of the veteran but on or before January 2, 1935, or that he was incapable of self-support at the disappearance of the veteran or became incapable of self-support after the disappearance of the veteran and before
§ 10.40 Payment on account of minor child.

Payments to a minor child shall be made to the legally constituted guardian, curator or conservator, or to the person found by the director to be otherwise legally vested with the care of the child.

§ 10.41 Definition of “child”.

The term child as used in the regulations in this part includes:

(a) A legitimate child;

(b) A child legally adopted;

(c) A stepchild if a member of the veteran’s household at the time of the death of the veteran, or

(d) An illegitimate child but as to the father only if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child’s support or has been judicially decreed to be the putative father of such child.

§ 10.42 Claim of child other than legitimate child.

A claim of a child legally adopted by the veteran upon whose service the claim is based shall be supported by a certified copy of the court record of such adoption. A claim of a stepchild of a veteran shall be supported by an affidavit of his or her legal guardian, stating that at the time of the death of the veteran said stepchild was a member of the veteran’s household. The fact, as stated in such affidavit, and the signature of the guardian thereto, shall be attested by the court having jurisdiction over the guardian, or by two competent persons to whom the child was personally known at the time of the death of the veteran. A claim of an illegitimate child of a veteran upon whose service claim is based, shall be supported by:

(a) A statement by the veteran in writing acknowledging his parentage of such child; or

(b) Certified copy of order or decree of a court ordering the veteran to contribute to such child’s support; or

(c) Certified copy of a decree of a court holding the veteran to be the putative father of such child.

§ 10.43 Claim by guardian of child of veteran.

A claim made by a legal guardian on behalf of his or her ward, a child of a veteran, shall be supported by an affidavit of said guardian, in the capacity of guardian, setting forth the names, ages, and addresses of all living children of the deceased veteran, or, if there be no living child other than the claimant child, statement of that fact shall be made. The signature of the guardian to such required affidavit shall be attested by the court having jurisdiction of the guardian and ward,
or by two competent persons to whom the child is personally known.

§ 10.44 Evidence required to support claim of mother or father.
The term mother and father as referred to in the order of preference as outlined in section 601 of the Act, as amended, includes stepmothers, stepfathers, mothers and fathers through adoption, and persons who, for a period of not less than one year, have stood in the place of a mother or father to the veteran at any time prior to the beginning of his service. In addition to the evidence of dependency required from a natural mother or father, a claim of a stepmother or stepfather shall be supported by evidence of marriage to the natural parent of the veteran. This evidence shall be in accordance with the requirements of proof of marriage as set forth in regulations of the Department of Veterans Affairs. A claim of a mother or father through adoption shall be supported by a certified copy of the court record of such adoption. A claim by a person who claims to have stood in the place of a mother or father shall be supported by evidence of such relationship satisfactory to the Department of Veterans Affairs. Such evidence shall comprise:

(a) An affidavit of the claimant containing a complete detailed statement of the alleged relationship and

(b) Affidavits of two competent witnesses to whom claimant was personally known at the time of the death of the veteran, said witnesses certifying to the truth of the statement as made by the claimant.

§ 10.45 Definition of “widow”.
The term widow as used in the regulations in this part includes widower.

§ 10.46 Authentication of statements supporting claims.
All statements, except those of licensed examining physicians under §10.39 (a)(2) and (b)(1), required by §§10.28 to 10.44 shall be subscribed and sworn to before an officer vested with authority to administer oaths, in the place where such statements are made. Signatures executed in foreign countries or places shall be certified by an American consul, a recognized representative of an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where such statements are made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the signature was authorized to administer oaths in the place where certification was made.

§ 10.47 Use of prescribed forms.
Statements required by the regulations in this part should be submitted on forms provided by the Department of Veterans Affairs, when conveniently available.

PAYMENTS

§ 10.50 Section 601 and section 603 payments made on first day of calendar quarter.
Cash payments and the first installment of installment payments authorized in sections 601 and 603, respectively of title VI of the World War Adjusted Compensation Act, as amended, will be made as of the first day of the calendar quarter following the finding by the director that the applicant is a dependent entitled to the benefits of the act, but in no case shall any such payments be made before March 1, 1925: Provided, however, That payments authorized by section 608 of title VI of the Act, as amended, shall be paid in a lump sum to the preferred dependent without reference to payments under section 603 of title VI of the Act, as amended.

§ 10.51 Payments to minor child.
Payments to minor child through legal guardian, natural guardian, or self. (See §10.40.)

§ 10.52 Duplication of payments prohibited.
Duplication of payments shall not be made in case of change of beneficiary. (See §10.16.)
§ 10.53 Payment on duplicate certificate.

Issuance of duplicate adjusted service certificates and payment of claims based upon lost, destroyed, or mutilated, adjusted service certificates. (See §§10.1 to 10.4, 10.24 and 10.25, respectively.)

PART 11—LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES

Loans by banks on adjusted service certificates under section 502 of the World War Adjusted Compensation Act

§ 11.75 Certificates.

Adjusted service certificates are dated as of the 1st day of the month in which the applications were filed, but no certificates are dated prior to January 1, 1925. Loans on the security of such certificates may be made at any time after the date of the certificate. The fact that a certificate is stamped or marked “duplicate” does not destroy its value as security for a loan.

§ 11.76 To whom loan may be made.

Only the veteran named in the certificate can lawfully obtain a loan on his adjusted service certificate and neither the beneficiary nor any other person than the veteran has any rights in this respect. The person to whom the loan is made must be known to the lending bank to be the veteran named in the certificate securing such note. The consent of the beneficiary is not required, the act providing that a loan on the security of the certificate may be made “with or without the consent of the beneficiary thereof.” Loans may be made to veterans adjudged incompetent only through the guardians of such veterans and pursuant to specific
Department of Veterans Affairs

§ 11.83 Additional loans by reason of 50 percent loan value.

(a) It will be the policy of the Department of Veterans Affairs to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Secretary of Veterans' Affairs. The Secretary shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest

§ 11.81 Rediscounts with Federal Reserve Banks.

Upon the endorsement of any bank, which shall be deemed a waiver of demand, notice and protest by such bank as to its own endorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by an Adjusted Service Certificate and held by a bank is made eligible for discount or rediscount by the Federal Reserve bank of the Federal reserve district in which such bank is located, whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the endorsement of any other bank: Provided, That at the time of discount or rediscount such note has a maturity not in excess of 9 months, exclusive of days of grace, and complies in all other respects with the provisions of the law, the regulations of the Federal Reserve Board and the regulations in this part.

§ 11.80 Sale or discount of note by holding bank.

Any bank holding a note secured by an Adjusted Service Certificate may sell the note to any bank authorized to make a loan to a veteran and deliver the certificate to such bank. In case a note secured by an Adjusted Service Certificate is sold or transferred, the bank selling, discounting or rediscounting the note is required by law to notify the veteran promptly by mail at his last known post office address. No Adjusted Service Certificate is negotiable or assignable, or may serve as security for a loan, except as provided in section 502 of the World War Adjusted Compensation Act, as amended. Any negotiation, assignment or loan made in violation of section 502 of the World War Adjusted Compensation Act is void. In case of sale, discount or rediscount by the bank which made the loan, the note or notes should be accompanied by the affidavit required by §11.85.

§ 11.77 By whom loans may be made.

Any national bank or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia, hereinafter referred to as any bank, is authorized to loan to any veteran upon his promissory note secured by his Adjusted Service Certificate any amount not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate, but it is provided by amendment to the World War Adjusted Compensation Act dated February 27, 1931, that the loan value of any certificate shall at no time be less than 50 percent of the face value. Upon the making of such loan, the lending bank shall promptly notify the Department of Veterans Affairs of the name of the veteran, the A-number shown immediately after the name, the number of the certificate, the amount, the rate of interest, and date of loan: However, this requirement may be waived by the Secretary of Veterans Affairs.

§ 11.83 Additional loans by reason of 50 percent loan value.

(a) It will be the policy of the Department of Veterans Affairs to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Secretary of Veterans' Affairs. The Secretary shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest.

§ 11.83 Additional loans by reason of 50 percent loan value.

(a) It will be the policy of the Department of Veterans Affairs to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Secretary of Veterans' Affairs. The Secretary shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest.

§ 11.83 Additional loans by reason of 50 percent loan value.

(a) It will be the policy of the Department of Veterans Affairs to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Secretary of Veterans' Affairs. The Secretary shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest.
§ 11.84 Redemption because of veteran's death.

If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, pay all unpaid principal and interest to the Secretary, who shall pay to the bank, in full satisfaction of its claim the amount of the unpaid principal and unpaid interest, at the rate authorized by the World War Adjusted Compensation Act, as amended, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Secretary and fails to present the certificate and note to the Secretary within 15 days after the notice such interest shall be paid only up to the fifteenth day after such notice.

§ 11.85 Condition requisite for redemption.

In order to be eligible for redemption by the Department of Veterans Affairs, the note and certificate must be accompanied by an affidavit of a duly authorized officer (the capacity in which the officer serves must be shown) of the lending bank showing that the said bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation in respect of the loan, or any other loan made by the bank under the provisions of section 502 of the World War Adjusted Compensation Act, except the rate of interest specified in the section of the Act cited; that the person who obtained the loan is known to the lending bank to be the person named in the Adjusted Service Certificate; and that notice required by § 11.77 was promptly given. In case the note was sold or discounted by the lending bank, there should be incorporated in the affidavit a statement that the veteran was notified promptly of the transfer by mail to his last known address. In case the note was resold or rediscounted by any other bank, affidavit shall be made by a duly authorized officer of such bank that proper notice of such resale or rediscount was promptly mailed to the veteran at his last known address. The proper execution of the appropriate affidavit on Form 6615 or 6615a will be considered as a compliance with the requirements of this section. A single affidavit setting forth the full particulars may be accepted to cover any number of veterans' notes submitted for redemption at one time. The affidavit must be executed before a judge of the United States court, a United States commissioner, a United States district attorney, a United States marshal, a collector of internal revenue, a collector of customs, a United States postmaster, a clerk of court of record under the seal of the court, an executive officer of an incorporated bank or trust company, under his official designation and the seal of the bank or trust company, or a notary public under his seal, or a diplomatic or consular officer of the United States, under his official seal.
DISPOSITION OF NOTES SECURED BY ADJUSTED CERTIFICATES REDEEMED FROM BANKS BY THE DEPARTMENT OF VETERANS AFFAIRS UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. L. 120, 68th CONG.)

SOURCE: Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948, unless otherwise noted.

§ 11.88 Cancellation of note.
When a veteran’s note is redeemed by the Department of Veterans Affairs, the note will be canceled and both the note and certificate will be retained in the files of the Department of Veterans Affairs until such time as settlement is made.

§ 11.89 Notification of veteran.
When a note is redeemed notification will be sent to the veteran at his last known address, advising him that the Department of Veterans Affairs holds his note, and outlining the conditions governing repayment.

§ 11.91 Repayment of loans.
Should the veteran so desire, he may repay the amount due on his note in full or in installments.

§ 11.93 Failure to redeem.
(a) If the veteran fails to redeem his certificate before its maturity there will be deducted from the face value of the certificate the amount of the unpaid principal of the note of the veteran and the unpaid interest thereon through September 30, 1931.
(b) If the veteran failed to redeem his certificate and died prior to January 27, 1936 there will be deducted from the face value of the certificate the amount of the unpaid principal of the veteran's note and the unpaid interest thereon to the date of his death. If the veteran died on or after January 27, 1936, the amount to be deducted when making settlement will be the unpaid principal of the veteran’s note and the unpaid interest thereon through September 30, 1931.

DEPARTMENT OF VETERANS AFFAIRS LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

SOURCE: Sections 11.96 to 11.104 appear at 13 FR 7126, Nov. 27, 1948, unless otherwise noted.

§ 11.96 By whom loans may be made.
Loans will be made by the Department of Veterans Affairs, Washington, DC, to any veteran, upon his promissory note secured by his adjusted service certificate, in any amount in even dollars not less than $10 and not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate but at no time is the loan value less than fifty per centum of the face value.

§ 11.99 Identification.
Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification will be made in accordance with § 11.114.

[19 FR 5086, Aug. 12, 1954]

§ 11.100 Form of note.
The form of note used in making loans secured by adjusted service certificates shall follow Form 1185.

§ 11.102 Term of note.
All loans will be for a period of one year and if not paid will be automatically extended from year to year for periods of one year in the amount of the principal plus interest accrued to the end of the immediately preceding expired loan year, which total amount shall automatically become a new principal each year provided a loan may be paid off at any time by the payment of principal and accrued interest, but in no event will interest accruing after September 30, 1931 be deducted in final settlement of a certificate except as provided in § 11.93(b).
§ 11.104 Disposition of notes and certificates.

All notes and certificates shall be held in the custody of the Department of Veterans Affairs, Washington, DC 20420.

[13 FR 7126, Nov. 27, 1948, as amended at 54 FR 34982, Aug. 23, 1989]

APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE UNDER THE ADJUSTED COMPENSATION PAYMENT ACT, 1936 (PUB. L. 425, 74TH CONG.)

§ 11.109 Settlement of unmatured adjusted service certificates.

Where an application for final settlement of an adjusted service certificate is received in the Department of Veterans Affairs prior to the maturity date of the certificate, payment will be made under the terms of the Adjusted Compensation Payment Act, 1936. This act provides for payment of the amount due on the certificate, after deducting any unpaid loans with interest through September 30, 1931, in adjusted service bonds. These bonds will be issued by the Treasury Department in denominations of $50, in the name of the veteran only, and will bear interest at the rate of 3 percent per annum from June 15, 1936, to June 15, 1945. Any excess amount not sufficient to purchase a $50 bond will be paid by check.

[19 FR 5087, Aug. 12, 1954]

§ 11.110 Who may make application for final settlement.

A mentally competent veteran to whom an adjusted service certificate has been issued.

(a) A legally appointed guardian of an incompetent veteran. An application submitted by a legally appointed guardian must be accompanied by letters of guardianship showing the fiduciary relationship, provided such papers are not already on file in the Department of Veterans Affairs.

(b) A representative of a physically incapacitated veteran. Where application is made by a representative of a physically incapacitated veteran, the representative must attach a statement describing the veteran’s incapacity. The correctness of such statement must be certified by an officer as designated in §11.114.

(c) A superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under the provision of Pub. L. No. 373, 72d Congress, may make application for an incompetent adult or minor Indian who is a recognized ward of the Government. The application must be accompanied by a certification from the superintendent or other bonded officer showing: (1) That the said beneficiary is a ward of the Government; (2) that no guardian or other fiduciary has been appointed; (3) that the officer making application has been designated by the Secretary of the Interior in accordance with Pub. L. No. 373, 72d Congress; (4) that he is properly bonded; and (5) that he will receive, handle, and account for such benefits in accordance with existing law and regulations of the Department of Interior.

(d) A manager of a Department of Veterans Affairs hospital, or a manager or superintendent of a contract hospital or State institution where the veteran is a patient may make application as custodian for the veteran. Such application must be made with the approval of the regional chief attorney.

[19 FR 5087, Aug. 12, 1954]

§ 11.111 Form of application.

Application must be made on Department of Veterans Affairs Adjusted Compensation Form 1701.

[13 FR 7127, Nov. 27, 1948]

§ 11.114 Identification.

Before settlement is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the settlement for which an application is made. If made in the United States or possessions, certification will be accepted if made by a United States postmaster or assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a member of the United States Senate or the House of Representatives; a postmaster, over his official title, of a post, chapter, or
§ 11.117 Missing applications.

Where the records of the Department of Veterans Affairs show that an application, disclosing an intention to claim the benefits of this Act, has been filed and the application cannot be found, such application shall be presumed, in

other comparable unit of an organization recognized under Veterans Regulation No. 10 (38 U.S.C. ch. 12A), or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, possession, District of Columbia, or in a Federal judicial district, of the United States. If identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; provided, there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A manager of a Department of Veterans Affairs hospital is authorized to identify patients, members, or employees of the hospital over which he has charge. An employee of the Department of Veterans Affairs who has been specifically designated in writing to do so may identify applicants during official hours and on the premises of the Department of Veterans Affairs for this purpose, if necessary, the official records of the Department of Veterans Affairs. Field station finance employees may not be designated for this purpose.

(a) Fingerprint impressions shall be required on the application and shall be imprinted thereon in the presence of the persons identifying the veteran. In the case of veterans who are mentally incapacitated and application is being executed by a representative of the veteran, the veterans’ fingerprints will be obtained if possible. If this cannot be done, as also in the case of an individual whose fingers are all missing, a statement of explanation will be required.

(b) [Reserved]

[13 FR 7227, Nov. 27, 1948, as amended at 19 FR 5087, Aug. 12, 1954]

§ 11.116 Death of veteran before final settlement.

If the veteran dies after making application under the Adjusted Compensation Payment Act, 1936, but before it is filed, it may be filed by any person and will be considered valid if found to bear the bona-fide signature of the applicant, discloses an intention to claim benefits under the Act, and is filed before the maturity of the certificate and before payment is made to the beneficiary. An application made by the veteran or his legal representative shall evidence his intention to claim the benefits of this Act; no other evidence shall be acceptable.

(a) If the veteran’s death occurs after the application is filed but before payment is received under this Act, or if the application is filed after death occurs but before the maturity of the certificate and before payment is made to the beneficiary under section 501 of the World War Adjusted Compensation Act, as amended, payment under this act shall be made to the estate of the veteran irrespective of any beneficiary designation.

(b) If the veteran dies without filing a valid application under this Act, no payment under this Act shall be made. In such case, payment of the certificate will be made under the World War Adjusted Compensation Act, as amended, in accordance with §11.128; however, in making any settlement there shall be deducted from the face value of the certificate the amount of any outstanding loans and so much of the unpaid interest as accrued prior to October 1, 1931.

[19 FR 5087, Aug. 12, 1954]

§ 11.115 Where to file application.

The application for final settlement, accompanied by the veteran’s adjusted service certificate, unless the certificate is being held in the Department of Veterans Affairs as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, DC 20421.

[19 FR 5087, Aug. 12, 1954]
§ 11.125 Settlement of matured adjusted service certificates.

Where an application for final settlement of an adjusted service certificate is received in the Department of Veterans Affairs subsequent to the date of maturity of the certificate, payment will be made under the terms of the World War Adjusted Compensation Act, as amended. This Act provides for payment of the face value of the certificate less any outstanding indebtedness for loans obtained on the certificate; however, interest accrued on the loans subsequent to September 30, 1931, and unpaid will be canceled insofar as the veteran is concerned.

§ 11.126 Form of application.

Either demand for payment (Form 1748) of application (Form 1701) may be used by the veteran or his legal representative in applying for final settlement of a matured certificate.

§ 11.127 Identification.

Before payment may be made on the adjusted service certificate, the person applying therefor will be identified as the person entitled to payment for which application is made. Such identification will be accepted if made by an authorized person as stated in §11.114; also, fingerprint impressions shall be placed in the space provided on the application in accordance with §11.114(a).

§ 11.128 Veteran dies without having filed application for final settlement.

If the veteran dies without having filed application for final settlement under the Adjusted Compensation Payment Act, 1936, and the certificate has not matured, payment will be made to the last designated beneficiary or, if no beneficiary, to his estate. If the certificate has matured, payment will be made to the veteran's estate regardless of any beneficiary designation. Payment of the amount due on a deceased veteran's certificate will be made only on an approved award based upon receipt in the Department of Veterans Affairs of an application properly executed by the person or persons entitled.

§ 11.129 Form of application for payment of deceased veteran's certificate.

Demand for payment (VA Form 8-582) is the proper form for use in applying for payment of the amount due on a deceased veteran's certificate.

§ 11.130 Where to file applications.

Application for payment of a matured certificate or a deceased veteran's certificate, accompanied by the adjusted service certificate, unless it is held in the Department of Veterans Affairs as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, DC, 20421.
§ 12.1 Designee cases; competent veterans.

(a) Each competent veteran now being cared for or who is hereafter admitted to receive care as such at a Department of Veterans Affairs medical center or other field facility, or who are discharged or who elope, or are absent without leave therefrom, and in respect to property found thereat, the term funds means all types of United States currency and coin, checks payable to the decedent except checks drawn on the Treasurer of the United States which have never been negotiated, and includes deposits to the credit of the veteran in the account "Personal Funds of Patients," and each competent veteran will be so advised. The term effects means and embraces all other property of every description, including insurance policies, certificates of stock, bonds and notes the obligation of the United States or of others, and all other papers of every character except checks drawn on the Treasurer of the United States, as well as clothing, jewelry and other forms of property, or evidences of interest therein. Checks drawn on the Treasurer of the United States which have never been negotiated will be returned to the issuing office for disposition.

(b) Field facilities as used in §§12.1 to 12.13 includes hospitals, centers, domiciliary activities, supply depots, and other offices over which the Department of Veterans Affairs has direct and exclusive administrative jurisdiction, and excludes State, county, city, private, and contract hospitals and hospitals or other institutions operated by the United States through agencies other than the Department of Veterans Affairs. At institutions other than field facilities as herein defined funds or effects as defined in paragraph (a) of this section, except for funds derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs in the account Personal Funds of Patients for incompetent veterans, will be disposed of under the laws governing such institutions. In any case where the veteran died intestate without heirs or next of kin his or her personal property vests in the United States. Disposition of the property will be made in accordance with the provisions of §§12.19 to 12.23.

event of death. He or she may also designate an alternate to whom delivery will be made if the first designee fails or refuses to accept delivery. It should be clearly understood that the delivery of such funds or effects will constitute only a delivery of possession thereof, and such delivery is not intended to affect in any manner the title to such funds or effects or determine the person ultimately entitled to receive same from the person to whom delivery is made (hereinafter in the regulations in this part termed the designee). The person designated may not be an employee of the Department of Veterans Affairs unless such employee be the wife (or husband), child, grandchild, mother, father, grandmother, grandfather, brother, or sister of the veteran. The veteran may in writing change or revoke such designation at any time. If a veteran becomes incompetent, any designation previously made will become inoperative with respect to those funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs. The guardian may change or revoke the existing designation with respect to personal effects and funds derived from other sources.

(b) Veterans will be encouraged to place in the custody of their relatives articles of little or no utility value to them during their period of care at a Department of Veterans Affairs field facility, and to retain in their possession only such funds and effects as are actually required and necessary for their immediate convenience.


§ 12.2 Designee cases; incompetent veterans.

(a) An incompetent veteran will not be informed concerning the designation of a person to receive funds or effects; but if he or she has a guardian the guardian will be requested to make such designation of himself or herself or another person to receive possession of the funds and effects (other than funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs) upon the incompetent's death. The guardian will sign the letter designating himself or herself or another person with the veteran’s name “By __________, guardian of his or her estate”.

(b) No effort will be made to obtain a designation by or on behalf of an incompetent veteran who has no guardian.


§ 12.3 Deceased veteran's cases.

(a) Immediately upon the death or the absence without leave of any beneficiary at a field facility, as defined in §12.0(b), a survey and inventory of the funds and effects of such beneficiary will be taken in the following manner:

(1) If the death or absence without leave occurred during hospitalization, a complete inventory (VA Form 10-2687, Inventory of Funds and Effects) will be made of all personal effects (including those in the custody of the hospital, jewelry being worn by the deceased person, or jewelry and other effects in pockets of clothing he or she may have been wearing) and all funds found and moneys on deposit in Personal Funds of Patients. In the case of death of incompetent veterans after November 30, 1959, the inventory will be completed to show separately those funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs. For purpose of determining the source of funds, expenditures from the account will be considered as having been made from gratuitous benefits, not to exceed the extent of deposits of such benefits. In the event death occurred during other than official working hours, the officer of the day and/or a representative of Nursing Service will collect and inventory all funds and personal effects on the person of the deceased beneficiary and on the ward, will carefully safeguard such property and, upon completion of the tour of duty, will turn the funds and effects over to the properly designated employees.
(2) If the death or absence without leave occurred while the beneficiary was assigned to a domiciliary section, or while receiving hospitalization and at time of death or absence without leave any effects are in the section, a like inventory will be made by representatives of the Chief, Domiciliary Operations and/or Medical Administration Division.

(3) The inventory report will be executed in triplicate, original and two copies. All will be signed by the employee making the inventory, and disposed of as provided for in pertinent procedural instructions.

(4) Personally owned clothing or other effects (such as tooth brushes, false teeth not containing gold, etc.), which are unserviceable by reason of wear or tear or insanitary condition, and clothing that had been supplied by the Government, will not be included in this inventory; instead, the unserviceable personally owned articles will be listed on a separate list, with their condition briefly described, and their disposition recommended in a separate report to the facility head. The facility head, if approving this recommendation, will order destruction or utilization in occupational therapy, or as wipe rags, etc., of such unserviceable articles and, when they are so destroyed or utilized, will have entered on the papers the date and nature of the disposition. The completed papers will then be placed in the correspondence file of the beneficiary. Clothing that had been supplied by the Government will be reconditioned if possible and returned to stock for issue to other eligible beneficiaries. When Government-owned clothing cannot be reconditioned it will be disposed of.

(5) When the nearest relative requests that the deceased beneficiary be clad for burial in clothing he or she personally owned, instead of burial clothing to be supplied under the contract for mortuary services, such request will be honored. A receipt in such cases will be obtained from the undertaker, specifying the articles of clothing so used. Adjustment of the undertaker’s bill in the case will correspondingly be made.

(6) In accomplishing such inventories, detailed description will be given of items of material value or importance, for example:

- Watch—Yellow metal (make, movement, and case number, if available without damage to watch).
- Ring—Yellow metal (probably gold-plated or stamped 14-K., setting if any).
- Discharge certificate.
- Adjusted service certificate (number).
- Bonds or stocks (name of company, registered or nonregistered, identifying number, recited par value, if any).
- Bank books or other asset evidence (name of bank or other obligor, apparent value, identifying numbers, etc.).
- Clothing (brief description and statement of condition). Etc.

(b) Upon completion of the survey and inventory, the effects will be turned over to the designated employee for safekeeping. Any funds found in excess of $100 which apparently were the property of the deceased will be turned over to the details clerk and delivered immediately to the agent cashier, who shall deposit same in the account “Personal Funds of Patients”. Unendorsed checks other than Treasury checks and funds not in excess of $100 will be considered personal effects and not funds and will be handled accordingly.

§ 12.4 Disposition of effects and funds to designee; exceptions.

(a) Upon authorization by the facility head or his or her designated representative, all funds, as defined in § 12.0 (except funds on deposit in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs where the veteran was incompetent at time of death), and effects will be delivered or sent to the designee of the deceased veteran if request therefor be made after death and within 90 days following the mailing of notice to such designee (see § 12.9(a)), unless:

(1) The executor or administrator of the estate of the deceased veteran shall have notified the facility head or his or her designated representative of his or her desire and readiness to receive such
§ 12.5 Nondesignee cases.  

(a) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent, or the designee fails or refuses to claim the funds and effects as defined in §12.0(a) within 90 days following the mailing of notice to such designee, the facility head will
take appropriate action to dispose of the effects to the person or persons legally entitled thereto, i.e., the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in the order named. Subject to the applicable provisions of §§12.3 and 12.4, such delivery may be made at any time before the sale contemplated by §12.9 to the designee or other person entitled under the facts of the case. Delivery will be made to the person entitled to priority as prescribed in this paragraph, unless such person waives right to possession, in which event delivery will be to the person, if any, in whose favor such prior entitled person waives right to possession. If the waiver is not in favor of a particular person or class, delivery will be to the person or persons next in order of priority under this paragraph. If in any case there be more than one person in the class entitled to priority, initially or by reason of waiver, delivery will be made only to their joint designated agent (who may, but need not, be one of the class), or to one of such class in his or her own behalf upon written waiver of all others of the class entitled thereto. The guardian of a minor or incompetent may waive his or her ward's prior right to possession.

(b) Except where delivery is made to a designee, executor, or administrator, funds of veterans who were competent at time of death will be released to the person or persons who would ultimately be entitled to distribution under the laws of the State of the decedent's domicile. The person or persons entitled may waive his or her right to the funds in favor of another heir or next of kin.

(c) Funds of veterans who were incompetent at time of death occurring after November 30, 1959 and which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs, will be paid upon receipt of proper application to the following persons living at the time of settlement, and in the order named: the surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. Any funds derived from gratuitous benefits not disposed of in accordance with this paragraph shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such funds as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses.

(e) No payment shall be made under paragraph (d) of this section unless claim therefor is filed with the Department of Veterans Affairs within 5 years after the death of the veteran, except that, if any person so entitled under such regulation is under legal disability at the time of death of the veteran, such 5-year period of limitation shall run from the termination or removal of the legal disability.

§ 12.6 Cases of living veterans.

(a) Except as provided in §12.8, effects of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the field facility) will be disposed of as follows:

(1) To the owner if competent, or if deceased to his or her administrator or executor or as directed in writing by such owner, or his or her executor or administrator.

(2) To the guardian of the owner if the latter be incompetent, or if deceased to his or her administrator or executor, or as directed in writing by such guardian, executor or administrator.
§ 12.7 To the incompetent owner if he or she has no guardian; delivery, however, to the incompetent owner may be withheld and may be made to the person who is caring for such incompetent if, in the judgment of the facility head or his or her designated representative, such delivery is to the incompetent's best interest.

NOTE: The Government will not pay expense of transportation of effects of competent or incompetent veterans discharged, on trail visit, absent without leave, or who have eloped, except that personal effects of a beneficiary discharged or on trail visit, or of a beneficiary being transferred to another facility at Government expense, which are not available at time of discharge, beginning of trail visit, or transfer of the beneficiary, due to the articles being in custody of the Government, may be shipped at Government expense.

(b) Funds of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the station) will be disposed of in accordance with the provisions of current Department of Veterans Affairs procedures.


§ 12.7 Cases not applicable to provisions of §§12.0 to 12.6.

The provisions of §§12.0 to 12.6 shall be inapplicable to property known to be that of any person dying in or discharged or absent without leave from a Department of Veterans Affairs field facility other than a veteran admitted as such to such field facility.

[13 FR 7129, Nov. 27, 1948]

§ 12.8 Unclaimed effects of veterans.

(a) In the case of any property of a veteran who was in receipt of hospital or domiciliary care, herefore or hereafter left at a Department of Veterans Affairs field facility, the owner of which is discharged or absent without leave or who has eloped and is not to be returned to a Department of Veterans Affairs field facility, or has died after departure therefrom, or in case the whereabouts or identity of any owner of any property thereat be unknown, such property, unless it shall be disposed of under the provisions of §§12.4 and 12.6 shall be sold, used, destroyed or otherwise disposed of as the manager or his or her designated representative shall determine the circumstances in the case may warrant. Any sale of such property shall be conditioned upon the 90-day notice provided in section 6 of the Act of June 25, 1938 (38 U.S.C. 5±16c).

(b) If the circumstances are such that retention of any property as is mentioned in paragraph (a) of this section, or of any property of unknown ownership found on the premises would endanger the health or life of patients or others on the premises (by reason of contagion, infection, or otherwise) such property shall be forthwith destroyed on order of the manager or his or her designated representative, and proper record of the action taken will be made.

(c) If there be no known claimant of any such property and if it may be used at the field facility for the benefit of the members or patients for such purposes as the General Post Fund is intended to serve, and if the value is inconsequential, the manager or his or her designated representative may authorize the retention and use of such property at the field facility.

(d) Any such property which is not destroyed or used as provided in paragraphs (b) and (c) of this section shall be sold in the manner provided in §§12.9 and 12.10, after notice as therein provided unless, prior to sale, claim be made for any such property by someone legally entitled thereto.

[13 FR 7129, Nov. 27, 1948]

§ 12.9 Rights of designate; sales instruction; transportation charges.

(a) Upon death of a veteran admitted as such to a field facility, the Manager or his or her designated representative will cause notice (parts I and V of VA Form 10±1171) to be sent to the designate: Provided, however, That if the Manager or his or her designated representative has information of the death of the primary designate, notice shall be sent to the alternate designate and all of the provisions of the regulations in this part respecting the designate will be deemed to apply to the alternate. If the designate is a minor or
(a) Upon receipt of notice of death of a person known to be incompetent, delivery of the funds or effects will be made only to the designate's guardian or custodian upon qualification. The right of the designate to receive possession ceases when he or she refuses to accept delivery or if he or she fails to respond within 90 days after VA Form 10-1171 was mailed. When the right of a designate ceases, VA Form 10-1171 will be forwarded immediately to the alternate designate, whose rights then become identical with those forfeited by the first designate, and the rights of the alternate designate shall terminate at the expiration of 90 days after VA Form 10-1171 was mailed to him or her. Delivery will not be made to a designate until he or she submits a signed statement to the effect that he or she understands that the delivery of such funds and effects constitutes a delivery of possession only and that such delivery is not intended to affect in any manner the title thereto. Such notice shall fully identify the decedent and state the fact that he or she designated the addressee to receive possession of such property; that the right to receive possession thereof does not affect the ownership but that the designate will be responsible for the ultimate disposition thereof to those who, under applicable law, are entitled to the decedent’s property; and will request prompt advice as to whether the designate will accept such property and that, if he or she will, he or she furnish shipping instructions, upon receipt of which the property will be shipped at the expense of the Government. However, prior to dispatching such notice, it will be definitely determined that the shipping expense will not exceed $25. If such expense will exceed $25, the excess cost will be ascertained, and the notice will include a statement of the amount of such excess shipping cost with request that the amount thereof be remitted at the time shipping instructions are furnished. In estimating the shipping expense, it will be assumed that shipment to the designate will be to the same address as that to which the notice is sent. Each notice, however, shall contain a statement that in no event will the Government pay shipping expense in excess of $25. The notice will include a copy of the inventory of the property which it is proposed to deliver to the designate.

(b) Upon receipt of appropriate shipping instructions the property will be shipped, transportation charges prepaid, by mail, express, or freight as may be appropriate under the circumstances and most economical to the Government. The expense of such shipment, chargeable to the Government, in no case to exceed $25.00, is payable the same as other administrative expenses of the Department of Veterans Affairs.

(c) The living owner of any property left or found at a field facility will be promptly notified thereof. Except as provided in §12.6(a), transportation charges on property shipped to a living veteran will not be paid by the Government. In such cases, shipment shall be made as requested by the owner of the property (or his or her guardian) upon receipt of necessary transportation charges, which will be prepaid, unless the owner requests shipment with charges collect and the carrier will accept such shipment without liability for such charges, contingent or otherwise, upon the Government.

(d) If the designate refuses or, upon the lapse of 90 days, has failed to take possession or request shipment of decedent’s property (paragraph (a) of this section), or if 90 days have elapsed after the finding of any property and the owner (known or unknown) has failed to request same, the manager or his or her designated representative will authorize destruction, use or sale.

(e) If sale of the property is authorized the manager will take necessary action to ascertain the names and addresses, of the owners; or, in the event of the owner’s decease, of his or her executor or administrator, widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister.

(f) When in possession of the necessary information the manager will cause proper notice of sale (Form 4-1171) to be mailed. Such notice in all cases shall disclose the identity, if known, of the decedent whose property is to be sold and contain a copy of the inventory of such property. A copy of such notice (Form 4-1171), after parts I, IV, and V thereof are completed, shall be mailed to the owner, if known, or if
§ 12.10 Proceeds of sale.

After proper notice as prescribed, sale of any such property which it is proper to sell, will be made by public auction by the manager (or any employee designated by him or her) at the time and place stated in the notice of sale. The property will be sold to the highest bidder (no employee except member employees of the Department of Veterans Affairs shall purchase any of this property) and forthwith delivered and the amount of the bid collected and deposited to the credit of "General Post Fund, Department of Veterans Affairs." Care will be taken to segregate the property of each owner and separate account will be maintained as to the proceeds of sale thereof. Property not disposed of by public auction will be included in the next sale or will be used or destroyed as the value thereof warrants at the discretion of the manager.

§ 12.12 Miscellaneous provisions.

If it is shown that some person other than the veteran has title to property in a veteran's possession at the time of death, nothing contained in §§ 12.0 to 12.12 shall be construed as prohibiting delivery of such property to the owner. A life insurance policy may be delivered to the beneficiary therein named if the insured is deceased, notwithstanding the veteran has designated a person to whom possession of his or her property at the field facility is to be transferred. In no case will funds or effects be delivered to a minor, or to an incompetent person other than as provided in § 12.9 (a) and (c), but where any such person is entitled to title or possession delivery may be made to his or her guardian.

In order that all persons who bring property on premises of the Department of Veterans Affairs may be advised of the existence of the act of June 25, 1938 (38 U.S.C. 16-16j), and that it affects such property, notice thereof (Form 4-1182), shall be permanently posted in at least one prominent place on the premises of each field facility where persons are likely to see such notice.

[13 FR 7130, Nov. 27, 1948]

§ 12.15 Inventory of property.

Immediately upon the death at a Department of Veterans Affairs field facility of a person who was not admitted as a veteran, or immediately after it is ascertained that any such person has absented himself or herself from such field facility, a survey and inventory of the personal funds and effects of such deceased or absent person will be made in the manner prescribed in § 12.3(a).

[13 FR 7130, Nov. 27, 1948]

§ 12.16 Action on inventory and funds.

(a) The manager will dispose of the personal funds and effects as promptly as possible. No expense will be incurred by the Government for shipment of the effects.

(b) In making disposition of funds and effects the manager will release the funds to the owner if living and will release the effects to him or her or as directed by him or her, provided that if he or she is incompetent and has a guardian the funds and effects will be released to such guardian. If the owner is deceased, and left a last will and testament probated under the laws of the place of his or her last legal domicile or under the laws of the State, territory, insular possession, or dependency, within which the field facility may be, the personal property of such decedent situated upon such premises will be released to the executor. If such person left on said premises funds or effects not disposed of by a will probated in accordance with the provisions of this paragraph, such property shall be released to the administrator, if one has been appointed.

(c) In those cases where there is neither an administrator nor an executor the funds and effects will be released to the person entitled to inherit the personal property of the decedent under the intestacy laws of the State where the decedent was last domiciled.

(d) Where disposition of the funds and effects cannot be accomplished under the provisions of paragraphs (b) and (c) of this section, the funds, at the expiration of 90 days will be deposited to the General Post Fund and the effects will be disposed of in accordance with the provisions of §§ 12.8, 12.9, and 12.10.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.17 Unclaimed effects to be sold.

(a) Personal effects of persons referred to in § 12.15 which remain unclaimed for 90 days after the death or departure of the owner shall be sold in the manner provided by § 12.8. The owner, his or her personal representative, or next of kin may reclaim any such property upon request therefor at any time prior to the sale.

(b) Any unclaimed funds and the proceeds of any effects sold as unclaimed will be deposited to the General Post Fund subject to be reclaimed within five years after notice of sale, by or on behalf of any person or persons who, if known, would have been entitled to the property prior to the sale.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

(a) The manager will notify the commanding officer of the death or absence of such patient and will deliver to the commanding officer, without expense to the Department of Veterans Affairs, the funds and effects of the deceased or absent officer, or enlisted man procuring a receipt therefor.
§ 12.19

(b) If the funds and effects are not delivered to the commanding officer within seven days after the death or absence without leave of an officer, or enlisted man, the funds will be deposited in the Personal Funds of Patients. If not disposed of at the expiration of 90 days after the date of death or absence, the funds will be transferred to the General Post Fund and the effects will be handled in accordance with regulations governing the disposition of unclaimed effects left by veterans. The proceeds derived from the sale of the personal effects will be paid to the person lawfully entitled thereto, providing claim is made within five years from the date of notice of sale, or in the case of legal disability within five years after termination of legal disability.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.20

(a) VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, includes notice to the applicant that the acceptance of care or treatment by any veteran shall constitute acceptance of the provisions of the act. Similar notice shall be given to each veteran receiving care as of March 26, 1942, by posting notice in a prominent place in each building where patients or members are housed. Such notices shall be posted immediately and kept posted.

(b) Since the provisions of the law are applicable to all veterans receiving care at the expense of the Department of Veterans Affairs (whether in contract, Federal, State or private hospital) it shall be the responsibility of the Department of Veterans Affairs officer authorizing admission of a veteran to other than a Department of Veterans Affairs hospital, center, or home, to cause the chief officer of such institution to post in a conspicuous place, in all buildings where veterans are housed, the provisions of § 12.19(a), or if he or she declines to post such provisions, notify the patients individually and supply a statement from each acknowledging notice. Such provisions supersede in part the provisions of Form 10-P-10, executed prior to March 26, 1942.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 243, Jan. 18, 1949]
§ 12.21 Action upon death of veteran.

Upon the death of a veteran at a Department of Veterans Affairs hospital, center or domiciliary activity while receiving care or treatment therein, and who it is believed leaves no will or heirs or next of kin entitled to his or her personal property, regardless of whether VA Form 10-P-10, executed by the veteran, names a designee, an inventory of the funds and effects, VA Form 10-2687, will be promptly prepared and supplemented by all information or evidence available as to personal property owned by the veteran in addition to that left at the place of death; similar action will be taken when the death of such a veteran hospitalized by the Department of Veterans Affairs occurs at a contract hospital, Army, Navy, Marine or other hospital. Such inventories and information together with any bank books, stocks, bonds, or other valuable paper as enumerated in §12.19(b), left in the effects of the veteran, will be delivered to the manager of the Department of Veterans Affairs hospital, center, or domiciliary activity having jurisdiction, for disposition in accordance with existing regulations.

[14 FR 243, Jan. 18, 1949]

§ 12.22 Disposition of personal property.

Any assets heretofore or hereafter accruing to the benefit of the General Post Fund, including stocks, bonds, checks, bank deposits, savings certificates, money orders, and similar assets, will be sold or otherwise converted into cash, except that articles of personal adornment which are obviously of sentimental value shall, if unclaimed, be retained for 5 years from the date of death of the veteran, unless for sanitary or other reasons their retention is deemed unsafe. Possession of effects other than those located on the premises of the Department of Veterans Affairs will be obtained, except that if transportation, storage, etc., is involved, determination will be made as to whether expenditure therefor is warranted. Proceeds from the conversion or sale will be deposited to the credit of the General Post Fund. Funds on deposit in Personal Funds of Patients will be transferred to the General Post Fund. Any claims against the estate of the deceased veteran will be adjudicated and paid, if valid.

[33 FR 1073, Jan. 27, 1968]

§ 12.23 Recognition of valid claim against the General Post Fund.

Effective December 26, 1941, the assets of the estate of a veteran theretofore or thereafter deposited to the General Post Fund are subject to the valid claims of creditors presented to the Department of Veterans Affairs within 1 year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee, or other person found to be legally entitled to the personal property of the veteran may claim same within 5 years from the date of the veteran’s death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran’s death, the 5-year period begins upon the termination of removal of legal disability. Such claims are for settlement by the field facility which had originally made the deposit. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund, the case will be referred to the Chief Attorney of jurisdiction for advice and/or appropriate action. Any necessary court costs or expenses will be paid from the appropriation, General Operating Expenses, Department of Veterans Affairs.

[33 FR 1073, Jan. 27, 1968]

§ 12.24 Operation of lost and found service.

Unless maintained by the Public Buildings Service, the lost and found service will be maintained by an employee designated by the Manager to be known as the lost and found custodian. VA Form 3771, Record of Lost or Found Article, will be used for recording articles of any personal property lost or found. Every effort will be made to determine rightful ownership of found articles and to recover items which have been reported lost. Currency, including readily negotiable instruments, found
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PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

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AUTHORITY: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 13 appear at 61 FR 7216, Feb. 27, 1996.

§ 13.1 Authority.

The regulations in this part are issued pursuant to 38 U.S.C. 501 to reflect action under 38 U.S.C. 512 and to implement 38 U.S.C. 5301, 5502, 5503, 5711 and 8520. The duties, the delegations of authority, and all actions required of the Veterans Services Officer set forth in §§13.1 through 13.111 inclusive, are to be performed under the direction of, and authority vested in, the Director of the field facility.

[40 FR 54247, Nov. 21, 1975]

§ 13.2 Field examinations.

(a) Authority to conduct; generally. Field personnel in the Office of the Veterans Services Division and other employees who are qualified and designated by the field facility Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within the jurisdiction of the Department of Veterans Affairs, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in the preparation of claims.

(b) Scope of field examinations; fiduciary activities. Field examinations include but are not limited to the following:

1. Matters involving the administration of estates and the welfare of beneficiaries of the Department of Veterans Affairs who are under legal disability or in need of supervision by the Veterans Services Officer.

and delivered to the lost and found custodian will not be retained beyond the official closing hour. The currency or negotiable instruments will be delivered to the agent cashier before the close of business. Individuals claiming found articles will furnish complete identification and satisfy the facility authority of rightful ownership. Where more than one individual claims ownership the matter will be referred to the Manager for decision. All articles of personal property remaining unclaimed for 90 days or more will be disposed of in accordance with §12.8.

[21 FR 3875, June 6, 1956]
(2) Matters involving the welfare and needs of dependents of incompetent beneficiaries.

(3) Recovery of amounts due the Government or General Post Fund under laws administered by the Department of Veterans Affairs.

§ 13.3 State legislation.

Field facility Directors are authorized to cooperate with the affiliated organizations, legislative committees, and through the General Counsel with local and State bar associations, to the end that deficiencies of the State laws relating to Department of Veterans Affairs operations may be removed. No action to commit the Department of Veterans Affairs regarding any proposed legislation relating to fiduciary matters will be taken without the approval of the Chief Benefits Director or designee.

§ 13.55 Veterans Services Officer to select and appoint or recommend for appointment the person or legal entity to receive Department of Veterans Affairs benefits in a fiduciary capacity.

(a) Authority. The Veterans Services Officer is authorized to select and appoint (or in the case of a court-appointed fiduciary, to recommend for appointment) the person or legal entity best suited to receive Department of Veterans Affairs benefits in a fiduciary capacity for a beneficiary who is mentally ill (incompetent) or under legal disability by reason of minority or court action, and beneficiary’s dependents.

(b) Payees. Authorized payees include:

(1) The beneficiary (§13.56(c));
(2) The beneficiary under supervision (supervised direct payment) (§13.56 (a) and (b));
(3) The wife or husband of an incompetent veteran (§13.57);
(4) The legal custodian of a beneficiary’s Department of Veterans Affairs benefits (§13.58);
(5) A court-appointed fiduciary of a beneficiary (§13.59);
(6) The chief officer of the institution in which the veteran is receiving care and treatment (§13.61);
(7) The bonded officer of an Indian reservation (§13.62);
(8) A custodian-in-fact of the beneficiary (§13.63);
(9) Dependents of the veteran by an apportioned award (§13.70).

(c) Certification. The Veterans Services Officer’s certification is authority to make payments to the designated payee.

§ 13.56 Direct payment.

(a) Veterans. Department of Veterans Affairs benefits payable to a veteran rated incompetent may be paid directly to the veteran in such amount as the Veterans Services Officer determines the veteran is able to manage with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the veteran, if not otherwise payable to a fiduciary.

(b) Other adults. Department of Veterans Affairs benefits payable to an adult beneficiary who has been rated or judicially declared incompetent may be paid directly to the beneficiary in such amounts as the Veterans Services Officer determines the beneficiary is able to manage with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the beneficiary, if not otherwise payable to a fiduciary.

(c) Minors. Department of Veterans Affairs benefits payable to a minor:

(1) May be paid direct when:
§ 13.57 Payment to the wife or husband of incompetent veteran.

Compensation, pension or emergency officers’ retirement pay of a veteran rated or judicially declared incompetent, may be paid to the veteran’s spouse, provided the spouse is qualified to administer the funds payable and agrees to use the amounts paid for the veteran and the veteran’s dependents, if any.

[40 FR 54247, Nov. 21, 1975]

§ 13.58 Legal custodian.

(a) Authority. The Veterans Services Officer is authorized to make determinations as to the person or legal entity to be appointed legal custodian to receive Department of Veterans Affairs payments on behalf of a beneficiary who is incompetent or under legal disability by reason of minority or court action. In the absence of special circumstances, the person or legal entity to be appointed legal custodian will be the person or legal entity caring for and/or having custody of the beneficiary or the beneficiary’s estate.

(b) Payment to. Department of Veterans Affairs benefits may be paid to a legal custodian subject to the following conditions:

(1) The Veterans Services Officer has determined that it would be in the best interests of the beneficiary to appoint a legal custodian.

(2) The proposed legal custodian is qualified to administer the benefits payable and will agree to:

(i) Apply the benefits paid for the best interests of the beneficiary,

(ii) Invest surplus funds as provided by Department of Veterans Affairs regulations,

(iii) Furnish, upon request, evidence of compliance with agreement as to usage and investment of Department of Veterans Affairs benefits, and

(iv) Inform the Veterans Services Officer of any change in the beneficiary’s estate or any other circumstances that might affect entitlement or the manner in which payments are to be made.

[40 FR 54247, Nov. 21, 1975]

§ 13.59 Court-appointed fiduciary.

(a) Payment to. Any Department of Veterans Affairs benefit may be paid to the fiduciary appointed by a State court for a beneficiary who is a minor, or incompetent or under other legal disability adjudged by a court of competent jurisdiction. Formal or informal accountings may be required from such fiduciaries, with or without judicial proceedings.

(b) Veterans Services Officer’s responsibility. The Veterans Services Officer shall:

(1) Determine and recommend to the Regional Counsel the person or legal entity best fitted for appointment as State court fiduciary for the particular beneficiary. Necessary legal action will be taken by the Regional Counsel.

(2) Upon advice from the Regional Counsel that the fiduciary has been appointed, issue appropriate certification thereof so that payment of benefits can be made to such fiduciary.

[40 FR 54247, Nov. 21, 1975]

§ 13.61 Payment to the chief officer of institution.

The Veterans Services Officer may authorize the payment of all or part of the pension, compensation or emergency officers’ retirement pay payable in behalf of a veteran rated incompetent by the Department of Veterans Affairs to the chief officer of the institution wherein the veteran is being furnished hospital treatment or institutional, nursing or domiciliary care, for the veteran’s use and benefit, when the Veterans Services Officer has determined such payment (called an institutional award) will adequately provide...
for the needs of the veteran and obviate need for appointment of another type of fiduciary.
[40 FR 54248, Nov. 21, 1975]

§ 13.62 Payment to bonded officer of Indian reservation.
Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.
[40 FR 54248, Nov. 21, 1975]

§ 13.63 Payment to custodian-in-fact.
All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary.
[36 FR 19023, Sept. 25, 1971]

§ 13.64 Fiduciary commissions.
Generally, a VA appointed fiduciary is to be encouraged to serve without fee.

(a) Authority. The Veterans Services Officer is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Services Officer may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.

(b) Amount; notice to beneficiary. The Veterans Services Officer shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by VA on behalf of the beneficiary to the fiduciary during that year; a year being the normal 12-month period following the anniversary date of appointment. The Veterans Services Officer shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) Persons who may be excluded. Commissions may not be authorized to dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.
(Authority: 38 U.S.C. 5502; Pub. L. 98-223)
[51 FR 26157, July 21, 1986]

§ 13.69 Limitation of beneficiaries to individual fiduciary.
For purposes of payment of Department of Veterans Affairs benefits, the number of beneficiaries for whom an individual fiduciary may act will be limited to the number the fiduciary may be reasonably expected to properly serve. When, in the judgment of the Veterans Services Officer, a fiduciary has been appointed or is seeking appointment in a case in excess of that number, the Veterans Services Officer will initiate action to obtain a suitable substitute fiduciary.
[40 FR 54248, Nov. 21, 1975]

§ 13.70 Apportionment of benefits to dependents.
(a) Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof. (1) When compensation, pension or emergency officers' retirement pay is payable in behalf of a veteran who is incompetent or under other legal disability by court action, the Veterans Services Officer may recommend such apportionment to or in behalf of the veteran's spouse, child or dependent parent as may be necessary to provide for their needs.

(2) When payment of compensation, pension or emergency officers' retirement pay, in behalf of a veteran rated incompetent by the Department of Veterans Affairs by reason of mental illness has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision
§ 13.71 Payment of cost of veteran’s maintenance in institution.

(a) By institutional award. (1) The payment of part of compensation, pension or emergency officers’ retirement pay for the cost of a veteran’s hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in paragraph (a)(2) of this section when:
   (i) The veteran is rated incompetent by the Department of Veterans Affairs.
   (ii) It has been determined that the veteran is legally liable for the cost of his or her maintenance, and
   (iii) The institution’s representative has asserted or probably will assert a claim for full maintenance costs.

(b) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree to pay the costs agreed to under the award to the veteran or his or her representative, the Veterans Services Officer may agree on behalf of the veteran with the institution to make payments to cover the cost of the veteran’s treatment, institutional or domiciliary care. Such payments shall not exceed the amount the Veteran Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation.

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

[40 FR 54248, Nov. 21, 1975, as amended at 51 FR 26158, July 21, 1986]

§ 13.72 Release of funds from Personal Funds of Patients.

Veterans Services Officers may authorize release of funds from Personal Funds of Patients.
Funds of Patients for the needs of veterans and their dependents, including amounts fixed by statute or administrative regulations as the cost of current maintenance of veterans in institutions of the United States or a political subdivision thereof other than Department of Veterans Affairs institutions.

[40 FR 54248, Nov. 21, 1975]

§ 13.73 Transfer of funds from funds due incompetent beneficiaries.

Veterans Services Officers may, when required for the benefit of the veteran and/or the veteran’s dependents, authorize the transfer of amounts credited to veterans in Funds Due Incompetent Beneficiaries to Department of Veterans Affairs Personal Funds of Patients accounts or to chief officers of non-Department of Veterans Affairs institutions for the accounts of institutionalized veterans.

[40 FR 54248, Nov. 21, 1975]

§ 13.74 Recommendation for payment.

(a) General. When veterans’ benefits are discontinued under 38 U.S.C. 5503(b)(1), Veterans Services Officers are delegated authority to recommend apportionments or awards in accordance with paragraphs (b) and (c) of this section.

(b) Needy dependent parent. If the veteran’s estate is $4,000 or more, the Veterans Services Officer may authorize payment from Personal Funds of Patients or recommend payment from the veteran’s estate for the needs of the dependent parent and for the care and maintenance of the veteran if hospitalized by the United States or a political subdivision thereof other than a Department of Veterans Affairs institution.

(c) No dependents. If the veteran is hospitalized by the United States or a political subdivision thereof other than a Department of Veterans Affairs institution and has no dependent parent, and the estate is less than $2,500, the Veterans Services Officer may recommend an award from appropriated funds, not to exceed the amount of the veteran’s discontinued award, to the hospital for current care and maintenance. When the veteran’s estate is $2,500 or more, no award from appropriated funds should be made but the Veterans Services Officer may authorize an award from Personal Funds of Patients if available; otherwise, the hospital must look to the veteran’s estate for payment.

(d) Hardship cases. Veterans Services Officers are authorized, in exceptional cases, to deviate from the criteria stated to avoid hardship.

[40 FR 54249, Nov. 21, 1975]

§ 13.75 Beneficiaries in penal institutions.

(a) All beneficiaries; 38 U.S.C. 1505(a). No Department of Veterans Affairs pension may be paid to or for any individual imprisoned in a penal institution as a result of conviction of a felony or misdemeanor for the period beginning 61 days after imprisonment and ending when imprisonment ends.

(b) Incompetent veterans; 38 U.S.C. 5503(b)(1). In addition to paragraph (a) of this section as to payment in pension cases, the provisions of 38 U.S.C. 5503(b)(1) governing payment of compensation, pension or emergency officers’ retirement pay to an incompetent veteran are applicable during his or her confinement in a penal institution whether awaiting trial, sentence or after conviction.

[36 FR 19024, Sept. 25, 1971, as amended at 40 FR 54249, Nov. 21, 1975]
§ 13.76 Appeals from Veterans Services Officer’s determination under 38 U.S.C. 5503(b)(2).

(a) Notification. The Veterans Services Officer will be responsible for notification of action taken and the right to initiate an appeal by filing a Notice of Disagreement and of the time limits within which such notice may be filed (§19.109 of this chapter) when he or she determines that:

(1) The dependent is not in need.

(2) The needs of the dependent parent are to be met from the veteran’s estate or from Personal Funds of Patients and no payments or partial payments will be made for the dependent parent’s support from appropriated funds.

(3) No award from appropriated funds for care and maintenance for the veteran in a non-Department of Veterans Affairs hospital will be made, and that the veteran’s estate will have to defray the cost.

(b) Appeals. Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals from determinations of the Veterans Services Officer. Appeals may be initiated by a dependent parent on questions of need and payments for his or her support from appropriated funds, and by a fiduciary for the disallowance of the use of appropriated funds for the veteran’s institutional care and maintenance.

(c) Statement of the case. When a Notice of Disagreement is filed, the Veterans Services Officer will be responsible for furnishing the claimant and the claimant’s representative with a Statement of the Case and such notification regarding the filing of an appeal as is provided for in §§19.114(b) and 19.115 of this chapter.

[40 FR 54249, Nov. 21, 1975]


(a) Veterans Services Officer (revisions).

(1) The Veterans Services Officer may revise any previous determination upon review of the evidence of record, provided a specific finding is made in writing that it was clearly and unmistakably erroneous.

(2) The Veterans Services Officer may revise a previous determination upon receipt of new evidence.

(b) Chief Benefits Director. Upon request for further review by the dependent parent, the Chief Benefits Director or designee will review and may revise the determination of the Veterans Services Officer as to the amount to be paid from Personal Funds of Patients for the support of the dependent parent, predicated upon need.

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

[40 FR 54249, Nov. 21, 1975]

§ 13.100 Supervision of fiduciaries.

(a) Federal fiduciaries. In Federal fiduciary cases, the Veterans Services Officer may, when he or she deems it necessary for the protection of the beneficiary’s interests:

(1) Require an accounting, formal or informal, of Department of Veterans Affairs benefits paid.

(2) Terminate the appointment of a Federal fiduciary and appoint a successor Federal fiduciary.

(Authority: 38 U.S.C. 5502)

(b) Court-appointed fiduciaries. In court-appointed fiduciary cases, the Veterans Services Officer will take such informal action as may be necessary to assure that the needs of the beneficiary are provided for and Department of Veterans Affairs benefits are prudently administered and adequately protected.

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

(c) Unsatisfactory conditions. In any case where a fiduciary fails to render a satisfactory account or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are illegal or inequitable or in excess of those allowed by law, or has failed to use Department of Veterans Affairs funds for the benefit of the beneficiary or the beneficiary’s dependents, or has otherwise failed or neglected to properly execute the duties of his or her trust, and informal efforts by the Veterans Services Officer to correct the situation prove unsuccessful, the case will be referred to the Regional Counsel. In such cases the Veterans Services Officer may have all Department of Veterans Affairs benefits suspended.

[40 FR 54249, Nov. 21, 1975]
(Authority: 38 U.S.C. 5502)

(d) Misappropriation, embezzlement or violation of Federal statutes. When the evidence indicates a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the matter will be submitted to the Regional Counsel for review and, if appropriate, the Regional Counsel’s referral to the U.S. Attorney.

(Authority: 38 U.S.C. 6101)

[40 FR 54249, Nov. 21, 1975]

§ 13.101 Management and use of estates of minors.

Department of Veterans Affairs benefits payable in behalf of minors should be used for their benefit. Such funds should be expended only to the extent the person or persons responsible for their needs are unable to provide for them, except those derived from payments under 38 U.S.C. ch. 35.

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

[28 FR 10751, Oct. 5, 1963]

§ 13.102 Accountability of legal custodians.

(a) Institutionalized veterans without spouse or child. The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon request to VA for funds received from VA for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

(b) All other beneficiaries. Compliance with the agreement as to benefit use and any authorized modifications due to changed need, proof of existence of funds surplus to immediate needs and proper investment thereof, if appropriate, will be established by personal contact.

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


§ 13.103 Investments by Federal fiduciaries.

(a) Type authorized. VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary’s advantage. Department of Veterans Affairs benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) Registration. (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary’s Name), (Social Security No.), under custodianship by designation of the Department of Veterans Affairs.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary’s name), by (Fiduciary’s Name), Federal fiduciary.

(c) Pre-need burial arrangements. Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary’s funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary’s interest.

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

[53 FR 20619, June 6, 1988]

§ 13.104 Accounts of court-appointed fiduciaries.

(a) Requirement to account; notices of filings and hearings. Accounts may be required from court-appointed fiduciaries as provided by State law, but in no event less frequently than once every 3 years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to court-appointed fiduciary cases where-in the Department of Veterans Affairs is an interested party, will be sent to the Veterans Services Officer for review, distribution and such action as may be appropriate. Matters which require legal action will be referred to the Regional Counsel, and will include any matter in which the Department of Veterans Affairs has any objections to offer.

(b) Fiduciary and beneficiary in jurisdiction other than a State of the United
§ 13.105

Accounts will not be required, in the discretion of the Veterans Services Officer, in cases where the fiduciary and beneficiary permanently reside in a jurisdiction other than a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary appointment was made in said jurisdiction.

[40 FR 54250, Nov. 21, 1975]

§ 13.105 Surety bonds.

(a) Federal fiduciaries. (1) The Veterans Services Officer may require a legal custodian, custodian-in-fact or chief officer of a private institution recognized to administer Department of Veterans Affairs benefits on behalf of a beneficiary, to furnish a corporate surety bond in an amount determined to be sufficient to protect the interest of the beneficiary. Such bond shall run to the Secretary of Veterans Affairs for the use and benefit of the beneficiary.

(2) The Veterans Services Officer may require a legal custodian to furnish an agreement in lieu of a surety bond or additional surety bond when funds are deposited in an interest or dividend-paying account in a State or federally insured institution. The agreement will provide that the legal custodian and institution agree that all funds received from the Department of Veterans Affairs on behalf of the beneficiary, which have been or will be deposited by the legal custodian in the account, will be withdrawn only with the written consent of the Veterans Services Officer or designee.

(b) Substitution of surety; claims against defunct companies. If any surety company is placed in receivership or ceases to do business in the particular State, the Secretary of Veterans Affairs may take the necessary action to have proper bonds substituted in Federal fiduciary cases and refer the matter to the Regional Counsel for such other action as may be appropriate.

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

[40 FR 54250, Nov. 21, 1975]

§ 13.107 Accounts of chief officers of public or private institutions.

(a) Department of Veterans Affairs benefits. The chief officer of an institution, other than a Federal institution, shall, when requested, render an account to the Veterans Services Officer for funds received from the Department of Veterans Affairs on account of an incompetent veteran.

(b) All income and assets. The chief officer of the aforementioned institution shall, when requested, furnish a statement of all income received in behalf of a Department of Veterans Affairs beneficiary under legal disability and the total assets held for the beneficiary.

(Authority: 38 U.S.C. 5503(b)(3))

[36 FR 19025, Sept. 25, 1971]


(a) Discontinuance of payments. When a veteran, rated incompetent by VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran’s estate equals or exceeds $1,500, the Veterans Services Officer shall, with regard to those estates monitored by the Veterans Services Officer, immediately notify the Regional Counsel for such other action as may be appropriate.

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

[40 FR 54250, Nov. 21, 1975]

§ 13.106 Investments by court-appointed fiduciaries.

The Veterans Services Officer will review and to the extent possible determine the legality and prudence of investments involving Department of Veterans Affairs income or estate. It is Department of Veterans Affairs policy to invest income or estate derived from Department of Veterans Affairs benefits only in legal investments which have safety, assured income, stability of principal and ready convertibility for the requirements of the beneficiary and his or her dependents. When notice of a contemplated or actual illegal or imprudent investment comes to the attention of the Veterans Services Officer, he or she will take remedial action to protect the beneficiary’s estate. Cases in which it becomes necessary to institute court action will be referred to the Regional Counsel.

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

[40 FR 54250, Nov. 21, 1975]
may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact.

(b) Waiver of discontinuance. The Veterans Services Officer may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact.

(b) Waiver of discontinuance. The Veterans Services Officer shall assist in those cases under the Veterans Services Officer's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The Veterans Services Officer should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority: 38 U.S.C. 5503(b)(1)(A))


(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

1. Adjusted service certificate.

2. Insurance policy having cash surrender or loan value.


4. Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

5. The value of the veteran's home unless medical prognosis indicates that there is no

(d) Death of veteran; personal funds of patient. In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

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

[53 FR 20639, June 6, 1988]


Exception as stated in paragraph (d) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Department of Veterans Affairs regional offices, hospitals, State institutions, hospitals or institutions of any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

1. Adjusted service certificate.

2. Insurance policy having cash surrender or loan value.


4. Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

5. For purposes of determinations under 38 U.S.C. 5503(b)(1)(A). The value of the veteran's home unless medical prognosis indicates that there is no
reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) For purposes of determinations under 38 U.S.C. 5505. The value of the veteran’s home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran’s burial plot will be likewise excluded.

(7) Amounts withheld under §3.551(b) of this chapter.

(Authority: 38 U.S.C. 5505)

NOTE: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[40 FR 54250, Nov. 21, 1975, as amended at 53 FR 20619, June 6, 1988; 56 FR 65853, Dec. 19, 1991]

§ 13.110 Escheat; post fund.

(a) Escheat; 38 U.S.C. 5502(e). Upon death of a beneficiary for whom payment of Department of Veterans Affairs benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary’s personal representative) shall, upon request, account for and return to the Department of Veterans Affairs any remaining assets derived from Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) General Post Fund; 38 U.S.C. 5220(a). Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran’s domicile, the veteran’s fiduciary, if any, or the veteran’s personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and choses in action owned by the veteran at the time of his or her death. (See also §14.514(c) of this chapter.)

(c) Refusal of fiduciary or personal representative to cooperate. If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Services Officer will submit a complete report to the Regional Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

§ 13.111 Claims of creditors.

Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Services Officer should refer the matter to the Regional Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]
14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

Prosecution
14.561 Administrative action prior to submission.
14.562 Collections or adjustments.
14.563 Crimes or offenses on Department of Veterans Affairs property.

Federal Tort Claims
14.600 Federal Tort Claims Act.

Administrative Claims
14.601 Investigation and development.
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14.603 Disposition of claims.
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14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

Administrative Settlement of Tort Claims Arising in Foreign Countries
14.615 General.
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14.626 Purpose.
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Source: 19 FR 5552, Aug. 31, 1954, unless otherwise noted.
§ 14.500 Functions and responsibilities of General Counsel.

The General Counsel is responsible to the Secretary for the following:
(a) All litigation arising in, or out of, the activities of the Department of Veterans Affairs or involving any employee thereof in his or her official capacity.
(b) All interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.
(c) All legal services, advice and assistance required to implement any law administered by the Department of Veterans Affairs.
(d) All delegations of authority and professional guidance required to meet these responsibilities.
(e) Maintenance of a system of field offices capable of providing legal advice and assistance to all Department of Veterans Affairs field installations and acting for the General Counsel as provided by Department of Veterans Affairs Regulations and instructions, or as directed by the General Counsel in special cases. This includes cooperation with U.S. Attorneys in all civil and criminal cases pertaining to the Department of Veterans Affairs and reporting to the U.S. Attorneys, as authorized, or to the General Counsel, or both, criminal matters coming to the attention of the Regional Counsel.
(f) Other matters assigned.

§ 14.501 Functions and responsibilities of Regional Counsels.

(a) Functions and responsibilities of the Regional Counsels are those set forth in this part and all other matters assigned by the General Counsel.
(b) In any matter within the jurisdiction of the General Counsel, delegated or otherwise assigned, the Regional Counsel and designated staff attorneys are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents.
(c) The Regional Counsel is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to Department of Veterans Affairs installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the Regional Counsel may delegate to staff members or other Department of Veterans Affairs attorneys authority to perform, to the extent specified, any legal function under the professional direction of the Regional Counsel. Conversely, the Regional Counsel may modify, suspend, or rescind any authority delegated hereunder.
(d) The Regional Counsel is authorized to cooperate with affiliated organizations, legislative committees, and with local and State bar associations to the end that any State law deficiencies relating to Department of Veterans Affairs operations may be removed. No commitment as to proposed legislation will be made without the approval of the General Counsel.
(e) In any case wherein the Regional Counsel is authorized to take legal action and payment of costs and necessary expenses incident thereto are involved, the administration requesting such action will pay such cost and expenses. Where it is impractical for the Regional Counsel to perform the legal service because of cost, distance, etc., the customary fee for the service rendered by a local attorney employed by the Regional Counsel will be borne by the administration requesting such action.
(f) The jurisdictions and addresses of Regional Counsels are as follows:
(1) Region 1: (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) J FK Federal Bldg., Room E213, Boston, MA 02203.
(2) Region 2: (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.
(3) Region 3: (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 849 International Drive, Suite 200, Linthicum, MD 21090.
§ 14.503 Requests for legal advice and assistance in other than domestic relations matters.

(a) Requests from administrative officials in the field for legal advice or assistance will be addressed to the appropriate Regional Counsel and will be written if requested by the Regional Counsel. Questions regarding insurance activities at St. Paul and Philadelphia should be referred to the Regional Counsel at the respective station. Except as to matters referred to in §14.504(b), the Regional Counsel’s authority to render legal advice and assistance shall extend to the release (unless otherwise instructed by the
General Counsel), without prior approval of the General Counsel, of opinions on all legal questions which are either:

1. Wholly controlled by the interpretation or application of the laws of the State or States in the district office area, or

2. Covered by Department of Veterans Affairs precedents and opinions of the General Counsel which the Regional Counsel knows to be currently authoritative on the issues involved.

In cases covered by §14.504(b) and all others not included in paragraph (a)(1) or (2) or paragraph (b) of this section, the Regional Counsel will prepare a tentative opinion (including identification of the benefit sought) and forward it to the General Counsel for review. When it is returned, the Regional Counsel will conform the opinion (if necessary) to the views of the General Counsel, and release it to the requesting official. The Regional Counsel may release any modified opinion as the opinion of the General Counsel.

(b) The Regional Counsel may submit to the General Counsel any legal question, opinion, or question pertinent to legal functions, upon which the views or advice of the General Counsel are desired. This request should set forth the special circumstances, contain a statement of the legal implications involved (including any Department of Veterans Affairs benefits claimed), set forth the facts out of which they arise, and cite any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with appropriate discussion. If any administration will be affected, a copy of the reply will be forwarded to that administration head.


§ 14.505 Submissions.

All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other original papers will not be submitted unless pertinent portions thereof cannot practically be summarized or copies made and attached as exhibits.

[42 FR 41411, Aug. 17, 1977]

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans’ benefits under laws administered by the Department of Veterans Affairs shall be conclusive as to all Department officials and employees with respect to the matter at issue, unless there has been a material change in
controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as “advisory only” by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Department policy, contained within a written legal opinion, shall not be binding on Department officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans’ benefits under laws administered by the Department of Veterans Affairs, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(c) For purposes of this section, the term written legal opinion of the General Counsel means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Department of Veterans Affairs stating a conclusion on a legal issue pertaining to Department of Veterans Affairs activities.

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


§14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification

(a) Suits against United States or Department of Veterans Affairs officials. When a suit involving any activities of the Department of Veterans Affairs is filed against the United States or the Secretary or a suit is filed against any employee of the Department of Veterans Affairs in which is involved any official action of the employee, not covered by the provisions of §§14.600 through 14.617, a copy of the petition will be forwarded to the General Counsel who will take necessary action to obtain the pertinent facts, cooperate with or receive the cooperation of the Department of Justice and, where indicated, advise the Regional Counsel of any further action required.

(b) Counsel and representation of employees. The Department of Justice may afford counsel and representation to Government employees who are sued individually as a result of the performance of their official duties. A civil action commenced in a State court against an employee, as the result of an action under color of his or her office, may be removed to the applicable Federal District Court. If a suit is filed against an employee as the result of the performance of his or her official duties, where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable (see §14.610), and the employee desires to be represented by the
U.S. Attorney, the Regional Counsel will obtain a written request to this effect from the employee and will also obtain an affidavit of the facility Director describing the incident in sufficient detail to enable a determination to be made as to whether the employee was in the scope of his or her employment at the time. These statements, together with a copy of the petition and two copies of a summary of pertinent facts, will be sent to the General Counsel, who will transmit copies thereof to the Department of Justice for appropriate action.

(c) Indemnification. (1) The Department of Veterans Affairs may indemnify a Department of Veterans Affairs employee, who is personally named as a defendant in any civil suit in state or Federal court or an arbitration proceeding or other proceeding seeking damages against the employee personally, where either 28 U.S.C. 2679 or 38 U.S.C. 7316 is not applicable, for any verdict, judgment, or other monetary award which is rendered against such employee; provided that: the alleged conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.

(2) The Department of Veterans Affairs may settle or compromise a personal damage claim against a Department of Veterans Affairs employee, in cases where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable, by the payment of available funds, at any time; provided that: the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.

(3) Absent exceptional circumstances as determined by the Secretary or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(4) A Department of Veterans Affairs employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Department of Veterans Affairs General Counsel, who shall make a recommended disposition of the request. Where the Department of Veterans Affairs determines it appropriate, the Agency shall seek the view of the Department of Justice. The General Counsel shall forward the employee request for indemnification, and the accompanying documentation, with the General Counsel's recommendation to the Secretary for decision.

(5) Any payment under this section either to indemnify a Department of Veterans Affairs employee or to settle or compromise a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of Veterans Affairs.

(d) Attorney-client privilege. Attorneys employed by the Department of Veterans Affairs who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to a Department of Veterans Affairs employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Department of Veterans Affairs should provide assistance in the representation of such a Department employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Department of Veterans Affairs attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department of Veterans Affairs, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee.
(e) Suits by the United States. In any instance wherein direct submission to a U.S. Attorney for institution of civil action has been authorized by the Department of Justice, the Regional Counsel will furnish the U.S. Attorney a complete report of the facts and applicable law, documentary evidence, names and addresses of witnesses and, in cases wherein Department of Veterans Affairs action has been taken, a copy of any pertinent decision rendered. The Regional Counsel will forward two copies of such report and of any proposed pleading to the General Counsel, and will render any practicable assistance requested by the U.S. Attorney.

§ 14.515 Suits involving loan guaranty matters.

(a) In actions for debt, possession or actions similar in substance (including title actions) in which § 36.4282 or § 36.4319 of this chapter has been complied with, the Regional Counsel is authorized to enter the appearance of and represent the Secretary of Veterans Affairs as the attorney of record and to file claims for debt in probate proceedings without prior reference to the General Counsel. Any such action will normally be taken within the time prescribed by law as though there had been valid service of process. In all other types of cases, the Regional Counsel will not enter an appearance or file any pleading on behalf of the Secretary except in imperative emergency until authorization is received from the General Counsel after submission of all relevant facts. In doubtful cases, the Regional Counsel will request instructions from the General Counsel, submitting copy of so much of the pleadings or other papers, together with a sufficient recital of the facts as will make clear the background, the issues, and the relief sought. The submission also will include names and addresses of adverse parties and attorneys so that immediate action may be taken if injunctive relief seems proper. Where necessary in any case to preserve rights which might be lost by default if there had been proper service of process, appropriate action will be taken by a special appearance, or, in jurisdictions where a special appearance does not serve the purpose or under State statute or decisions will constitute a general appearance for a later date, by an appearance through amicus curiae, to obtain an extension of time, preferably 30 days or more, in which to appear and plead without prejudice. If not feasible to obtain an extension, the Regional Counsel will explain to adverse counsel by letter, and personally, if desirable, the necessity of deferring all action and will see that the proper judge receives a signed copy of the letter before default day. The letter will point out that there is no valid service of process on the Secretary of Veterans Affairs but will not base the delay on that alone.

(b) The General Counsel or each Regional Counsel representing the General Counsel is the attorney of the Secretary of Veterans Affairs for all purposes of 38 U.S.C. 3720 and, as such, is authorized to represent the Secretary in any court action or other legal matter arising under said statutory provisions. Said authorization is subject to any applicable statutes and Executive orders concerning claims of the United States. A Regional Counsel may enter appearance in such cases, subject to the provisions of §§ 36.4282 and 36.4319 of this chapter and paragraph (a) of this section. Each Regional Counsel is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans or direct loans by the Department of Veterans Affairs; or for examination and other proper services with respect to title to and liens on real and personal property, material incident to such activities of the Department of Veterans Affairs, when, such employment is deemed by the Regional Counsel to be appropriate, the authority delegated to the Regional Counsel may be redelegated with the approval of the General Counsel.

(c) The General Counsel and each Regional Counsel, in carrying out their duties as authorized in paragraph (a) or (b) of this section, are authorized: (1) To contract for and execute, for and on behalf of the Secretary, any bond (and appropriate contract or application
§ 14.516 Escheat and post fund cases.

In any case in which the Department of Veterans Affairs is entitled to possession of assets or property under the escheat provisions of 38 U.S.C. 5502(e), the gifts provisions of 38 U.S.C. ch. 83 or the General Post Fund provisions of 38 U.S.C. ch. 85, the Regional Counsel will endeavor to obtain possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person having custody or possession of the assets or property for the purpose of determining whether the person would be willing to turn over the property to the Department of Veterans Affairs without litigation. If unsuccessful in this effort, a complete report will be submitted by the Regional Counsel to the General Counsel so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

[42 FR 41411, Aug. 17, 1977]

§ 14.517 Cases affecting the Department of Veterans Affairs generally.

Regional Counsel will establish and maintain such close liaison with the State and Federal courts as to insure that notice will be afforded the Department of Veterans Affairs on all cases affecting the Department of Veterans Affairs. Such information will be forwarded to the General Counsel promptly in every case.

[42 FR 41411, Aug. 17, 1977]

§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

(a) Service of process generally. An employee, at a field facility, served with a writ of habeas corpus involving a beneficiary of the Department of Veterans Affairs, which is required in or preliminary to or in connection with any judicial proceeding in which the Regional Counsel is attorney for the Secretary, and to incur obligations for premiums for such bonds and (2) to do all other acts and incur all costs and expenses which are necessary or appropriate to further or protect the interests of the Secretary in or in connection with prosecuting or defending any cause in any court or tribunal within the United States, which cause arises out of or incident to the guaranty or insurance of loans, or the making or direct loans by the Department of Veterans Affairs, pursuant to 38 U.S.C. ch. 37.

(d) Except in an emergency, no Regional Counsel will initiate action for appellate review without prior approval by the General Counsel. These limitations do not preclude the filing of a motion for a new trial, appeal to intermediate court with hearing de novo, the giving of notice of appeal, reserving of bills of exception, or any other preliminary action in the trial court which may be necessary or appropriate to protect or facilitate, the exercise of the right of appellate review, nor do they preclude the taking of appropriate steps on behalf of the Secretary as appellee (respondent) without prior reference to the General Counsel. Upon the conclusion of the trial of a case, the Regional Counsel will report the result thereof to the General Counsel with recommendation as to seeking appellate review if the result reported is adverse to the position of the Secretary in the litigation. The reporting Regional Counsel who recommends appellate review will include as a part of the communication or in exhibits attached: (1) A summary of the evidence; (2) a summary of the law points to be reviewed; (3) citations of statutes and cases; (4) statements of special reasons for recommending appellate review; (5) time limitations for the action recommended; (6) requirements, if any, respecting printing of the record and briefs; (7) the estimated total expenses to be incurred by reason of the appeal, reporting separately the estimated costs for printing the brief and record so that authority for printing may be granted in accordance with the prescribed procedure, MP–1, part II, chapter 9:1 and (8) the recommendation or a statement as to nonrecommendation by the Loan Guaranty Officer.

[42 FR 41411, Aug. 17, 1977]

1 Available in any Department of Veterans Affairs facility.
Department of Veterans Affairs § 14.561

Affairs in the employee's custody will immediately notify the Regional Counsel of the region in addition to taking such steps as in his or her judgment are necessary for self protection.

(b) Habeas corpus writs. (1) If a Director of a Department of Veterans Affairs hospital concerned advises that, according to current medical opinion, hospitalization is necessary for the veteran's safety or the safety of others, the Regional Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action will be taken unless so instructed by the General Counsel.

(2) If the medical opinion is that hospitalization is not required for the veteran's safety or the safety of others but continued treatment is clearly indicated in the veteran's interest, the Regional Counsel will assure that the court issuing the writ is so informed and will abide by the court's decision.

(3) If the medical opinion is that there is no danger of self injury to the veteran or others and the need for continued treatment is not clearly demonstrated, the Regional Counsel will advise the Director of the hospital concerned that the veteran should be released and will notify the veteran's attorney of the planned discharge. These cases will be handled informally to the extent practicable.

(4) Involuntary confinement of mentally ill patients in Department of Veterans Affairs installations is predicated upon the law of the State in which the installation is located. In the event the writ is filed in Federal Court, the Regional Counsel will cooperate with the U.S. Attorney to the extent practicable to the end that the case is removed to the appropriate State court.


§ 14.561 Administrative action prior to submission.

Before a submission is made to the U.S. Attorney in cases involving personnel or claims, the General Counsel, if the file is in Central Office, or the Regional Counsel at the regional office, hospital or center, if the file is in the regional office or other field facility, will first ascertain that necessary administrative or adjudicatory (forfeiture (see Pub. L. 86-222; 73 Stat. 452), etc.), action has been taken; except that in urgent cases such as breaches of the peace, disorderly conduct, trespass, robbery, or where the evidence may be lost by delay, or prosecution barred by the statute of limitations, submission to the U.S. Attorney will be made immediately.

[42 FR 41413, Aug. 17, 1977]
§ 14.562 Collections or adjustments.

When it is determined that a submission is to be made to the U.S. Attorney, no demand for payment or adjustment will be made without the advice of the U.S. Attorney. However, if, before or after submission, the potential defendant or other person tenders payment of the liability to the United States, payment will be accepted if the U.S. Attorney has no objection. If the U.S. Attorney determines that prosecution is not indicated, or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken.

[42 FR 41413, Aug. 17, 1977]

§ 14.563 Crimes or offenses on Department of Veterans Affairs property.

Upon receipt by the Regional Counsel of a report from the Director of any Department of Veterans Affairs facility located in the district regional office area, other than the District of Columbia, indicating a violation of any penal statutes occurring on such Department of Veterans Affairs property, the Regional Counsel will extend full cooperation and advice to the Director. In so doing, the Regional Counsel will be guided by the provisions of 18 U.S.C. 13 and 3041, and 38 U.S.C. 901. Serious crimes (felonies or misdemeanors) committed on a hospital or domiciliary reservation will be reported directly to the U.S. Attorney or local agent of the Federal Bureau of Investigation by the Director of the facility. The Regional Counsel will give every assistance to the Director in such cases.

[42 FR 41413, Aug. 17, 1977]

§ 14.600 Federal Tort Claims Act.

The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.


Administrative Claims

§ 14.601 Investigation and development.

(a) Development of untoward incidents prior to receipt of a claim. (1) A report of any collision involving a Government-owned vehicle which results in property damage or personal injury or death will be made by the operator of the Government vehicle immediately following the accident, on SF 91, Operator’s Report of Motor Vehicle Accident, and shall be submitted to the Director of the facility involved. A copy of the report, if accompanied by an executed copy of VA Form 2162, Report of Accident, will be promptly submitted by the Director to the appropriate Regional Counsel, who will authorize such additional investigation as the circumstances of the case may warrant.

Forms required by other agencies will continue to be used in addition to VA Form 2162.

(2)(i) Any incident resulting in damage to, or loss of, property, other than personal effects of a patient in a Department of Veterans Affairs facility, or in personal injury or death, due apparently or allegedly to the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her office or employment, or injury to or loss of Government-owned property caused by other than a Department of Veterans Affairs employee acting within the scope of his or her office or employment, will be immediately reported. The Director of the facility where such occurrence took place will promptly transmit a copy of the report to the appropriate Regional Counsel who will authorize such additional investigation as the circumstances of the case may warrant.

(ii) Where the incident involves the loss of personal effects of a patient in a Department of Veterans Affairs facility, the Director will assist the patient.
in completing an SF 95, Claim for Damage, Injury, or Death, and will advise the patient that it will be forwarded immediately to the appropriate Regional Counsel for consideration. The Director will forward along with the claim a brief summary of the facts, as well as his or her recommendation, to the Regional Counsel. The Regional Counsel will expedite the processing of claims of this nature.

(3) An employee will be designated at each facility to investigate motor vehicle collisions and other incidents involving damage to, or loss of privately owned property or personal injury or death, apparently or allegedly resulting from the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, other than investigation of alleged malpractice, or damage to or loss of Government-owned property caused by other than Department of Veterans Affairs employees. In Central Office, the designation will be made by the Director of Support Service, Office of the Assistant Secretary for Human Resources and Administration, and at all other facilities, by the Director.

(4) The Regional Counsel for the area in which a field facility is located will be responsible for processing claims involving motor vehicle collisions and other occurrences resulting in property damage, personal injury, or death, within such area. The Baltimore Regional Counsel will also have jurisdiction, except as otherwise provided in paragraph (a)(3) of this section over incidents occurring in Department of Veterans Affairs Central Office.

(b) In medical malpractice cases, the Regional Counsel may refer a claim to the Under Secretary for Health via the Director, Medical-Legal Affairs for review and for professional opinion or guidance. In the consideration of claims involving a medical question, the responsible Regional Counsel involved and the General Counsel will be guided by the views of the Under Secretary for Health as to the standard of medical care and treatment, the nature and extent of the injuries, the degree of temporary or permanent disability, the prognosis, the necessity for future treatment or physical rehabilitation, and any other pertinent medical aspects of a claim.

§ 14.602 Requests for medical information.

(a) Where there is indication that a tort claim will be filed, medical records or other information shall be not be released without approval of the Regional Counsel.

(b) Request for medical records, documents, reports, or other information shall be handled in accordance with the provisions of §1.511(a)(2) of this chapter.

§ 14.603 Disposition of claims.

Setoff for cost of unauthorized medical treatment. In any tort claim administratively settled or compromised where the claimant owes the Department of Veterans Affairs for unauthorized medical treatment, there will be included in the tort claim award the amount of the claimant’s indebtedness to the Government. The amount of the indebtedness is for credit to the appropriation account from which the services were provided. The voucher prepared for settlement of the claim will specify the amount to be deposited to the credit of the designated account and that the balance of the award be paid to the claimant.

§ 14.604 Filing a claim.

(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place. He or she will also be advised to
§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

(a)(1) Section 2679 of title 28 U.S.C., provides that no suit will lie against a Federal employee, or the employee’s estate, for damage to property, personal injury, or death resulting from his or her wrongful act or omission while acting within the scope of his or her office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671-2680 is the exclusive remedy under these circumstances.

(2) Section 7316 of title 38 U.S.C., provides that (i) where there is remedy against the United States under 28 U.S.C. 2671-2680, or (ii) where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671-2680 (as is the case, for example, in the Federal Employees’ Compensation Act, 5 U.S.C. 8101, et seq.), such recourse is the exclusive remedy for property damage, personal injury, or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician’s assistant, dentist’s assistant, pharmacist or paramedical (for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Veterans Health Administration. Accordingly, a malpractice or negligence suit for property damage, personal injury, or death will not lie against such personnel under the circumstances set forth in this subparagraph.

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a) (1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Department of Veterans Affairs as a result of a wrongful act or omission arising out of employment with the Government, or as a result of furnishing medical or dental care and treatment in or for the Veterans Health Services and Research Administration, the employee shall immediately forward a copy of all papers served on him or her to the Regional Counsel having jurisdiction over the area in which the employee works. The employee will also promptly forward to the appropriate Regional Counsel a signed statement indicating whether he or she desires the Department of Justice to provide representation, and to otherwise protect his or her interests as provided for by law. Even though there may not
§ 14.605

have been service, if an employee learns that a suit arising from either of the above-described circumstances has been filed against him or her, the employee shall immediately so advise the appropriate Regional Counsel, provide the Regional Counsel with a brief description of the facts unsolved, and state whether he or she desires Federal intervention.

(c) Upon receipt of notice that suit has been filed against an employee of the Department of Veterans Affairs who is entitled to protection under 28 U.S.C. 2679 or 38 U.S.C. 7316, the Regional Counsel having jurisdiction over the place where the employee works will conduct a preliminary investigation, which will include an affidavit by the employee’s supervisor as to whether the defendant-employee was acting in the scope of his or her employment at the time of the incident, and a request from the defendant-employee for representation. The affidavit will contain a factual description of the employee’s duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the Regional Counsel will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316. The Regional Counsel will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for protection under 28 U.S.C. 2679 or 38 U.S.C. 7316. The U.S. Attorney will decide whether the Department of Veterans Affairs employee is eligible for the protection. The Regional Counsel will submit to the General Counsel a preliminary report in duplicate containing the information furnished the U.S. Attorney. In all such cases, the Regional Counsel will conduct a complete investigation of the facts and law. Two copies of the investigation report will be sent to the General Counsel and one copy will be sent to the appropriate U.S. Attorney. The General Counsel, through the Regional Counsel, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunization pursuant to one of the aforementioned provisions, the General Counsel’s office, through the Regional Counsel, will advise the employee and will call to his or her attention the discretionary conditional indemnification provisions of section 7316(e) of title 38 U.S.C.

(d) Where a civil action is commenced in a State court against a Department of Veterans Affairs employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 7316, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit. After such removal, the United States has available all defenses to which it would have been entitled if the action had originally been commenced against the United States in the proper Federal District Court. Should a Federal District Court determine that the Department of Veterans Affairs employee whose acts or omissions gave rise to the suit was not acting within the scope of his or her office or employment, and therefore not eligible for immunization as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which he or she may have under 38 U.S.C. 7316(e), he or she shall immediately notify the General Counsel, through the local Regional Counsel. Through the Regional Counsel, the General Counsel will call the employee’s attention to the discretionary conditional indemnification provisions of section 7316(e).

(e) Under the authority of 38 U.S.C. 7316(e), the Secretary of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or his or her estate) described in paragraph (a)(2) of this section, as the result of any suit instituted against such individual which is not cognizable under the provisions of 28 U.S.C. 2671-2680 because the individual was assigned to a foreign country, the
§ 14.615
said individual was detailed to a State
or political division thereof, or the
cause of action was specifically ex-
cluded under the provisions of 28 U.S.C.
2680(h); Provided, That the amount of
damages sustained is reasonable when
compared with similar cases, litigated
or settled, and the United States was
given a reasonable opportunity to de-
 fend such individual and to participate
in settlement negotiations.
[42 FR 41417, Aug. 17, 1977. Redesignated and
amended at 61 FR 27784, June 3, 1996]

ADMINISTRATIVE SETTLEMENT OF TORT
CLAIMS ARISING IN FOREIGN COUNTRIES

§ 14.615 General.
(a) Authority. Section 515(b), title 38
U.S.C., provides that the Secretary of
Veterans' Affairs may pay tort claims,
in the manner authorized in the first
paragraph of section 2672 of title 28
U.S.C., when such claims arise in for-
eign countries in connection with De-
partment of Veterans Affairs oper-
ations abroad.
(b) Action by claimant. Claims for
property loss or damage may be filed
by the owner of the property or his or
her duly authorized agent or legal rep-
resentative. If the property was insured
and the insurer is subrogated, in whole
or in part, and if both the owner and
the insurer desire to file a claim for
their respective losses they should join
in one claim. Claims for personal in-
jury may be filed by the injured person
or his or her agent or legal representa-
tive. Claims for death may be filed by
the personal representative of the deces-
dent or any other legally qualified per-
son. When filed by an agent or legal
representative, the claim must show
the title or capacity of the person rep-
resenting the claimant and be accom-
panied by evidence of the appointment
of such person as agent, legal repre-
sentative, executor/executrix, adminis-
trator/administratrix, guardian, or
other fiduciary.
(c) Time for filing. A claim may not be
allowed under 38 U.S.C. 515(b) unless it
is presented to the Secretary or his or
her designee within 2 years after the
claim accrues.
[38 FR 5473, Mar. 1, 1973, as amended at 42 FR
41417, Aug 17, 1977]

§ 14.616 Form and place of filing claim.
(a) Form of claim. Claims arising
under 38 U.S.C. 515(b) will be prepared
in the form of a sworn statement and
submitted in duplicate. The original
copy of the claim will be sworn to or
affirmed before an official with author-
ity to administer oaths or affirmations
and will contain the following informa-
tion, at least:
(1) The name and address of claim-
ant;
(2) The amount claimed for injury or
death, and for property loss or damage;
(3) If property was lost or damaged,
the amount paid or payable by the in-
surer together with the name of the in-
surer;
(4) A detailed statement of the facts
and circumstances giving rise to the
claim, including the time, place, and
date of the accident or incident;
(5) If property was involved, a de-
scription of the property and the na-
ture and extent of the damage and the
cost of repair or replacement based
upon at least two impartial estimates;
(6) If personal injury was involved,
the nature of the injury, the cost of
medical and/or hospital services, and
time and income lost due to the injury;
(7) If death is involved, the names
and ages of claimants and their rela-
tionship to decedent;
(8) The name and official position of
the employee of the United States al-
legedly responsible for the accident or
injury, or loss or damage of property;
(9) The names and addresses of any
witnesses to accident or incident; and
(10) If desired, the law applicable to
the claim.
(b) Place of filing claim. Claims arising
in the Philippines under 38 U.S.C. 515(b)
will be filed with the Director, Depart-
ment of Veterans Affairs Regional Of-

cine, Manila, Republic of the Phil-
ippines. Claims arising in other foreign
countries will be filed with the Amer-
ican Embassy or Consulate nearest the
place where the incident giving rise to
the claim took place.
(c) Evidence to be submitted by claim-
ant—(1) General. The amount claimed
on account of damage to or loss of
property or on account of personal in-
jury or death shall, so far as possible,
be substantiated by competent evidence. Supporting statements, estimates and the like will, if possible, be obtained from disinterested parties. All evidence will be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language will be accompanied by English translations.

(2) Personal injury or death. In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant’s or decedent’s employer as to time and income lost from work; and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and the like.

(3) Damage to personal property. In support of claims for damage to personal property which has been repaired, the claimant will submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to cost, age of the property and salvage value.

(4) Damage to real property. In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant will submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(5) Damage to crops. In support of claims for damage to crops, the claimant will submit an itemized signed statement showing the number of acres, or other unit measure of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield and an estimate of the costs of cultivating, harvesting and marketing the crop. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year’s crop will also be stated.

(Approved by the Office of Management and Budget under control number 2900-0437)

§ 14.617 Disposition of claims.

(a) Disposition of claims arising in Philippines. All claims arising under 38 U.S.C. 515(b) in the Philippines, including a complete investigation report and a brief résumé of applicable law, will be forwarded directly by the Director to the General Counsel, together with a recommendation as to disposition.

(b) Disposition of claims arising in foreign countries other than the Philippines. When a claim is received in an American Embassy or Consulate, the Embassy or Consulate receiving such claim shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, including a résumé of applicable law and a recommendation regarding allowance or disallowance of the claim, through regular channels of the Department of State to the General Counsel, Department of Veterans Affairs Central Office, Washington, DC.

(c) Payment of claims. Upon determining that there is liability on the part of the United States under 38 U.S.C. 515(b), the General Counsel, or such other personnel as may be designated by the Secretary, will take the necessary action to effect payment.

§ 14.618  Collection action.

(a) In a case where the Regional Counsel determines that damage to or loss of Government property under the jurisdiction of the Department of Veterans Affairs resulted from the negligence or other legal wrong of a person other than an employee of the United States, while acting within the scope of his or her employment, the Regional Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(4)(ii) of this chapter, in conformity with the standards in § 1.900 series of this chapter. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated and does not exceed $100,000, will be referred by the Regional Counsel to the appropriate U.S. attorney along with the information required by §§ 1.951 through 1.953 of this chapter. Any claim in excess of $100,000 for which payment in full has not been made, will be transmitted along with the report required by § 14.601(a)(2)(i), a report on credit data (§ 1.952 of this chapter), and any other pertinent information, to the General Counsel for appropriate action.

(c) The General Counsel or those designated in § 2.6(e)(4) of this chapter will take action to collect in full on such claims and to compromise, suspend, or terminate any such claims not exceeding $100,000 in conformity with § 1.900 series of this chapter. Any such claims not compromised, or on which collection actions is not suspended or terminated and does not exceed $100,000, will be referred to the appropriate U.S. attorney. Any such claims in excess of $100,000, which have not been collected in full, will be referred by the General Counsel to the Department of Justice for appropriate action.

(d) The provisions of paragraphs (a) through (c) of this section are not applicable to the collection of claims involving damage to General Services Administration Motor Pool System vehicles issued for Department of Veterans Affairs use. Whenever there is any indication that a party other than the operator of a motor pool system vehicle is at fault in an accident, all documents and data pertaining to the accident and its investigation will be submitted to the General Services Administration Regional Counsel of the region that issued the vehicle who has jurisdiction over such matters. Whenever a motor pool system vehicle is involved in an accident, resulting in damage to the property of, or injury to the person of a third party, and the third party asserts a claim against the Department of Veterans Affairs based upon the alleged negligence of the vehicle operator, the claim will be considered under § 14.600 et seq.


§ 14.619  Collection action.

(a) In a case where the Regional Counsel determines that medical care and services were furnished as a result of the negligence of a third party, other than an employee of the United States while acting in the scope of his or her employment, the Regional Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of $100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the Regional Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

(c) In a case where the Regional Counsel determines that a claim is appropriate under the provisions of
§ 14.628 Recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Secretary of Veterans Affairs.

(a) National organization. An organization may be recognized as a national organization if:

(1) It was recognized by the Department of Veterans Affairs prior to October 10, 1978, and continues to satisfy the requirements of §14.628(d) of this section, or

(2) It satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under paragraph (e) of this section;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(d) Benefit means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans, dependents, and survivors.

(e) Cancellation means termination of authority to represent claimants.

(f) Claim means application made under title 38 U.S.C., and implementing directives, for entitlement to Department of Veterans Affairs benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) Claimant means a person who has filed a written application for determination of entitlement to benefits provided under title 38 U.S.C., and implementing directives.

(h) Recognition means certification by the Department of Veterans Affairs of organizations to represent claimants.

(i) Representative means a person who has been recommended by a recognized organization and accredited by the Department of Veterans Affairs.

(j) State includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(k) Suspension means temporary withholding of authority to represent claimants.

§ 14.628

REPRESENTATION OF DEPARTMENT OF VETERANS AFFAIRS CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 5901–5905

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs benefits have qualified representation in the preparation, presentation, and prosecution of claims for veterans’ benefits.


§ 14.627 Definitions.

As used in regulations on representation of Department of Veterans Affairs claimants:

(a) Accreditation means recognition by the Department of Veterans Affairs of representatives, attorneys, and agents to represent claimants.

(b) Agent means a person who has met the standards and qualifications outlined in §14.629(b).

(c) Attorney means a member in good standing of a State bar.

(d) Benefit means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans, dependents, and survivors.

(e) Cancellation means termination of authority to represent claimants.

(f) Claim means application made under title 38 U.S.C., and implementing directives, for entitlement to Department of Veterans Affairs benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) Claimant means a person who has filed a written application for determination of entitlement to benefits provided under title 38 U.S.C., and implementing directives.

(h) Recognition means certification by the Department of Veterans Affairs of organizations to represent claimants.

(i) Representative means a person who has been recommended by a recognized organization and accredited by the Department of Veterans Affairs.

(j) State includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(k) Suspension means temporary withholding of authority to represent claimants.

[53 FR 52419, Dec. 28, 1988]
§ 14.628

(iii) Sizable number of claimants for which powers of attorney for claim representation are held;

(iv) Present capability to represent claimants before the Board of Veterans Appeals in Washington, DC; and

(v) Geographic diversification, i.e., sizable number of chapters or offices in more than one State.

(b) State organization. An organization created by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) Other organization. An organization other than a State or national organization as set forth in paragraphs (a) and (b) of this section may be recognized when the Department of Veterans Affairs has determined that it is a veterans’ service organization primarily involved in delivering services connected with either title 38 U.S.C., benefits and programs or other Federal and State programs designed to assist veterans. The term veteran as used in this paragraph shall include veterans, former armed forces personnel, and the dependents or survivors of either. Further, the organization shall provide responsible, qualified representation in the preparation, presentation, and prosecution of claims for title 38 U.S.C., benefits.

(d) Requirements for recognition. In order to be recognized under paragraph (a) or (c) of this section the organization shall:

(1) Have as a primary purpose services to veterans; and

(2) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans’ services to a sizable number of veterans; and

(3) Commit a significant portion of its assets to veterans’ services; and

(4) Establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service. Complete claims service includes the ability to assure representation before the Board of Veterans Appeals. However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Department of Veterans Affairs; and

(5) Take affirmative action, including training and monitoring of its accredited representatives, to ensure proper handling of claims.

(e) Information to be submitted by organizations requesting recognition. In order for an organization to be recognized under paragraphs (a) or (c) of this section, the following information shall be supplied:

(1) Purpose. A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) Service commitment. (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and by-laws of the organization, as appropriate; and

(iii) The type of services performed or to be performed, with an approximation of the number of veterans and dependent clients served by the organization in each type of service designated; and/or

(iv) The type of services performed in connection with other Federal and State programs which are designed to assist former armed forces personnel and their dependents, and an approximation of the number of veterans and dependent clients served by the organization under each program designated.

(3) Assets. (i) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting veterans’ services; and

(ii) A statement indicating that use of the organization’s funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Department of Veterans Affairs.

(4) Training. (i) A statement of the skills, training, and other qualifications for handling veterans’ claims of paid or volunteer staff personnel; and

(ii) A plan for recruiting and training qualified claim representatives, including the number of hours of formal
§ 14.629

Requirements for accreditation of representatives, agents, and attorneys.

The Regional Counsel will resolve any question of current qualifications of a representative, agent, or attorney. The claimant; the representatives, agent, or attorney, or an official of the organization for which such person acts; or the appropriate Department of Veterans Affairs officials may appeal such determination to the General Counsel.

(a) Representatives. A recognized organization shall file with the Office of the General Counsel Department of Veterans Affairs Form 2-21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and

(ii) Has successfully completed a Department of Veterans Affairs approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Department of Veterans Affairs; or

(ii) Has otherwise demonstrated an ability to represent claimants before the Department of Veterans Affairs;
§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney. A person accredited under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made to the General Counsel.

(Authority: 38 U.S.C. 5903)

[53 FR 52421, Dec. 28, 1988]

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Department of Veterans Affairs Form 23-22 (Appointment of Veterans Service Organization as Claimant's...
Representative) or Department of Veterans Affairs Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with §14.629(c) or when representation by an individual is authorized under §14.630. The power of attorney shall meet the following requirements:

1. Contain signature by:
   (i) The claimant, or
   (ii) The claimant's guardian, or
   (iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and
2. Shall be presented to the appropriate Department of Veterans Affairs office for filing in the veteran's claims folder.

(b) Questions concerning powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(c)(1) Only one organization, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in §14.629(c) and paragraphs (c)(2) and (c)(3) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or attorney of record until notice of a change, if any, is received by the Department of Veterans Affairs.

(2) An organization named in a power of attorney executed in accordance with paragraph (a) of this section may employ an attorney to represent a claimant in a particular claim. Unless the attorney is an accredited representative of the organization, the written consent of the claimant shall be required.

(3) Legal interns, law students, and paralegals may assist in the preparation, presentation, or prosecution of a claim under the direct supervision of a claimant's attorney of record designated under §14.629(c), or an attorney who is either employed by or an accredited representative of an organization named in a power of attorney executed in accordance with paragraph (a) of this section. However, prior to their participation, the claimant's written consent must be furnished to the Department of Veterans Affairs. Such consent must specifically state that a legal intern, law student, or paralegal furnishing written authorization from the attorney of record or the organization named in the power of attorney may have access to the claimant's records and that such person's participation in all aspects of the claim is authorized. The supervising attorney, or an attorney authorized under §14.629(c)(2), must be present at any hearing in which a legal intern, law student, or paralegal participates.

(d) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney. If an attorney submits a letter of representation under §14.629 regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under §14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(e) The authority which a power of attorney provides may be continued for a reasonable time after the death of the claimant to determine whether the claim will be continued by a new claimant and whether a new power of attorney will be executed.

(Authority: 38 U.S.C. 5902, 5903, 5904)

§ 14.632 Letters of accreditation.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and
§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or organization.

(b) Accreditation shall be canceled at such time a determination is made that any requirement of §14.629 is no longer met by an agent, attorney, or representative.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following:

1. Violation of or refusal to comply with the laws administered by the Department of Veterans Affairs or with the regulations governing practice before the Department of Veterans Affairs;

2. Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

3. Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

4. Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, mis-leading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of request for evidence by the Department of Veterans Affairs, or willfully withholding an application for benefits.)

(d) Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before the Department of Veterans Affairs demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

(e) As to cancellation of accreditation under paragraphs (b), (c) or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of §14.629, improper conduct, or incompetence, the Regional Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.

1. If the result of the inquiry does not justify further action, the Regional Counsel will close the inquiry and maintain the record for 3 years.

2. If the result of the inquiry justifies further action, the Regional Counsel shall take the following action:

   (i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the suspension and of an intent to cancel accreditation. The notice to the representative will also state the reasons for the suspension and impending cancellation, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

   (ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel accreditation. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to
submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, the Regional Counsel shall forward the record to the General Counsel for final determination.

(f) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the Regional Counsel. The hearing officer will have authority to administer oaths. A member of the Regional Counsel’s office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the party requesting the hearing, an appropriate Department of Veterans Affairs official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Regional Counsel within 10 working days after the close of the hearing. The Regional Counsel will immediately forward the entire record to the General Counsel for decision.

(g) The decision of the General Counsel is final. The effective date for termination of accreditation shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel’s office for 3 years.

§ 14.634  Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity.

(Authority: 38 U.S.C. 5903, 5904)


Cross References: Payment of Representative’s Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans’ Appeals. See §20.609 of this chapter. Payment of Representative’s Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans’ Appeals. See §20.610 of this chapter.

§ 14.635  Office space and facilities.

The Secretary may furnish office space and facilities, if available, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting veterans in the preparation, presentation, and prosecution of claims for veterans’ benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Department of Veterans Affairs facility in which space is desired and should set forth:

(1) The number of full-time paid representatives who will be permanently assigned to the office;

(2) The number of secretarial or other support staff who will be assigned to the office;

(3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and

(4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such
§ 14.640Purpose.

(a) Sections 14.640 through 14.643 establish policy, assign responsibilities and prescribe procedures with respect to:

(1) When, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated Veterans Benefits Administration (VBA) claims records of those claimants whom they represent;

(2) The exercise of authorized access by claimants' representatives; and

(3) The bases and procedures for disqualification of a representative for violating any of the requirements for access.

(b) VBA will grant access to its automated claimants' claims records from locations outside Regional Offices under the following conditions. Access will be provided:

(1) Only to individuals and organizations granted access to automated claimants' records under §§ 14.640 through 14.643;

(2) Only to the claims records of VA claimants whom the organization or individual represents as reflected in the claims file;

(3) Solely for the purpose of the representative assisting the individual claimant whose records are accessed in a claim for benefits administered by VA; and

(4) On a read-only basis. Individuals authorized access to VBA automated claims records under §§ 14.640 through 14.643 will not be permitted to modify the data.

(c) Access will be authorized only to the inquiry commands of the Benefits Delivery Network which provide access to the following categories of data:

(i) Beneficiary identification data such as name, social security number, sex, date of birth, service number and related service data; and

(ii) Claims processing history, award data, rating data, including service-connected medical conditions, income data, dependency data, deduction data, payment data, educational facility and program data (except chapter 32 benefits), and education program contribution and delimiting data (except chapter 32 benefits).

(d) Sections 14.640 through 14.643 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States; or

(2) Create, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

§ 14.641Qualifications for access.

(a) An applicant for read-only access to VBA automated claims records from a location other than a VA Regional Office must be:
§ 14.643

(1) An organization, representative, attorney or agent approved or accredited by VA under §§14.626 through 14.635; or
(2) An attorney of record for a claimant in proceedings before the Court of Veterans Appeals or subsequent proceedings who requests access to the claimant’s automated claims records as part of the representation of the claimant.

(b) The hardware, modem and software utilized to obtain access, as well as their location, must be approved in advance by VBA.

(c) Each individual and organization approved for access must sign and return a notice provided by the Regional Office Director (or the Regional Office Director’s designee) of the Regional Office of jurisdiction for the claim. The notice will specify the applicable operational and security requirements for access and an acknowledgment that the breach of any of these requirements is grounds for disqualification from access.

§ 14.642 Utilization of access.

(a) Once an individual or organization has been issued the necessary passwords to obtain read-only access to the automated claims records of individuals represented, access will be exercised in accordance with the following requirements:
(1) The individual or organization will obtain access only from equipment and software approved in advance by the Regional Office from the location where the individual or organization primarily conducts its representation activities which also has been approved in advance;
(2) The individual will use only his or her assigned password to obtain access;
(3) The individual will not reveal his or her password to anyone else, or allow anyone else to use his or her password;
(4) The individual will access only the VBA automated claims records of VA claimants who are represented by the person obtaining access or by the organization employing the person obtaining access;
(5) The individual will access a claimant’s automated claims record solely for the purpose of representing that claimant in a claim for benefits administered by VA;
(6) Upon receipt of the password, the individual will destroy the hard copy; no written or printed record containing the password will be retained; and
(7) The individual and organization will comply with all security requirements VBA deems necessary to ensure the integrity and confidentiality of the data and VBA’s automated computer systems.

(b) An organization granted access shall ensure that all employees provided access in accordance with these regulations will receive regular, adequate training on proper security, including the items listed in §14.643(a). Where an individual such as an attorney or registered agent is granted access, he or she will regularly review the security requirements for the system as set forth in these regulations and in any additional materials provided by VBA.

(c) VBA may, at any time without notice:
(1) Inspect the computer hardware and software utilized to obtain access and their location;
(2) Review the security practices and training of any individual or organization granted access under these regulations; and
(3) Monitor an individual’s or organization’s access activities. By applying for, and exercising, the access privileges under §§14.640 through 14.643, the applicant expressly consents to VBA monitoring the access activities of the applicant at any time.

§ 14.643 Disqualification.

(a) The Regional Office Director or the Regional Office Director’s designee may revoke an individual’s or an organization’s access privileges to a particular claimant’s records because the individual or organization no longer represents the claimant, and, therefore, the beneficiary’s consent is no longer in effect. The individual or organization is no longer entitled to access as a matter of law under the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7332. Under these circumstances, the individual or organization is not entitled to any hearing or to present
any evidence in opposition to the revocation.

(b) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges either to an individual claimant's records or to all claimants' records in the VBA automated claims benefits systems if the individual or organization:

(1) Violates any of the provisions of §§ 14.640 through 14.643;
(2) Accesses or attempts to access data for a purpose other than representation of an individual veteran;
(3) Accesses or attempts to access data other than the data specified in these regulations;
(4) Accesses or attempts to access data on a VA beneficiary who is not represented either by the individual who obtains access or by the organization employing the individual who obtains access;
(5) Utilizes unapproved computer hardware or software to obtain or attempt to obtain access to VBA computer systems;
(6) Modifies or attempts to modify data in the VBA computer systems;
(7) If VBA is considering revoking an individual's access under § 14.643(b), and that individual works for an organization, the Regional Office of jurisdiction will notify the organization of the pendency of the action.

(d) After an individual's access privileges are revoked, if the conduct which resulted in revocation was such that it merits reporting to an appropriate governmental licensing organization such as a State bar, the VBA Regional Office of jurisdiction will immediately inform the licensing organization in writing of the fact that the individual's access privileges were revoked and the reasons why.

(e) The VBA Regional Office of jurisdiction may temporarily suspend access privileges prior to any determination where the Regional Office Director or the Director's designee determines that such immediate suspension is necessary in order to protect the integrity of the system or confidentiality of the data in the system from a reasonably foreseeable compromise. However, in such case, the Regional Office shall offer the individual or organization an opportunity to respond to the charges immediately after the temporary suspension.

Scope of authority and effective date.

Pub. L. 88-558 (78 Stat. 767), approved August 31, 1964, as amended, authorizes the Secretary or the Secretary's designee to settle and pay a claim for not more than $40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of personal property incident to such person's service. Authority is delegated by § 2.6(e)(5) of this chapter to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), and the Deputy Assistant General Counsel, of said staff group and the Regional Counsel and those acting for them to settle and pay such claims on behalf of the Secretary, and such settlement shall be final and conclusive.

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(1) The date, time, and place the loss or damage occurred and the circumstances surrounding such loss or damage, together with the supporting statements of any witnesses who can verify such facts.

(2) In the event of damage, the date of acquisition, original cost, condition before damage, and at least two estimates of the cost of repair or replacement. In the event of loss, the date of acquisition, the original cost, the condition, and an estimate of the reasonable market value of the article or articles.

(3) A statement as to any claims or potential claim he or she may have for indemnification of the loss or damage against other than the United States and whether he or she will assign such to the United States and cooperate in its prosecution. Where such claim or potential claim is against a carrier or insurer, evidence that a timely claim has been properly made. Where a recovery from the carrier or his or her insurer has been obtained or offered, such information shall be included.

(4) In cases involving damage or destruction of personal property by patients or domiciliary members, a statement as to whether a claim was filed pursuant to 38 U.S.C. 703(a)(5) and whether such claim has been finally denied.

(b) The Personnel Officer receiving the claim will forward same to the person designated to investigate accidents at the station pursuant to §14.605 within 5 days after receipt.

(c) The employee designated pursuant to §14.605 will ascertain if such claim is complete in all respects and conduct such investigation as is necessary to establish all facts required to properly evaluate the claim both as to merit and the reasonable amount payable for the loss or damage. Where it is indicated that the claimant may have a potential claim against other than the United States, the employee designated will secure a suitable assignment of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim.

§ 14.666 Regional Counsel responsibility.

(a) The Regional Counsel having jurisdiction will conduct such additional investigation as is deemed necessary to establish all facts required. If the claimant has a potential claim for indemnification against other than the United States, the Regional Counsel will ascertain that a suitable assignment, legally enforceable, of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim is of record. If such potential claim is against a carrier or insurer, the Regional Counsel will ascertain that claimant has filed a timely proper claim against the carrier or insurer and review same for legal sufficiency.

(b) The Regional Counsel having jurisdiction over a claim will not authorize payment thereon unless the requirement of §§14.664 through 14.667 are met. In determining the equitable value of a claim, the depreciation schedule issued by the General Counsel will be used as a guide.

§ 14.667 Claims payable.

(a) No claim shall be paid unless timely filed in proper form as provided in §14.665 and the preponderance of the evidence establishes that the loss or damage:

(1) Actually occurred and the amount claimed is reasonable,

(2) Was incident to the employee's service and his or her possession of the property was reasonable, useful, or proper under the circumstances,
§ 14.668 Disposition of claims.

(a) Disallowed claims. Claimants will be promptly notified of the disallowance of a claim and the reasons therefor.

(b) Allowed claims—

(1) Reimbursement in kind. Where a claim is allowed and it is determined to be to the advantage of the Government, reimbursement will be made in kind. The official authorizing settlement will request the Director, Supply Service, Veterans Health Services and Research Administration, to procure the necessary article or articles and deliver same to the claimant.

(2) Reimbursement by check. The official authorizing settlement will forward allowed claims, other than those requiring reimbursement in kind, to the Finance activity at the Department of Veterans Affairs installation where the claim arose. That activity will audit the claim, which if found proper for payment, will be scheduled on SF 1166, Voucher and Schedule of Payments, and forwarded to the appropriate Regional Disbursing Office for payment.


§ 14.669 Fees of agents or attorneys; penalty.

The Military Personnel and Civilian Employees’ Claims Act of 1964 (Pub. L. 89–558, 78 Stat. 767) was amended by Pub. L. 89–185 (79 Stat. 789), on September 15, 1965, by adding a new section which provided that no more than 10 percent of the amount paid in settlement of each individual claim submitted and settled under the authority of the Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. Any person violating the provisions of this Act is deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

[38 FR 5475, Mar. 1, 1973]

COMMITMENTS—FIDUCIARIES

§ 14.700 Court cost and expenses; commitment, restoration, fiduciary appointments.

It is the responsibility of the Regional Counsel to assure the protection of the veteran, his or her beneficiaries, and their estates in State court proceedings involving commitment and restoration, and the appointment of fiduciaries. To this end certain expenses such as court costs, publication fees, recording fees, transportation expenses and fees for medical testimony may be authorized by the Regional Counsel. Payment of these costs will be borne by the administration concerned. However, every effort will be made by the Regional Counsel to avoid having these costs imposed on the Department of Veterans Affairs. The travel and per diem cost of the Regional Counsel personnel will be borne by the Regional Counsel.
§ 14.701 Commitment and restoration proceedings.

(a) State institutions. Regional Counsels are authorized to cooperate with State courts, including the production of required records in the commitment of veterans to State hospitals or in their restoration to full civil rights.

(b) Department of Veterans Affairs institutions—(1) Assistance to courts in commitment proceedings. The Regional Counsel will render assistance to the courts in cases involving the commitment of mentally ill veterans to the Department of Veterans Affairs. To this end, the Regional Counsel may:

(i) Produce Department of Veterans Affairs records.

(ii) Appear in court and present material facts.

(iii) When authorized to institute commitment proceedings under paragraph (b)(2) of this section, prepare and present all necessary legal papers, and arrange and authorize transportation costs of veterans and attendants at Department of Veterans Affairs expense (§§ 14.703 and 14.704).

(2) Commitment proceedings. If a mentally ill veteran will accept hospitalization voluntarily, no action will be initiated by any Department of Veterans Affairs employee to commit such veteran. If the veteran will not accept hospitalization, or after being voluntarily hospitalized by the Department of Veterans Affairs demands his or her release, and hospitalization is necessary for the veteran’s safety or the safety of others, the Regional Counsel (if a relative of the veteran or other interested person has not done so) may institute proceedings to commit the veteran to the Department of Veterans Affairs subject to the following conditions:

(i) That the written consent of the veteran’s nearest relative has been obtained. If the nearest relative cannot be readily contacted or refuses to consent, coupled with inability or refusal to offer adequate alternative care, the Regional Counsel may initiate the action if the petition is signed by another relative, a civil official or representative of a cooperating agency or other person authorized by State law.

(ii) If timely action cannot be taken under paragraph (b)(2)(i) of this section, the Hospital or Clinic Director, or designee, may sign the petition if permissible under State law, and the Regional Counsel will then take any action necessary to bring the matter before the appropriate court.

(3) Illegal commitment. When a hospitalized veteran, previously committed to the Department of Veterans Affairs, demands release and continued hospitalization is necessary for the veteran’s safety or the safety of others, and the Regional Counsel determines the commitment to be illegal, immediate action will be taken to obtain a legal commitment.

(4) Restoration proceedings. When a veteran has been a committed patient in a Department of Veterans Affairs hospital and is subsequently rated competent by the Department of Veterans Affairs, the Regional Counsel upon request, may institute proceedings necessary to restore the veteran to full civil rights.

§ 14.702 Medical testimony in commitment or restoration proceedings.

(a) Commitment. When permissible under State law, Department of Veterans Affairs physicians, upon request of the Regional Counsel, will sign interrogatories or certificates of mental illness or insanity and, unless unavailable, as provided in paragraph (c) of this section, will testify in proceedings which the Regional Counsel is authorized to institute under §14.701 to commit eligible veterans to the Department of Veterans Affairs.

(b) Restoration. (1) When permissible under State law, Department of Veterans Affairs physicians, upon the request of the Regional Counsel, will testify in proceedings brought for the purpose of restoring a committed veteran to full civil rights when the veteran is a committed patient in a Department of Veterans Affairs hospital.

(2) The Director of a Department of Veterans Affairs hospital or the Regional Counsel upon discharge of the veteran, may furnish a certificate of sanity or such similar certificate to the proper civil authorities.

(c) Employment of private physicians. When testimony of Department of Veterans Affairs physicians is prohibited
§ 14.703 Costs in commitment or restoration proceedings.

(a) When authorized to institute a proceeding under §14.701, the Regional Counsel may authorize in advance or thereafter the payment or reimbursement of costs and other expenses for which the veteran is legally liable, including publication of notice necessary to accomplish the commitment.

(b) The Regional Counsel also may authorize the payment of necessary costs and expenses for which the veteran is legally liable incident to his or her restoration to full civil rights in any case in which the Regional Counsel is authorized to institute restoration proceedings under §14.701(b)(4).


When a mentally ill veteran who should be committed is hospitalized by the Department of Veterans Affairs and where the hospital is located, a commitment may not be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the commitment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the Regional Counsel. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel.

§ 14.705 Authority to file petitions for appointment of fiduciaries in State courts.

(a) Adult beneficiary. The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within §14.706(a) a petition for the appointment of a fiduciary and all necessary legal papers for an adult beneficiary only if it has been determined that alternative methods of payment would not be to the best interests of the beneficiary and when the Regional Counsel has obtained the written consent of:

(1) The beneficiary’s spouse.

(2) The beneficiary’s adult child, parent, adult brother or sister if the beneficiary is unmarried, or consent of the spouse is immaterial because of estrangement or mental incapacity, or refusal to consent coupled with failure to offer adequate alternative means for providing for the beneficiary’s needs.

(3) A civil official or representative of a cooperating agency when none of the relative listed in paragraph (a) (1) and (2) of this section can be located after reasonable inquiry or those located are not mentally competent to consent or refuse without offering adequate alternative means for providing for the needs of the beneficiary.

(b) Minor beneficiaries. The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within §14.706(a) a petition for the appointment of a fiduciary for a minor. If permissible under the law of the jurisdiction concerned and if it has been determined that protection of the minor’s rights under laws administered by the Department of Veterans Affairs requires the appointment, provided:

the written consent of the minor’s natural or adoptive parent or parents or the person or persons occupying the relationship of “in loco parentis” as defined, by the law of the jurisdiction, in which they reside has been obtained.

The Regional Counsel will not institute a court proceeding for the appointment of a fiduciary over the objections of such parent or parents if they are sui juris unless the parent or parents have abandoned the minor or have otherwise
refused to meet their parental obligations toward the minor or they have previously been appointed or recognized as the minor’s fiduciary and failed to properly execute the duties of their trust. If the minor has no parent or the parent or parents are not sui juris, the Regional Counsel may file the petition without the consent of any relative.

(c) Court-appointed fiduciaries. In court-appointed fiduciary cases, the Regional Counsel may appear in the court of appointment or in any court having original, concurrent, or appellate jurisdiction, and make proper presentation relating to the foregoing matters. The Regional Counsel’s authority includes by is not limited to:

1. Petitioning the court to cite a fiduciary to account;
2. Filing exceptions to accountings;
3. Requiring fiduciaries to file bonds or make any necessary adjustments;
4. Requiring investments;
5. Filing petitions to vacate or modify court orders;
6. Appearing or intervening in any State court as attorney for the Secretary of Veterans Affairs in litigation instituted by the Secretary or otherwise affecting money paid to such fiduciary by the Department of Veterans Affairs;
7. Incuring necessary court costs and other expenses, including witness fees, appeal bonds, advertising in any newspaper or other publication, preparing briefs or transcripts, purchase of records of trial or other records;
8. Instituting any other action necessary to secure proper administration of the estate of a Department of Veterans Affairs beneficiary, such as filing petitions for the removal of a fiduciary and appointment of a successor;
9. Taking appropriate action to recover funds improperly disbursed.

(d) Appeal. Unless a trial is de novo, no appeal shall be taken to an appellate court and no costs incurred in connection therewith without the prior approval of the General Counsel and the Chief Benefits Director or their designees.

§ 14.706 Legal services in behalf of beneficiaries.

(a) The Regional Counsel may furnish legal services in behalf of minor and incompetent beneficiaries of the Department of Veterans Affairs in fiduciary appointment and estate administration matters involving Department of Veterans Affairs benefits or property derived therefrom when the beneficiary’s estate or income is not sufficient to justify the employment of an attorney.

(b) The Regional Counsel may also furnish legal services in hardship situations when restoration from legal disability is a condition of precedent to direct payment of Department of Veterans Affairs benefits.

(c) Where the fiduciary does not in due course institute the necessary action to terminate the trust relationship and the beneficiary requests representation by the Regional Counsel or in any such case where there is in question the proper administration of the estate, the Regional Counsel may file the necessary action and supply legal services. Costs, unless assessed against the fiduciary, should be charged to the estate of the beneficiary.


When the appointment of a fiduciary is required for an incompetent veteran hospitalized by the Department of Veterans Affairs and, under the law of the State wherein the hospital is located, the appointment cannot be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the appointment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director, upon request of the Regional Counsel, may authorize travel of the veteran and an attendant or attendants, if necessary. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel.
§ 14.708 Costs and other expenses incident to appointment of fiduciary.

(a) The Regional Counsel may authorize the payment of costs and other necessary expenses incident to the appointment of an initial or successor fiduciary for a Department of Veterans Affairs beneficiary when:

(1) Authorized to render legal services under § 14.706.

(2) Appointment was caused by the Department of Veterans Affairs and it develops that no benefits are payable and there is no estate from which costs may be paid.

(3) Costs must be advanced when there is no immediate estate from which same may be paid. These costs are to be recovered from benefits payable unless the case falls within paragraph (a)(1) of this section.

(b) Costs and necessary expenses include:

(1) All those chargeable by statute or rule of court and certified by the clerk of court.

(2) Certified copies of court records required by the Department of Veterans Affairs.

(3) Fees for guardian ad litem when chargeable as court costs and required by State law.

§ 14.709 Surety bonds; court-appointed fiduciary.

(a) It is the policy of the Department of Veterans Affairs to require, where possible under State laws and rules of the court, corporate surety bonds in all court-appointed fiduciary cases where the fiduciary is an individual and the estate is sufficient to justify the expense of procuring a corporate surety bond. Corporate bonds may be required of corporate fiduciaries in accordance with State laws. In cases wherein fiduciaries neglect or refuse to furnish surety bonds in the amount requested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Services Officer.

(b) When it is not practical or feasible to require a fiduciary to furnish a corporate surety bond, the Regional Counsel is authorized to accept bonds with such number of personal sureties as is permissible under State law, but in no event less than one. To be acceptable for Department of Veterans Affairs purposes, each personal surety must be worth at least the penal sum named in the bond over and above all debts, liabilities and exemptions and qualify in accordance with the requirements of State law. The Regional Counsel will request suitable evidence of financial responsibility whenever there is any question as to the ability of a personal surety to meet any probable liability. When suitable evidence is not furnished as requested, or financial responsibility is found to be insufficient to meet the penal sum of the bond, the Regional Counsel should take appropriate court action and notify the Veterans Services Officer.

(c) It is the policy of the Department of Veterans Affairs to require surety bonds in an amount commensurate with value of the personal estate derived from Department of Veterans Affairs benefits plus the anticipated net income from Department of Veterans Affairs benefits received during the ensuing accounting period. In cases where the fiduciaries neglect or refuse to furnish surety bonds in the amount requested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Services Officer. When permissible under State law, the Regional Counsel may accept, without objection, a lesser degree of protection approved by the court when it is determined that such action will adequately protect the beneficiary’s estate.

Testimony of Department Personnel and Production of Department Records in Legal Proceedings

Source: 59 FR 6666, Feb. 11, 1994, unless otherwise noted.

§ 14.800 Purpose.

Sections 14.800 through 14.810 establish policy, assign responsibilities and prescribe procedures with respect to:

(a) The production or disclosure of official information or records of the Department of Veterans Affairs (VA); and

(b) The testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual’s performance of official duties, or by
§ 14.801 Applicability.

(a) Sections 14.800 through 14.810 apply to:

(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that these regulations apply, as well as the personnel of contractors and subcontractors.

(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.

(b) Sections 14.800 through 14.810 do not apply to:

(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2)(i) Legal proceedings in which the Department of Veterans Affairs, the Secretary of Veterans Affairs or the United States is a party, is represented or has a direct and substantial interest; or

(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.

(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any way to, the personnel’s official duties or to the functions and activities of the VA or the United States.

(4) Official comments on matters in legal proceedings, where appropriate.

(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to federal, state, local and foreign law enforcement or regulatory agencies.

(6) Congressional demands or requests for testimony or documents.


(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.

(9) Legal proceedings before or involving the VA concerning a claim or dispute as to the rights of a beneficiary or obligations or liabilities of the United States under any law or program administered by the Department of Veterans Affairs.

(10) Requests by a veteran or that veteran’s representative for access to the veteran’s records for use in an administrative or judicial claim for benefits administered by the Department of Veterans Affairs.

(11) Foreign legal proceedings covered by Department of State procedures governing the production of records or witnesses in response to requests or demands in connection with foreign legal proceedings.

(c) Sections 14.800 through 14.810 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States;

(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases;

(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under these regulations. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality statutes; absent disclosure authority granted by those statutes, information and records subject to those laws may not be disclosed, or testimony given as to them under the procedures established in these regulations); or

(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)
§ 14.802 Definitions.

(a) Demand. Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.

(b) Request. Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) VA personnel. All present and former officers and employees of the VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another official of the VA, including nonappropriated fund activity employees, and other individuals hired through contractual agreements by or on behalf of the VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

(d) Legal proceedings. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in §14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in §14.801(b).

(e) Official VA information. All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) Testimony. Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) VA records. All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term ‘record’ as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

§ 14.803 Policy.

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§14.800 through 14.810 only as authorized in accordance with these regulations. In determining whether to authorize testimony or the production of records, the determining official will consider the effect in this case, as well as in future cases generally, based on the factors set forth in §14.804, which testifying or producing records not available for public disclosure will have on the ability of the agency or VA personnel to perform their official duties.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees’ private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation’s veterans access to the courts.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

§ 14.804 Factors to consider.

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning
servicing the Nation's veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release in camera, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute's prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

(g) Whether the testimony or production of records, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.

(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;

(j) The need to prevent the public's possible misinterpretation of variances between personal opinions of VA personnel and VA or Federal policy.

(k) Whether the demand or request is within the authority of the party making it;

(l) Whether the demand or request is sufficiently specific to be answered;

(m) Whether the demand or request is sufficiently specific to be answered;

(n) Whether the demand or request is sufficiently specific to be answered;

(o) Whether the demand or request is sufficiently specific to be answered;

(p) Whether the demand or request is sufficiently specific to be answered;

(q) Whether the demand or request is sufficiently specific to be answered;

(r) Whether the demand or request is sufficiently specific to be answered;

(s) Whether the demand or request is sufficiently specific to be answered;

(t) Whether the demand or request is sufficiently specific to be answered;

(u) Whether the demand or request is sufficiently specific to be answered;

(v) Whether the demand or request is sufficiently specific to be answered;

(w) Whether the demand or request is sufficiently specific to be answered;

(x) Whether the demand or request is sufficiently specific to be answered;

(y) Whether the demand or request is sufficiently specific to be answered;

(z) Whether the demand or request is sufficiently specific to be answered.

§ 14.805 Contents of a demand or request.

The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit, or if that is not feasible, in, or accompanied by, a written statement by the party seeking the testimony or records or by the party’s attorney, a summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in §14.807, the responsible VA official may ask the requester to provide additional information.

Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301

§ 14.806 Scope of testimony or production.

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in §14.807(b). VA personnel may only testify concerning or comment upon official VA information,
§ 14.807 Procedure when demand or request is made.

(a) VA personnel upon whom a demand or request for testimony or the production of records in connection with legal proceedings as defined in §14.802(d) is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. The field station or Central Office component shall notify the responsible VA official designated in §14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the Regional Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the Regional Counsel office designated by the Regional Counsel is the responsible VA official authorized to determine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in §14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the VA official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The responsible VA official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in §14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the responsible VA official in accordance with this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (b) of this section shall furnish the requester or the court or other authority with a copy of §§14.800 through 14.810 and any other relevant documentation, inform the requester or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to §14.807(d), or if such court or other authority orders that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to §14.807(d), or if such court or other authority orders that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(f) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to §14.807(d), or if such court or other authority orders that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to §14.807(d), or if such court or other authority orders that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(f) Normally, written demands or requests allowing reasonable lead time for evaluation and processing are required. However, in emergency situations where response time is limited and a written demand or request is impractical, the following procedures should be followed:

(1) The responsible VA official has the authority to waive the requirement of a written demand or request and may expedite a response in the event of an emergency under conditions which could not be anticipated in the course of proper planning or which demonstrate a good faith attempt to comply with these regulations. Determinations on oral demands or requests should be reserved for instances where insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the legal proceeding for which the testimony or records are sought. No requester has a right to make an oral demand or request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the responsible VA official.

(2) If the responsible VA official concludes that the demand or request, or any portion of it, should be granted (after considering the factors listed in §14.804), the responsible VA official will then orally advise the requester of the determination in accordance with the procedures provided in §14.807(c), including any limitations on such testimony or production of records, and seek a written confirmation of the oral demand or request. The responsible VA official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.808 Expert or opinion testimony.

(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in §14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the responsible VA official designated in §14.807(b) may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the responsible VA official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the responsible VA official of such order. If the responsible VA official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. If directed by the appropriate VA official after consultation with the appropriate United States Attorney’s office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with these regulations, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by these regulations;

(ii) Request an opportunity to consult with the responsible VA official mentioned in §14.807(b) before giving such testimony;

(iii) Explain that, upon such consultation, approval for such testimony may be provided; and
§ 14.809

(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201–209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information, subjects or activities without the opportunity to consult with the appropriate VA officer, the witness respectfully shall refuse to do so. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects or activities during §14.802(d) legal proceedings, the responsible VA official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of these regulations provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in §14.802(d) in which the United States is not already represented, without consulting with the responsible VA official, the witness, as soon after testifying as possible, shall inform the responsible VA official of the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.810

Fees.

(a) The testimony of VA personnel as witnesses, particularly as expert witnesses, and the production of VA records in legal proceedings subject to §§14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which the VA may establish a charge for providing under 31 U.S.C. 9701. The responsible VA official will determine all fees associated with §§14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance.

(b)(1) When a request is granted under §14.808 to permit VA personnel to testify in whole or in part as to expert, opinion or policy matters, the requester shall pay to the government a fee calculated to reimburse the cost of providing the witness. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand or request;
(ii) Costs of attorney time expended in reviewing the demand or request and any information located in connection with the demand or request;
(iii) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information;
(iv) The cost of the time expended by the witness to prepare to testify; and
(v) Costs of travel by the witness and attendance at trial.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)
(2) All costs for documents necessary for such expert testimony shall be calculated as provided in VA regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) When an individual testifies in legal proceedings covered by these regulations in any capacity other than as an expert witness, the requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule, such as a local Federal district court rule, will apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(d) When a requester wishes to interview VA personnel as part of legal proceedings covered by these regulations, and such interview has been approved in accordance with these regulations, the requester shall pay a fee calculated upon the total hourly pay of the individual interviewed.

(e) When VA produces records in legal proceedings pursuant to §§14.800 through 14.810, the fees to be charged and paid prior to production of the records shall be the fees charged by VA under its regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(f) Fees shall be paid as follows:

(1) Fees for copies of documents, blueprints, electronic tapes, or other VA records will be paid to the VA office or station providing the records, and covered to the General Fund of the Department of the Treasury.

(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall thereafter be deposited in the General Fund.

(3) The private party requesting a VA witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds.

(g) A waiver of any fees in connection with the testimony of an expert witness may be granted by the appropriate VA official at the official's discretion provided that the waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that the VA or the United States favors one party or a position advocated by a party to the legal proceeding.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

PART 15—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

§ 15.101 Purpose.
15.101 Purpose.
15.102 Application.
15.111 Notice. 15.112—15.129 [Reserved] 15.130 General prohibitions against discrimination.
15.131—15.139 [Reserved] 15.140 Employment.
15.150 Program accessibility: Existing facilities.
15.151 Program accessibility: New construction and alterations.
15.152—15.159 [Reserved] 15.160 Communications.
15.181 Compliance procedures.
15.182—15.189 [Reserved]


Source: 53 FR 25885, July 8, 1988, unless otherwise noted.

§ 15.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 15.102 Application.

This regulation (§§15.101—15.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve
§ 15.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant’s name and address and describes the agency’s alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services
provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by §15.140.


Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 15.104—15.109 [Reserved]

§ 15.110 Self-evaluation.

(a) The agency shall, by September 6, 1969, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 15.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 15.112—15.129 [Reserved]

§ 15.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;
(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;
(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of possibly separate or different programs or activities.
(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—
(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or
(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—
(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or
(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.
(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.
(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.
(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.
§§ 15.131—15.139 [Reserved]
§ 15.140 Employment.
No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.
§§ 15.141—15.148 [Reserved]
§ 15.149 Program accessibility: Discrimination prohibited.
Except as otherwise provided in §15.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from
participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 15.150 Program accessibility: Existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 15.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) Methods—(1) General. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) Historic preservation programs. In meeting the requirements of § 15.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 15.150(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) Time period for compliance. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be
undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency’s facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 15.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 15.152—15.159 [Reserved]

§ 15.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §15.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not
result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 15.161—15.169 [Reserved]

§ 15.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Assistant Secretary for Equal Employment Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to the Secretary of Veterans Affairs or the Deputy Assistant Secretary for Equal Employment Opportunity at the following address: Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §15.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25885, July 8, 1988, as amended at 53 FR 25885, July 8, 1988; 54 FR 34982, Aug. 23, 1989]

§§ 15.171—15.999 [Reserved]

PART 16—PROTECTION OF HUMAN SUBJECTS

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§ 16.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in §16.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in §16.102(e) must be reviewed and approved, in compliance with §§16.101, 16.102, and §§16.107 through 16.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as: (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

   (i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and
   (ii) any disclosure of the human subjects’ responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

   (i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or
agencies, which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs;
(ii) procedures for obtaining benefits or services under those programs;
(iii) possible changes in or alternatives to those programs or procedures;
or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies. (i) If wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the Federal Register or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the Federal Register or in such other manner as provided in department or agency procedures.¹

¹Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A-D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.
§ 16.102 Definitions.

(a) Department or agency head means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) Institution means any public or private entity or agency (including federal, state, and other agencies).

(c) Legally authorized representative means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) Research subject to regulation, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. “Private information” includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) IRB means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) IRB approval means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) Certification means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§ 16.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements
set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under §16.101(b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB’s review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member’s chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with §16.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through
§§ 16.104—16.106

such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §16.101(b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by §16.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by §16.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under control number 9999-0020)

§§ 16.104—16.106 [Reserved]

§ 16.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the

(56 FR 28012, 28021, June 18, 1991; 56 FR 29789, June 28, 1991)
member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ 16.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in §16.103(b)(4) and, to the extent required by, §16.103(b)(5).

(b) Except when an expedited review procedure is used (see §16.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ 16.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in, (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with §16.116. The IRB may require that information, in addition to that specifically mentioned in §16.116, be given to the subjects when in the IRB’s judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with §16.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

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§ 16.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk.

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewer(s) may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in §16.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method...
§ 16.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

1. Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

2. Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

3. Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

4. Informed consent will be sought from each prospective subject or the subject’s legally authorized representative, in accordance with, and to the extent required by §16.116.

5. Informed consent will be appropriately documented, in accordance with, and to the extent required by §16.117.

6. When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

7. When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ 16.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ 16.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB’s requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB’s action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

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§ 16.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency
head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§ 16.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described is § 16.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in §§16.103(b)(4) and 16.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by §16.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

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§ 16.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or
where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practically be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

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§ 16.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.
(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by §16.116. This form may be read to the subject or the subject’s legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by §16.116 have been presented orally to the subject or the subject’s legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject’s wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

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§ 16.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution’s responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects’ involvement will depend upon completion of experiments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under §16.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§ 16.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

§ 16.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of
§ 16.121 [Reserved]

§ 16.122 Use of Federal funds.
Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

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(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

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§ 17.30 Definitions.

When used in Department of Veterans Affairs medical regulations, each of the following terms shall have the meaning ascribed to it in this section:

(a) Medical services. The term medical services includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§17.160 through 17.166, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 1762, wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary.

(b) Domiciliary care. The term domiciliary care means the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. The term further includes travel and incidental expenses pursuant to §17.143.

(c) Transportation and incidental expenses for any person entitled to such benefits under the provisions of §17.143.

(d) Inactive duty training. The term inactive duty training means: (1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206,
§ 17.32 Informed consent.

(a) Definitions: Close friend. Any person eighteen years or older who has shown care and concern for the patient's welfare, who is familiar with the patient's activities, health, religious beliefs and values, and who has presented a signed written statement for the record that describes that person's relationship to and familiarity with the patient.

Decision-making capacity. The ability to understand and appreciate the nature and consequences of health-care treatment decisions.

Health-care agent. An individual named by the patient in a Durable Power of Attorney for Health Care.

Legal guardian. A person appointed by a court of appropriate jurisdiction to make decisions for an individual who has been judicially determined to be incompetent.

Practitioner. Any physician, dentist, or health-care professional who has been granted specific clinical privileges to perform the treatment or procedure involved. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents regardless of whether they have been granted clinical privileges.

Signature consent. The patient's or surrogate's signature on a VA-authorized consent form, e.g., a published numbered VA form (OF 522) or comparable form approved by the local VA facility.

(b) Policy. Except as otherwise provided in this section, all patient care furnished under title 38 U.S.C. shall be carried out only with the full and informed consent of the patient or, in appropriate cases, a representative thereof. In order to give informed consent, the patient must have decision-making capacity and be able to communicate decisions concerning health care. If the patient lacks decision-making capacity or has been declared incompetent, consent must be obtained from the patient's surrogate. Practitioners may provide necessary medical care in emergency situations without the patient's or surrogate's express consent.
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when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient or others and the patient is unable to consent and the practitioner determines that the patient has no surrogate or that waiting to obtain consent from the patient’s surrogate would increase the hazard to the life or health of the patient or others. In such circumstances consent is implied.

(c) General requirements for informed consent. Informed consent is the freely given consent that follows a careful explanation by the practitioner to the patient or the patient’s surrogate of the proposed diagnostic or therapeutic procedure or course of treatment. The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must explain in language understandable to the patient or surrogate the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. The patient or surrogate must be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant permission freely without coercion. The practitioner must advise the patient or surrogate if the proposed treatment is novel or unorthodox. The patient or surrogate may withhold or revoke his or her consent at any time.

(d) Documentation of informed consent.

(1) The informed consent process must be appropriately documented in the medical record. In addition, signature consent is required for all diagnostic and therapeutic treatments or procedures that:

(i) Require the use of sedation;

(ii) Require anesthesia or narcotic analgesia;

(iii) Are considered to produce significant discomfort to the patient;

(iv) Have a significant risk of complication or morbidity;

(v) Require injections of any substance into a joint space or body cavity; or

(vi) Involve testing for Human Immunodeficiency Virus (HIV).

(2) The patient’s or surrogate’s signature on a VA-authorized consent form must be witnessed. The witness’ signature only attests to the fact that he or she saw the patient or surrogate and the practitioner sign the form. When the patient’s or surrogate’s signature is indicated by an “X”, two adults must witness the act of signing. The signed form must be filed in the patient’s medical record. A properly executed OF 522 or other VA-authorized consent form is valid for a period of 30 calendar days. If, however, the treatment plan involves multiple treatments or procedures, it will not be necessary to repeat the informed consent discussion and documentation so long as the course of treatment proceeds as planned, even if treatment extends beyond the 30-day period. If there is a change in the patient’s condition that might alter the diagnostic or therapeutic decision, the consent is automatically rescinded.

(3) If it is impractical to consult with the surrogate in person, informed consent may be obtained by mail, facsimile, or telephone. A facsimile copy of a signed consent form is adequate to proceed with treatment. However, the surrogate must agree to submit a signed consent form to the practitioner. If consent is obtained by telephone, the conversation must be audiotaped or witnessed by a second VA employee. The name of the person giving consent and his or her authority to act as surrogate must be adequately identified for the record.

(e) Surrogate consent. If the practitioner who has primary responsibility for the patient determines that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time, informed consent must be obtained from the patient’s surrogate. Patients who are incapable of giving consent as a matter of law, i.e., persons judicially determined to be incompetent and minors not otherwise able to provide informed consent, will be deemed to lack decision-making capacity for the purposes of this section. If the patient is considered a minor in the state where the VA facility is located and cannot consent to medical treatment, consent must be obtained from the patient’s parent or
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Legal guardian. The surrogate generally assumes the same rights and responsibilities as the patient in the informed consent process. The surrogate's decision must be based on his or her knowledge of what the patient would have wanted, i.e., substituted judgment. If the patient's wishes are unknown, the decision must be based on the patient's best interest. The following persons are authorized to consent on behalf of patients who lack decision-making capacity in the following order of priority:

(1) Health-care agent;
(2) Legal guardian or special guardian;
(3) Next-of-kin: a close relative of the patient eighteen years of age or older, in the following priority: spouse, child, parent, sibling, grandparent, or grandchild; or
(4) Close friend.

(f) Consent for patients without surrogates. (1) If none of the surrogates listed in paragraph (e) of this section are available, the practitioner may request Regional Counsel assistance to obtain a special guardian for health care or follow the procedures outlined in this paragraph (f).

(2) Facilities may use the following process to make treatment decisions for patients who lack decision-making capacity and have no surrogate. For treatments or procedures that involve minimal risk, the practitioner must verify that no authorized surrogate can be located. The practitioner must attempt to explain the nature and purpose of the proposed treatment to the patient and enter this information in the medical record. For procedures that require signature consent, the practitioner must certify that the patient has no surrogate. The attending physician and the Chief of Service (or his or her designee) must indicate their approval of the report in writing. After reviewing the record, the facility Director may concur with the decision to withhold or withdraw life support or request further review by Regional Counsel.

(g) Special consent situations. In addition to the other requirements of this section, additional protections are required in the following situations.

(1) No patient will undergo any unusual or extremely hazardous treatment or procedure, e.g., that which might result in irreversible brain damage or sterilization, except as provided in this paragraph (g). Before treatment is initiated, the patient or surrogate must be given adequate opportunity to consult with independent specialists, legal counsel or other interested parties of his or her choosing. The patient's or surrogate's signature on a VA authorized consent form must be witnessed by someone who is not affiliated with the VA health-care facility, e.g., spouse, legal guardian, or patient advocate. If a surrogate makes the treatment decision, a multi-disciplinary committee, appointed by the facility Director, must review that decision to ensure it is consistent with the patient's wishes or in his or her best interest. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the facility Director. The Director may authorize treatment consistent with the surrogate's decision or request that a special guardian for health care be appointed to make the treatment decision.

(2) Administration of psychotropic medication to an involuntarily committed patient against his or her will must meet the following requirements. The patient or surrogate must be allowed to consult with independent specialists, legal counsel or other interested parties concerning the treatment with psychotropic mediation. Any recommendation to administer or continue medication against the patient's or surrogate's will must be reviewed by a multi-disciplinary committee appointed by the facility Director for this purpose. This committee must include a psychiatrist or a physician who has
§ 17.33 Psychopharmacology privileges. The facility Director must concur with the committee’s recommendation to administer psychotropic medications contrary to the patient’s or surrogate’s wishes. Continued therapy with psychotropic medication must be reviewed every 30 days. The patient (or a representative on the patient’s behalf) may appeal the treatment decision to a court of appropriate jurisdiction.

3 Patients have the right to the least restrictive conditions necessary to achieve treatment purposes.

4 No patient in the Department of Veterans Affairs medical care system, except as otherwise provided by the applicable State law, shall be denied legal rights solely by virtue of being voluntarily admitted or involuntarily committed. Such legal rights include, but are not limited to, the following:

(i) The right to hold and to dispose of property except as may be limited in accordance with paragraph (c)(2) of this section;

(ii) The right to execute legal instruments (e.g., will);

(iii) The right to enter into contractual relationships;

(iv) The right to register and vote;

(v) The right to marry and to obtain a separation, divorce, or annulment;

(vi) The right to hold a professional, occupational, or vehicle operator’s license.

(b) Residents and inpatients. Subject to paragraph (c) of this section, patients admitted on a residential or inpatient care basis to the Department of Veterans Affairs medical care system have the following rights:

1 Visitations and communications. Each patient has the right to communicate freely and privately with persons outside the facility, including government officials, attorneys, and clergymen. To facilitate these communications each patient shall be provided the opportunity to meet with visitors during regularly scheduled visiting hours, convenient and reasonable access to public telephones for making and receiving phone calls, and the opportunity to send and receive unopened mail.

(i) Communications with attorneys, law enforcement agencies, or government officials and representatives of recognized service organizations when the latter are acting as agents for the patient in a matter concerning Department of Veterans Affairs benefits, shall not be reviewed.

(ii) A patient may refuse visitors.

(iii) If a patient’s right to receive unopened mail is restricted pursuant to paragraph (c) of this section, the patient shall be required to open the sealed mail while in the presence of an

appropriate person for the sole purpose of ascertaining whether the mail contains contraband material, i.e., implements which pose significant risk of bodily harm to the patient or others or any drugs or medication. Any such material will be held for the patient or disposed of in accordance with instructions concerning patients’ mail published by the Veterans Health Administration, Department of Veterans Affairs, and/or the local health care facility.

(iv) Each patient shall be afforded the opportunity to purchase, at the patient’s expense, letter writing material including stamps. In the event a patient needs assistance in purchasing writing material, or in writing, reading or sending mail, the medical facility will attempt, at the patient’s request, to provide such assistance by means of volunteers, sufficient to mail at least one (1) letter each week.

(v) All information gained by staff personnel of a medical facility during the course of assisting a patient in writing, reading, or sending mail is to be kept strictly confidential except for any disclosure required by law.

(2) Clothing. Each patient has the right to wear his or her own clothing.

(3) Personal Possessions. Each patient has the right to keep and use his or her own personal possessions consistent with available space, governing fire safety regulations, restrictions on noise, and restrictions on possession of contraband material, drugs and medications.

(4) Money. Each patient has the right to keep and spend his or her own money and to have access to funds in his or her account in accordance with instructions concerning personal funds of patients published by the Veterans Health Administration.

(5) Social Interaction. Each patient has the right to social interaction with others.

(6) Exercise. Each patient has the right to regular physical exercise and to be outdoors at regular and frequent intervals. Facilities and equipment for such exercise shall be provided.

(7) Worship. The opportunity for religious worship shall be made available to every patient who desires such opportunity. No patient will be coerced into engaging in any religious activities against his or her desires.

(c) Restrictions. (1) A right set forth in paragraph (b) of this section may be restricted within the patient’s treatment plan by written order signed by the appropriate health or mental health professional if—

(i) It is determined pursuant to paragraph (c)(2) of this section that a valid and sufficient reason exists for a restriction, and

(ii) The order imposing the restriction and a progress note detaining the indications therefor are both entered into the patient’s permanent medical record.

(2) For the purpose of this paragraph, a valid and sufficient reason exists when, after consideration of pertinent facts, including the patient’s history, current condition and prognosis, a health or mental health professional reasonably believes that the full exercise of the specific right would—

(i) Adversely affect the patient’s physical or mental health,

(ii) Under prevailing community standards, likely stigmatize the patient’s reputation to a degree that would adversely affect the patient’s return to independent living,

(iii) Significantly infringe upon the rights of or jeopardize the health or safety of others, or

(iv) Have a significant adverse impact on the operation of the medical facility, to such an extent that the patient’s exercise of the specific right should be restricted. In determining whether a patient’s specific right should be restricted, the health or mental health professional concerned must determine that the likelihood and seriousness of the consequences that are expected to result from the full exercise of the right are so compelling as to warrant the restriction. The Chief of Service or Chief of Staff, as designated by local policy, should concur with the decision to impose such restriction. In this connection, it should be noted that there is no intention to imply that each of the reasons specified in paragraphs (c)(2)(i) through (iv) of this section are logically relevant to each of the rights set forth in paragraph (b)(1) of this section.
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(3) If it has been determined under paragraph (c)(2) of this section that a valid and sufficient reason exists for restricting any of the patient’s rights set forth in paragraph (c)(1) of this section, the least restrictive method for protecting the interest or interests specified in paragraphs (c)(2)(i) through (iv) of this section that are involved shall be employed.

(4) The patient must be promptly notified of any restriction imposed pursuant to this paragraph and the reasons therefor.

(5) All restricting orders must be reviewed at least once every 30 days by the practitioner and must be concurred in by the Chief of Service or Chief of Staff.

(d) Restraint and seclusion of patients.

(1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of a physician. The reason for any restraint order will be clearly documented in the progress notes of the patient’s medical record. The written order may be entered on the basis of telephonic authority received from a physician, but in such an event the ordering physician must examine the patient and sign the written order within twelve (12) hours of giving the order for restraint or seclusion. In emergency situations, where inability to contact a physician prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from a physician. Use of restraints or seclusion shall be for no more than twenty-four (24) hours, at which time the physician shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen at least once every twelve (12) hours by an appropriate health professional who will monitor and chart the patient’s physical and mental condition and by other ward personnel as frequently as is reasonable under existing circumstances, but no less than once each hour.

(3) Each patient in restraint or seclusion shall have bathroom privileges according to his or her needs.

(4) Each patient in restraint or seclusion shall have the opportunity to bathe at least every twenty-four (24) hours.

(5) Each patient in restraint or seclusion shall be provided nutrition and fluid appropriately.

(e) Medication. Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on the written order of a physician in that patient’s medical record. The written order may be entered on the basis of telephonic authority received from a physician, but in such an event a physician must countersign the written order within 24 hours of the ordering of the medication. The attending physician shall be responsible for all medication given or administered to a patient. The attending physician shall review the drug regimen of each patient under his or her care at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the convenience of the staff, or in quantities which interfere with the patient’s treatment program.

(f) Confidentiality. Information gained by staff from the patient or the patient’s medical record will be kept confidential and will not be disclosed except in accordance with applicable law.

(g) Patient grievances. Each patient has the right to present grievances with respect to perceived infringement of the rights described in this section or concerning any other matter on behalf of himself, herself or others, to staff members at the facility in which the patient is receiving care, other Department of Veterans Affairs officials,
government officials, members of Congress or any other person without fear or reprisal.

(h) Notice of patient's rights. Upon the admission of any patient, the patient or his/her representative shall be informed of the rights described in this section, shall be given a copy of a statement of those rights and shall be informed of the fact that the statement of rights is posted at each nursing station. All staff members assigned to work with patients will be given a copy of the statement of rights and these rights will be discussed with them by their immediate supervisor.

(i) Other rights. The rights described in this section are in addition to and not in derogation of any statutory, constitutional or other legal rights.

(Authority: 38 U.S.C. 501, 1721)


§ 17.35 Hospital care and medical services in foreign countries.

The Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the United States, without regard to the veteran's citizenship:

(a) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(b) If the care is furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care for the reasons enumerated in 38 CFR 17.48(j)(2).

(Authority: 38 U.S.C. 1724)


§§ 17.36–17.37 [Reserved]

§ 17.40 Additional services for indigents.

In addition to the usual medical services agreed upon between the governments of the United States and the Republic of the Philippines to be made available to patients for whom the Department of Veterans Affairs has authorized care at the Veterans Memorial Medical Center, any such patient determined by the U.S. Department of Veterans Affairs to be indigent or without funds may be furnished toilet articles and barber services, including haircutting and shaving necessary for hygienic reasons.


§ 17.41 Persons eligible for hospital observation and physical examination.

Hospitalization for observation and physical (including mental) examination may be effected when requested by an authorized official, or when found...
§ 17.42 Examinations on an outpatient basis.

Physical examinations on an outpatient basis may be furnished to applicants who have been tentatively determined to be eligible for Department of Veterans Affairs hospital or domiciliary care to determine their need for such care and to the same categories of persons for whom hospitalization for observation and examination may be authorized under § 17.41.

§ 17.43 Persons entitled to hospital or domiciliary care.

Hospital or domiciliary care may be provided:

(a) Subject to the provisions of 38 U.S.C. 1710, 1722, and 1729, and 38 CFR 17.44 and 17.45, for persons eligible as veterans or on the basis of service in the uniformed services.

(b) Not subject to the eligibility provisions of 38 U.S.C. 1710, 1722, and 1729, and 38 CFR 17.44 and 17.45, for:

(1) Persons in the Armed Forces when duly referred with authorization therefor, may be furnished hospital care. Emergency treatment may be rendered, without obtaining formal authorization, to such persons upon their own application, when absent from their commands. Identification of active duty members of the uniformed services will be made by military identification card.

(2) Hospital care may be provided, upon authorization, for beneficiaries of the Public Health Service, Office of Workers' Compensation Programs, and other Federal agencies.

(3) Pensioners of nations allied with the United States in World War I and World War II may be supplied hospital care when duly authorized.

(4) Hospital care when incidental to, and to the extent necessary for, the use of a specialized Department of Veterans Affairs medical resource pursuant to a sharing agreement entered into under § 17.210, may be authorized for any person designated by the other
§ 17.44 Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

Hospital care may be furnished when beds are available to members or former members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, now National Oceanic and Atmospheric Administration hereinafter referred to as NOAA, and Public Health Service) temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Department of Veterans Affairs, or who having eligibility do not elect hospitalization as Department of Veterans Affairs beneficiaries. Care under this section is subject to the following conditions:

(a) Persons defined in this section who are members or former members of the active military, naval, or air service must agree to pay the subsistence rate set by the Secretary of Veterans Affairs, except that no subsistence charge will be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now NOAA, and enlisted personnel of the Army, Navy, Marine Corps, and Air Force.

(b) Under this section, the term chronic diseases shall include chronic arthritis, malignancy, psychiatric disorders, poliomyelitis with residuals, neurological disabilities, diseases of the nervous system, severe injuries to the nervous system, including quadriplegia, hemiplegia and paraplegia, tuberculosis, blindness and deafness requiring definitive rehabilitation, disability from major amputation, and other diseases as may be agreed upon from time to time by the Under Secretary for Health and designated officials of the Department of Defense and Department of Health and Human Services. For the purpose of this section, blindness is defined as corrected visual acuity of 20/200 or less in the better eye, or corrected central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that its widest diameter subtends the widest diameter of the field of the better eye at an angle no greater than 20°.

(c) In the case of persons who are former members of the Coast and Geodetic Survey, care may be furnished under this section even though their retirement for disability was from the Environmental Science Services Administration or NOAA.

§ 17.45 Hospital care for research purposes.

Subject to the provisions of §17.62(g), any person who is a bona fide volunteer may be admitted to a Department of Veterans Affairs hospital when the treatment to be rendered is part of an approved Department of Veterans Affairs research project and there are insufficient veteran-patients suitable for the project.

§ 17.46 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

(a) In furnishing hospital care under 38 U.S.C. 1710(a)(1), VA officials shall:

(1) If the veteran is in immediate need of hospitalization, furnish care at VA facility where the veteran applies or, if that facility is incapable of furnishing care, arrange to admit the veteran to the nearest VA medical center, or Department of Defense hospital with which VA has a sharing agreement under 38 U.S.C. 8111, which is capable of
§ 17.47 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

(a)(1) For applicants discharged or released for disability incurred or aggravated in line of duty and who are not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Armed Forces relative to findings of line of duty for its purposes will be accepted in determining eligibility for hospital care. Where the official records of the Armed Forces show a finding of disability not incurred or aggravated and evidence is submitted to the Department of Veterans Affairs which permits a different finding, the decision of the Armed Forces will not be binding upon the Department of Veterans Affairs, which will be free to make its own determination of line of duty incurrence or aggravation upon evidence so submitted. It will be incumbent upon the applicant to present controverting evidence and, until such evidence is presented and a determination favorable to the applicant is made by the Department of Veterans Affairs, which will be free to make its own determination of line of duty incurrence or aggravation upon evidence so submitted, the finding of the Armed Forces will control and hospital care will not be authorized. Such controverting evidence, when received from an applicant, will be referred to the adjudicating agency which would have jurisdiction if the applicant was filing claim for pension or disability compensation, and the determination of such agency as to line of duty, which is promptly to be communicated to the head of the field facility receiving the application for hospital care, will govern the facility Director’s disapproval.
or approval of admission, other eligibility requirements having been met. Where the official records of the Armed Forces show that the disability for which a veteran was discharged or released from the Armed Forces under other than dishonorable conditions was incurred or aggravated in the line of duty, such showing will be accepted for the purpose of determining his or her eligibility for hospitalization, notwithstanding the fact that the Department of Veterans Affairs has made a determination in connection with a claim for monetary benefits that the disability was incurred or aggravated not in line of duty.

(2) In those exceptional cases where the official records of the Armed Forces show discharge or release under other than dishonorable conditions because of expiration of period of enlistment or any other reason except disability, but also show a disability incurred or aggravated in line of duty during the said enlistment; and the disability so recorded is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge or release for disability had the period of enlistment not expired or other reason for discharge or release been given, the Under Secretary for Health, upon consideration of a clear, full statement of circumstances, is authorized to approve admission of the applicant for hospital care, provided other eligibility requirements are met. A typical case of this kind will be one where the applicant was under treatment for the said disability recorded during his or her service at the time discharge or release was given for the reason other than disability.

(b)(1) Under 38 U.S.C. 1710(a)(1), veterans who are receiving disability compensation awarded under §3.800 of this chapter, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. ch. 31, under any law administered by VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of 38 U.S.C. 1710(a)(1) may not be authorized during any period when disability compensation under §3.800 of this title is not being paid because of the provision of §3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in §3.800(a)(2) of this title.

(2) For purposes of eligibility for domiciliary care, the phrase no adequate means of support refers to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and/or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff, and who is otherwise without the means to provide adequately for self, or be provided for in the community.

(c) A disability, disease, or defect will comprehend any acute, subacute, or chronic disease (or a general medical, tuberculous, or neuropsychiatric type) of any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care; or any condition which does not require hospital care for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such ambulant medical care as is needed. To be provided with domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period.

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(d)(1) For purposes of determining eligibility for hospital or nursing home care under §17.47(a), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that:

(i) The veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act;

(ii) The veteran is in receipt of pension under 38 U.S.C. 1521; or

(iii) The veteran’s attributable income does not exceed $15,000 if the veteran has no dependents, $18,000 if the veteran has one dependent, plus $1,000 for each additional dependent.

(2) For purposes of determining eligibility for hospital or nursing home care under §17.47(c), a veteran will be determined eligible for necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that: The veteran’s attributable income does not exceed $20,000 if the veteran has no dependents, $25,000 if the veteran has one dependent, plus $1,000 for each additional dependent.

(3) Effective on January 1 of each year after calendar year 1986, the amounts set forth in paragraph (d)(1) and (2) of this section shall be increased by the percentage by which the maximum rates of pension were increased under 38 U.S.C. 1111(a), during the preceding year.

(e)(1) If VA determines that an individual was incorrectly charged a copayment, VA will refund the amount of any copayment actually paid by that individual.

(2) In the event a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710(a)(1) rather than §1710(a)(2), VA shall retroactively bill the veteran for the applicable copayment.

(f) If a veteran who receives hospital or nursing home care under 38 U.S.C. 1710(a)(2) or outpatient care under 38 U.S.C. 1712(a)(4) by virtue of the veteran’s eligibility for hospital care under 38 U.S.C. 1710(a), fails to pay to the United States the amounts agreed to under those sections shall be grounds for determining, in accordance with guidelines promulgated by the Under Secretary for Health, that the veteran is not eligible to receive further care under those sections until such amounts have been paid in full.


(g)(1) Persons hospitalized who have no service-connected disabilities pursuant to §17.47, and/or persons receiving outpatient medical services pursuant to paragraphs (e), (f), (i), (j), and/or (k) of §17.60 who have no service-connected disabilities who it is believed may be eligible for hospital care and/or medical services, or reimbursement for the expenses of care or services for all or part of the cost thereof by reason of the following:

(i) Membership in a union, fraternal or other organization, or
(ii) Coverage under an insurance policy, or contract, medical, or hospital service agreement, membership, or subscription contract or similar arrangement under which health services for individuals are provided or the expenses of such services are paid, will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties referred to in paragraphs (g)(1)(i) or (g)(1)(ii) of this section, are, will become, or may be liable. Persons believed entitled to care under circumstances described in paragraph (g)(2)(i) or (g)(2)(iii) of this section will be required to complete such forms as the Secretary may require.

(2) Persons hospitalized for the treatment of nonservice-connected disabilities pursuant to §17.47, or persons receiving outpatient medical services pursuant to paragraph (e), (f), (h), (i), (j), or (k) of §17.60, and who it is believed may be entitled to hospital care and/or medical services or to reimbursement for all or part of the cost thereof from any one or more of the following parties:

(i) Workers’ Compensation or employer’s liability statutes, State or Federal;
(ii) By reason of statutory or other relationships with third parties, including those liable for damages because of negligence or other legal wrong;
(iii) By reason of a statute in a State, or political subdivision of a State;
(A) Which requires automobile accident reparations or;
(B) Which provides compensation or payment for medical care to victims suffering personal injuries as the result of a crime of personal violence;
(iv) Right to maintenance and cure in admiralty;
(will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties are, will become, or may be liable. Persons believed entitled to care under circumstances described in paragraph (g)(2)(ii) of this section will be required to complete such forms as the Secretary may require, such as a power of attorney and assignment. Notice of this assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained, a bill therefore will be mailed to such party or parties. Persons believed entitled to care under circumstances described in paragraph (g)(2)(i) or (g)(2)(iii) of this section will be required to complete such forms as the Secretary may require.


(h) Women veterans will not be entitled to hospital care for pregnancy and
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Parturition unless it is complicated by a pathological condition.

(i) Within the limits of Department of Veterans Affairs facilities, any veteran who is receiving hospital or nursing home care in a hospital under the direct jurisdiction of the Department of Veterans Affairs, or hospital care in a Federal hospital under agreement, may be furnished medical services to correct or treat any nonservice-connected disability of such veteran, in addition to treatment incident to the disability for which the veteran is hospitalized, if the veteran is willing, and such services are reasonably necessary to protect the health of such veteran.

(j) Participating in a rehabilitation program under 38 U.S.C. chapter 31 refers to any veteran

(1) Who is eligible for and entitled to participate in a rehabilitation program under chapter 31.

(2) Who is medically determined to be in need of hospital care or medical services (including dental) for any of the following reasons:

(i) Make possible his or her entrance into a rehabilitation program; or

(ii) Achieve the goals of the veteran's vocational rehabilitation program; or

(iii) Prevent interruption of a rehabilitation program; or

(iv) Hasten the return to a rehabilitation program of a veteran in interrupted or leave status; or

(v) Hasten the return to a rehabilitation program of a veteran placed in discontinued status because of illness, injury or a dental condition; or

(vi) Secure and adjust to employment during the period of employment assistance; or

(vii) To enable the veteran to achieve maximum independence in daily living.

(k) Veterans eligible for treatment under chapter 17 of 38 U.S.C. who are alcohol or drug abusers or who are infected with the human immunodeficiency virus (HIV) shall not be discriminated against in admission or treatment by any Department of Veterans Affairs health care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection. This does not preclude the rule of clinical judgment in determining appropriate treatment which takes into account the patient's immune status and/or the infectivity of the HIV or other pathogens (such as tuberculosis, cytomegalovirus, cryptosporidiosis, etc.). Hospital Directors are responsible for assuring that admission criteria of all programs in the medical center do not discriminate solely on the basis of alcohol, drug abuse or infection with human immunodeficiency virus. Quality Assurance Programs should include indicators and monitors for nondiscrimination.

(l) In seeking medical care from VA under 38 U.S.C. 1710 or 1712, a veteran shall furnish such information and evidence as the Secretary may require to establish eligibility.

(Authority: 38 U.S.C. 7333)

[32 FR 13813, Oct. 4, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.47, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 17.49 Priorities for inpatient care.

The Under Secretary for Health may establish priorities for admission to hospital, nursing home, and domiciliary care consistent with §17.46 to facilitate management of VA health care facilities and to help assure prompt delivery of care.

(Authority: 38 U.S.C. 501 and 1721)

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs.

Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of Department of Veterans Affairs patients pursuant to agreements between the Department of Veterans Affairs and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for Department of Veterans Affairs patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under 38 U.S.C. 1710 or 38 CFR 17.44. Care in a Federal facility not operated by the Department of Veterans Affairs, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.46b, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.47(b)(2) or § 17.47(c)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.47.

§ 17.51 Emergency use of Department of Defense, Public Health Service or other Federal hospitals.

Hospital care in facilities operated by the Department of Defense or the Public Health Service (or any other agency of the U.S. Government) which do not have beds allocated for the care of Department of Veterans Affairs patients may be authorized subject to the limitations enumerated in § 17.50 only in emergency circumstances for any veteran otherwise eligible for hospital care under 38 U.S.C. 1710 or 38 CFR 17.46.

§ 17.52 Hospital care and medical services in non-VA facilities.

(a) When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care or services required, VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be made. Care in public or private facilities, however, subject to the provisions of § 17.53 through f, will only be authorized, whether under a contract or an individual authorization, for-

(1) Hospital care or medical services to a veteran for the treatment of—

(i) A service-connected disability; or

(ii) A disability for which a veteran was discharged or released from the active military, naval, or air service or

(iii) A disability of a veteran who has a total disability permanent in nature from a service-connected disability, or

(iv) For a disability associated with and held to be aggravating a service-connected disability, or

(v) For any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j).


(2) Medical services for the treatment of any disability of—

(i) A veteran who has a service-connected disability rated at 50 percent or more,

(ii) A veteran who has received VA inpatient care for treatment of non-service-connected conditions for which treatment was begun during the period of inpatient care. The treatment period (to include care furnished in both facilities of VA and non-VA facilities or any combination of such modes of care) may not continue for a period exceeding 12 months following discharge from the hospital except when it is determined that a longer period is required
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(6) Hospital care or medical services that will obviate the need for hospital admission for veterans in Alaska, Hawaii, Virgin Islands and other territories of the United States except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of VA in government and non-VA facilities in each such State or territory shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by VA within the 48 contiguous States.


(7) Outpatient dental services and treatment, and related dental appliances, for a veteran who is a former prisoner of war and was detained or interned for a period of not less that 181 days.


(8) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran which developed during authorized travel to the hospital, or during authorized travel after hospital discharge preventing completion of travel to the originally designated point of return (and this will encompass any other medical services necessitated by the emergency, including extra ambulance or other transportation which may also be furnished at VA expense.

(Authority: 38 U.S.C. 1701(5))

(9) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent VA outpatient clinics to obviate the need for hospital admission.


(10) For any disability of a veteran receiving VA contract nursing home care. The veteran is receiving contract nursing home care and requires emergency treatment in non-VA facilities.

(Authority: 38 U.S.C. 1703(a))
(11) For completion of evaluation for observation and examination (O&E) purposes, clinic directors or their designees will authorize necessary diagnostic services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA Regional Offices for O&E of a person to determine eligibility for VA benefits or services.

(b) The Under Secretary for Health shall only furnish care and treatment under paragraph (a) of this section to veterans described in §17.47(d).

(1) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in §17.47(a) and (c), and

(2) If the veteran agrees to pay the United States an amount as determined in §17.48(e).


§ 17.53 Limitations on use of public or private hospitals.

The admission of any patient to a private or public hospital at Department of Veterans Affairs expense will only be authorized if a Department of Veterans Affairs medical center or other Federal facility to which the patient would otherwise be eligible for admission is not feasibly available. A Department of Veterans Affairs facility may be considered as not feasibly available when the urgency of the applicant’s medical condition, the relative distance of the travel involved, or the nature of the treatment required makes it necessary or economically advisable to use public or private facilities. In those instances where care in public or private hospitals at Department of Veterans Affairs expense is authorized because a Department of Veterans Affairs or other Federal facility was not feasibly available, as defined in this section, the authorization will be continued after admission only for the period of time required to stabilize or improve the patient’s condition to the extent that further care is no longer required to satisfy the purpose for which it was initiated.


§ 17.54 Necessity for prior authorization.

(a) The admission of a veteran to a non-Department of Veterans Affairs hospital at Department of Veterans Affairs expense must be authorized in advance. In the case of an emergency which existed at the time of admission, an authorization may be deemed a prior authorization if an application, whether formal or informal, by telephone, telegraph or other communication, made by the veteran or by others in his or her behalf is dispatched to the Department of Veterans Affairs (1) for veterans in the 48 contiguous States and Puerto Rico, within 72 hours after the hour of admission, including in the computation of time Saturday, Sunday and holidays, or (2) for veterans in a noncontiguous State, territory or possession of the United States (not including Puerto Rico) if facilities for dispatch of application as described in this section are not available within the 72-hour period, provided the application was filed within 72 hours after facilities became available.

(b) When an application for admission by a veteran in one of the 48 contiguous States in the United States or in Puerto Rico has been made more than 72 hours after admission, or more than 72 hours after facilities are available in a noncontiguous State, territory or possession of the United States, authorization for continued care at Department of Veterans Affairs expense shall be effective as of the postmark or dispatch date of the application, or the date of any telephone call constituting an informal application.


§ 17.55 Payment for authorized public or private hospital care.

Except as otherwise provided in this section, payment for public or private hospital care authorized under 38 U.S.C. 1703 or 38 CFR 17.52 of this part shall be based on a prospective payment system similar to that used in
the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Health Care Financing Administration (HCFA) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in subparts D and G of 42 CFR part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, VA shall pay the transferring hospital an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system or from a hospital that does not participate in Medicare, the transferring hospital will receive a payment for each patient day of care not to exceed the amount provided in paragraph (i) of this section.

(c) VA shall pay the providing facility the full DRG-based rate or reasonable cost, without regard to any copayments or deductible required by any Federal law that is not applicable to VA.

(d) If the cost or length of a veteran’s care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with subpart F of 42 CFR part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital’s capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists in small rural hospitals. These amounts will be determined by the Under Secretary for Health on an annual basis and published in the “Notices” section of the Federal Register.

(f) Payment shall be made only for those services authorized by VA.

(g) Payments made in accordance with this section shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG payment covers (42 CFR part 412) shall be paid only to the extent they are reasonable and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(i) Hospitals of distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost-to-charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(j) A hospital participating in an alternative payment system that has been granted a Federal waiver from the prospective payment system under the provisions of 42 U.S.C. section 1395f(b)(3) or 42 U.S.C. section 1395ww(c) for the purposes of Medicare payment shall not be subject to the payment methodology set forth in this section so long as such Federal waiver remains in effect.

(k) Payments for episodes of hospital care furnished in Alaska that begin during the period starting on the effective date of this section through the 364th day thereafter will be in the amount determined by the HCFA PRICER plus 50 percent of the difference between the amount billed by the hospital and the amount determined by the PRICER. Claims for services provided during that period will be accepted for payment by VA under this paragraph (k) until December 31 of the year following the year in which this section became effective.
§ 17.56 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following: Any veteran who has been discharged from a hospital under the direct jurisdiction of VA and is currently receiving VA hospital based home health services.

(b) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in 38 U.S.C. 1710(a)(1), the Under Secretary for Health may furnish care under this paragraph to any veteran described in 38 U.S.C. 1710(a)(2) if the veteran agrees to pay the United States an amount as determined in 38 U.S.C. 1710(f).

§ 17.60 Extensions of community nursing home care beyond six months.

Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing home care continues to exist and

(a) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(b) The veteran has made specific arrangements for private payment for such care, and

(1) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(2) Such difficulties can reasonably be expected to be resolved within the extension period; or

(c) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(d) In no case may an extension under paragraph (a) or (b) of this section exceed 45 days.

§ 17.61 Eligibility.

VA health care personnel may assist a veteran by referring such veteran for placement in a privately or publicly-owned community residential care facility if:

(a) At the time of initiating the assistance:

(1) The veteran is receiving VA medical services on an outpatient basis or VA medical center, domiciliary, or nursing home care; or

(2) Such care or services were furnished the veteran within the preceding 12 months;

(b) The veteran does not need hospital or nursing home care but is unable to live independently because of medical (including psychiatric) conditions and has no suitable family resources to provide needed monitoring, supervision, and any necessary assistance in the veteran’s daily living activities; and

(c) The facility has been approved in accordance with §17.63 of this part.

§ 17.62 Definitions.

For the purpose of §§17.61 through 17.72:
§ 17.63 Approval of community residential care facilities.

(a) The term community residential care means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.

(b) The term statement of needed care means a written description of needed assistance in daily living activities devised by VA for each referred veteran in the community residential care program.

(c) The term daily living activities includes:

1. Walking;
2. Bathing, shaving, brushing teeth, combing hair;
3. Dressing;
4. Eating;
5. Getting in or getting out of bed;
6. Laundry;
7. Cleaning room;
8. Managing money;
9. Shopping;
10. Using public transportation;
11. Writing letters;
12. Making telephone calls;
13. Obtaining appointments;
14. Self-administration of medications;
15. Recreational and leisure activities;
16. Other similar activities.

(d) The term paper hearing means a review of the written evidence of record by the hearing official.

(e) The term oral hearing means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.

(f) The term approving official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(g) The term hearing official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(Authority: 38 U.S.C. 1730)

(c) Interior plan. The facility must:

1. Have comfortable dining areas, adequate in size for the number of residents;
2. Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and
3. Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) Laundry service. The facility must provide or arrange for laundry service.

(e) Residents’ bedrooms. Residents’ bedrooms must:

1. Contain no more than four beds;
2. Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and
3. Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) Nutrition. The facility must:

1. Provide a safe and sanitary food service that meets individual nutritional requirements and residents’ preferences;
2. Plan menus to meet currently recommended dietary allowances;
3. Activities. The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs specified in the statement of needed care.

(h) Residents’ rights. The facility must have written policies and procedures that ensure the following rights for each resident:

1. Each resident has the right to:
   (i) Be informed of the rights described in this section;
   (ii) Be able to inspect the residents’ own records kept by the community residential care facility;
   (iv) Exercise rights as a citizen; and
   (v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

2. Financial affairs. Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(i) Privacy. Residents must:
   (i) Be treated with respect, consideration, and dignity;
   (ii) Have access, in reasonable privacy, to a telephone within the facility;
   (iii) Be able to send and receive mail unopened and uncensored; and
   (iv) Have privacy of self and possessions.

(j) Financial affairs. Residents have the right to:

1. Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;
2. Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;
3. Leave and return freely to the facility, and
4. Practice the religion of their own choosing or choose to abstain from religious practice.

(k) Transfer. Residents have the right to:

1. Records. The facility must maintain records on each resident in a secure place.
2. Facility records must include:
   (i) A copy of the statement of needed care;
   (ii) Emergency notification procedures; and
   (iii) A copy of all signed agreements with the resident.
3. Records may only be disclosed with the resident’s permission, or when required by law.

(Approved by the Office of Management and Budget under control number 2900-0491)
available to care for the resident and ensure the health and safety of each resident.

2. The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) Cost of community residential care. (1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

2. The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

3. The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989, the rates charged for care are pegged to the facility’s basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (iii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards.

(Authority: 38 U.S.C. 1730)

§ 17.64 Exceptions to standards in community residential care facilities.

(a) Facilities which have participated in VA’s community residential care program prior to (the effective date of these regulations) may continue to be approved when the standard for §17.63(c)(3) and/or §17.63(e)(2) of this part are not met if:

1. All standards other than §17.63(c)(3) and/or §17.63(e)(2) of this part are met;

2. There is at least one functional toilet, lavatory, and bathing or shower facility for every eight people living in the facility, including provider and staff;

3. The resident’s bedrooms measure, exclusive of closet space, at least 80 square feet for a single-resident room, or 65 square feet for each resident in a multiresident room.

(b) Community residential care facilities which do not meet the requirements for continued approval because they do not comply with paragraphs (a)(2) or (a)(3) of this section may apply in writing to the Secretary of Veterans Affairs for an exception. The application must include a detailed description of the facility, including a description of the toilet, lavatory and bathing and shower facilities and/or resident’s bedroom size, and an analysis of alternative solutions.

(Authority: 38 U.S.C. 1730)

§ 17.65 Duration of approval.

(a) Approval may be valid for up to 24 months if VA finds that the facility complies with all standards during the current and all previous VA inspections and any necessary interim monitoring for a period of two years.

(b) Approval may be valid for up to 15 months if VA finds that the facility has complied with all standards except the records standard set forth in §17.51(j)(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(c) Approval may be valid for up to 12 months if VA finds that the facility has complied with all standards except the laundry service standard set forth
in §17.63(d) and the records standard set forth in §17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(d) Approval may be valid for up to 9 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in §17.63(d) of this part; the bedroom standard set forth in §17.63(e) of this part; the activities standard set forth in §17.63(g) of this part; and the records standard set forth in §17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(Authority: 38 U.S.C. 1730)


§ 17.66 Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in §17.63 of this part, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility’s opportunity to request an oral or paper hearing under §17.51n of this part before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility’s request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility’s request for an oral or paper hearing within 36 hours of receipt of VA notice.

(Authority: 38 U.S.C. 1730)


§ 17.67 Request for a hearing.

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility’s compliance with VA standards. The hearing official may accept a request for a hearing received after the time limit, if the community residential care facility shows that the failure of the request to be received by the hearing official’s office by the required date was due to circumstances beyond its control.

(Authority: 38 U.S.C. 1730)


§ 17.68 Notice and conduct of hearing.

(a) Upon receipt of a request for an oral hearing, the hearing official shall:

(1) Notify the community residential care facility operator of the date, time, and location for the hearing; and

(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility’s request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

(c) In all hearings, the community residential care facility operator and VA may be represented by counsel.

(Authority: 38 U.S.C. 1730)

§ 17.69 Waiver of opportunity for hearing.
If representatives of a community residential care facility which receive a notice of noncompliance under § 17.66 of this part fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with § 17.68 of this part, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:
(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and,
(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

(Authority: 38 U.S.C. 1730)

§ 17.70 Written decision following a hearing.
(a) The hearing official shall issue a written decision within 20 days of the completion of the hearing. An oral hearing shall be considered completed when the hearing ceases to receive in person testimony. A paper hearing shall be considered complete on the date by which written statements must be submitted to the hearing official in order to be considered as part of the record.
(b) The hearing official's determination of a community residential care facility's noncompliance with VA standards shall be based on the preponderance of the evidence.
(c) The written decision shall include:
1. A statement of the facts;
2. A determination whether the community residential care facility complies with the standards set forth in § 17.63 of this part; and
3. A determination of the time period, if any, the community residential care facility shall have to remedy any noncompliance with VA standards before revocation of VA approval occurs.

§ 17.71 Revocation of VA approval.
(a) If a hearing official determines under § 17.70 of this part that a community residential care facility does not comply with the standards set forth in § 17.63 of this part and determines that the community residential care facility shall not have further time to remedy the noncompliance, the hearing official shall revoke approval of the community residential care facility and notify the community residential care facility of this revocation.
(b) Upon revocation of VA approval, VA health care personnel shall:
1. Cease referring veterans to the community residential care facility; and,
2. Notify any veteran residing in the community residential care facility of the facility's disapproval and request permission to assist in the veteran's removal from the facility. If a veteran has a person or entity authorized by law to give permission on behalf of the veteran, VA health care personnel shall notify that person or entity of the community residential care facility's disapproval and request permission to assist in removing the veteran from the community residential care facility.
(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in § 17.63 of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or
any other standards, the procedures set forth in §§17.66-17.71 of this part shall be followed.

(Authority: 38 U.S.C. 1730)


§ 17.72 Availability of information.

VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities.

(Authority: 38 U.S.C. 1730)


USE OF SERVICES OF OTHER FEDERAL AGENCIES

§ 17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.

(a) Alcohol and drug dependence or abuse treatment and rehabilitation may be authorized by contract in nonresidential facilities and in residential facilities provided by halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, when considered to be medically advantageous and cost effective for the following:

(1) Veterans who have been or are being furnished care by professional staff over which the Secretary has jurisdiction and such transitional care is reasonably necessary to continue treatment;

(2) Persons in the Armed Forces who, upon discharge therefrom will become eligible veterans, when duly referred with authorization for Department of Veterans Affairs medical center hospital care in preparation for treatment and rehabilitation in this program under the following limitations:

(i) Such persons may be accepted by transfer only during the last 30 days of such person’s enlistment or tour of duty,

(ii) The person requests transfer in writing for treatment for a specified period of time during the last 30 days of such person’s enlistment period or tour of duty,

(iii) Treatment does not extend beyond the period of time specified in the request unless such person requests in writing an extension for a further specified period of time and such request is approved by the Department of Veterans Affairs Medical Center Director authorizing treatment and rehabilitation, (iv) Such care and treatment will be provided as if the person were a veteran, subject to reimbursement by the respective military service for the costs of hospital care and control treatment provided while the person is an active duty member.

(b) The maximum period for one treatment episode is limited to 60 days. The Department of Veterans Affairs Medical Center Director may authorize one 30-day extension.

(c) Any person who has been discharged or released from active military, naval or air service, and who, upon application for treatment and rehabilitative services under the authority of this section is determined to be legally ineligible for such treatment or rehabilitation services shall be:

(1) Provided referral services to assist the person, to the maximum extent possible, in obtaining treatment and rehabilitation services from sources outside the Department of Veterans Affairs, not at Department of Veterans Affairs expense and,

(2) If pertinent, advised of the right to apply to the appropriate military, naval or air service and the Department of Veterans Affairs for review of such person’s discharge or release from such service.

(Authority: 38 U.S.C. 1720A)


§ 17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under §17.80(a) may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of
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the residents of the contractor's program, has been determined and then only to contractors, determined by the Under Secretary for Health or designee to meet the following requirements.

(1) Meet fire safety requirements as follows:

(i) The building must meet the requirements of the applicable residential occupancy chapters (1–7, 22–23, and 31) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 5.5. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

(ii) Where applicable, the home must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Department of Veterans Affairs sponsored residents will be mentally and physically capable of leaving the building, unaided, in the event of an emergency. Halfway house, therapeutic community and other residential program management must agree that all the other residents in any building housing veterans will also have such capability.

(iv) There must be at least one staff member on duty 24 hours a day.

(v) Fire exit drills must be held at least quarterly. Residents must be instructed in evacuation procedures when the primary and/or secondary exits are blocked. A written fire plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff and residents in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(vi) A written policy regarding tobacco smoking in the facility shall be established and enforced.

(vii) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.

(viii) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

(A) The fire alarm system shall be test operated at least semi-annually.

(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.

(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(ix) An annual fire and safety inspection shall be conducted at the halfway house or residential facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Be in compliance with existing standards of State safety codes and local, and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR part II) and the “Confidentiality of
§ 17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under §17.80 may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the participants of the contractor's program, has been determined and then only to contractors determined by the Under Secretary for Health or designee to be fully capable of meeting the following standards:

1. The following minimum fire safety requirements must be met:

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule, and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilita-

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U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

(ii) Where applicable, the facility must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Department of Veterans Affairs sponsored patients will be mentally and physically capable of leaving the building, unaided, in the event of an emergency.

(iv) Fire exit drills must be held at least quarterly. A written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(v) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.

(vi) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

(A) The fire alarm system shall be test operated at least semi-annually.

(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.

(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(vii) An annual fire and safety inspection shall be conducted at the facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Conform to existing standards of State safety codes and local or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR part 2) and the “Confidentiality of Certain Medical Records” (38 U.S.C. 7332), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

(i) A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Structured activities.

(iv) Appropriate group activities.

(v) Monitoring medications.

(vi) Supportive social service.

(vii) Individual counseling as appropriate.

(viii) Opportunities for learning/development of skills and habits which will enable Department of Veterans Affairs sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.

(ix) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).
(x) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to upgrade skills and improve personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall, to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), and will be made available on a need to know basis to appropriate Department of Veterans Affairs staff members involved with the treatment program of the veterans concerned.

(Authority: 38 U.S.C. 1720A)

§ 17.83 Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.

The authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts, and payments shall not exceed these amounts.


§ 17.84 Medical care for survivors and dependents of certain veterans.

(a) Medical care may be provided for—

(1) The spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and

(2) The surviving spouse or child of a veteran who—

(i) Died as a result of a service-connected disability, or

(ii) At the time of death has a total disability, permanent in nature resulting from a service-connected disability and—

(3) The surviving spouse or child of a person who died in the active military, naval or air service in the line of duty and not due to such person’s own misconduct—

(Authority: 38 U.S.C. 1713(a))

who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10 U.S.C. (CHAMPUS) and—

(Authority: 38 U.S.C. 1713)

(4) An eligible child who is pursuing a full-time course of instruction approved under title 38, U.S.C., chapter 36, and who incurs a disabling illness or injury while pursuing such course; between terms, semesters or quarters; or during a vacation or holiday period; which is not the result of his or her own willful misconduct and which results in the inability to continue or resume the chosen program of education shall remain eligible for medical care until:

(i) The end of the six-month period beginning on the date the disability is removed; or

(ii) The end of the two-year period beginning on the date of the onset of the disability; or

(iii) The twenty-third birthday of the child, whichever occurs first.

(Authority: 38 U.S.C. 1713(c))
§ 17.85  Treatment of research-related injuries to human subjects.

(a) VA medical facilities shall provide necessary medical treatment to a research subject injured as a result of participation in a research project approved by a VA Research and Development Committee and conducted under the supervision of one or more VA employees. This section does not apply to:

1. Treatment for injuries due to non-compliance by a subject with study procedures, or
2. Research conducted for VA under a contract with an individual or a non-VA institution.

Note to §17.85(a)(1) and (a)(2): Veterans who are injured as a result of participation in such research may be eligible for care from VA under other provisions of this part.

(b) Except in the following situations, care for VA research subjects under this section shall be provided in VA medical facilities.

1. If VA medical facilities are not capable of furnishing economical care or are not capable of furnishing the care or services required, VA medical facility directors shall contract for the needed care.
2. If inpatient care must be provided to a non-veteran under this section, VA medical facility directors may contract for such care.
3. If a research subject needs treatment in a medical emergency for a condition covered by this section, VA medical facility directors shall provide reasonable reimbursement for the emergency treatment in a non-VA facility.

(c) For purposes of this section, “VA employee” means any person appointed by VA as an officer or employee and acting within the scope of his or her appointment (VA appoints officers and employees under Title 5 and Title 38 of the United States Code).

Authority: 38 U.S.C. 501, 7303

§ 17.90  Medical care for veterans receiving vocational training under 38 U.S.C. chapter 15.

Hospital care, nursing home care and medical services may be provided to any veteran who is participating in a vocational training program under 38 U.S.C. chapter 15.

(a) For purposes of determining eligibility for this medical benefit, the term participating in a vocational training program under 38 U.S.C. chapter 15 means the same as the term participating in a rehabilitation program under 38
§ 17.93 Eligibility for outpatient services.

(a) VA shall furnish on an ambulatory or outpatient basis medical services as are needed, to veterans for an adjunct nonservice-connected condition associated with and held to be aggravating a disability from a disease or injury adjudicated as being service-connected.

(b) The term “shall furnish” in this section and 38 U.S.C. 1712 (a)(1) and (a)(2) means that, if the veteran is in immediate need of outpatient medical services, VA shall furnish care at the VA facility where the veteran applies. If the needed medical services are not available there, VA shall arrange for care at the nearest VA medical facility or Department of Defense facility (with which VA has a sharing agreement) that can provide the needed care. If VA and Department of Defense facilities are not available, VA shall arrange for

(Authority: 38 U.S.C. 1524, 1525, 1516)

§ 17.94  Outpatient medical services for military retirees and other beneficiaries.

Outpatient medical services for military retirees and other beneficiaries for which charges shall be made as required by §17.101, may be authorized for persons properly referred by authorized officials of other Federal agencies for which the Secretary of Veterans Affairs may agree to render such service under the conditions stipulated by the Secretary and pensioners of nations allied with the United States in World War I and World War II when duly authorized.


§ 17.95  Outpatient medical services for Department of Veterans Affairs employees and others in emergencies.

Outpatient medical services for which charges shall be made as required by §17.101 may be authorized for employees of the Department of Veterans Affairs, their families, and the general public in emergencies, subject to conditions stipulated by the Secretary of Veterans Affairs.

(Authority: 38 U.S.C. 1711(c)(1))


§ 17.96  Prescriptions filled.

Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non-Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy, provided:

(a) The prescription is for:

(1) A veteran who by reason of being permanently housebound or in need of regular care and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under §3.1(u) (Section 306 Pension) or §3.1(w) (Improved Pension), of this title, as a veteran of the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

(2) A veteran in need of regular care and attendance who was formerly in receipt of increased pension as described in paragraph (a)(1) of this section whose pension has been discontinued solely by reason of excess income, but only so long as such veteran's annual income does not exceed the maximum annual income limitation by more than $1,000, and

(Authority: Pub. L. 95-588)

(b) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries.

§ 17.97 Prescriptions in Alaska, and territories and possessions.

In Alaska and territories and possessions, where there are no Department of Veterans Affairs pharmacies, the expenses of any prescriptions filled by a private pharmacist which otherwise could have been filled by a Department of Veterans Affairs pharmacy under 38 U.S.C. 1712(h), may be reimbursed.


§ 17.98 Mental health services.

(a) Following the death of a veteran, bereavement counseling involving services defined in 38 U.S.C. 1701(6)(B), may be furnished to persons who were receiving mental health services in connection with treatment of the veteran under 38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84 of this part, prior to the veteran's death, but may only be furnished in instances where the veteran's death had been unexpected or occurred while the veteran was participating in a VA hospice or similar program. Bereavement counseling may be provided only to assist individuals with the emotional and psychological stress accompanying the veteran's death, and only for a limited period of time, as determined by the Medical Center Director, but not to exceed 60 days. The Medical Center Director may approve a longer period of time when medically indicated.

(b) For purposes of paragraph (a) of this section, an unexpected death is one which occurs when in the course of an illness the provider of care did not or could not have anticipated the timing of the death. Ordinarily, the provider of care can anticipate the patient's death and can inform the patient and family of the immediacy and certainty of death. If that has not taken place, a death can be described as unexpected.

(Authority: 38 U.S.C. 1701(6)(B))


§ 17.99 Priorities for medical services.

Unless compelling medical reasons indicate otherwise, eligible veterans shall be furnished outpatient medical services on a priority basis in the following order:

(a) To any veteran for a service-connected disability.

(b) To any veteran with a service-connected disability, rated at 50 percent or more.

(c) To any veteran with a disability rated as service-connected, including any veteran being examined to determine the existence or rating of a service-connected disability.

(Authority: Pub. L. 96-22, sec. 101)

(d) To any veteran who is a former prisoner of war or to any veteran eligible for treatment for conditions which may have resulted from exposure to dioxin or toxic substances or ionizing radiation.

(Authority: Pub. L. 97-37, sec. 5(c); Pub. L. 97-72, sec. 102(b))

(e) To any veteran eligible under the provisions of §17.60(i).

(Authority: 38 U.S.C. 1712 (i))

(f) To any veteran who is in receipt of pension under 38 U.S.C. 1521.

(g) To any other nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by §17.48(d)(1).

(h) To any nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by §17.48(d)(2).

(i) To any nonservice-connected veteran eligible for VA hospital care under §17.97(d) if the veteran agrees to pay the United States an amount as determined by §17.48(e).


BREAKING APPOINTMENTS

§ 17.100 Refusal of treatment by unnecessarily breaking appointments.

A patient under medical treatment who breaks an appointment without a reasonable excuse will be informed that breaking an additional appointment will be deemed to be a refusal to accept VA treatment. If such a patient fails to keep a second appointment, without at least 24 hours notice, such
§ 17.101 Charges for care or services.

Charges at the indicated rates shall be made for Department of Veterans Affairs hospital care or medical services (including, but not limited to, dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care) as follows:

(a) Furnished in error or on tentative eligibility. Charges at rates prescribed by the Under Secretary for Health shall be made for inpatient or outpatient care or services (including domiciliary care) authorized for any person on the basis of eligibility as a veteran or a tentative eligibility determination under §17.34 but he or she was subsequently found to have been ineligible for such care or services as a veteran because the military service or any other eligibility requirement was not met, or

(b) Furnished in a medical emergency. Charges at rates prescribed by the Under Secretary for Health shall be made for any inpatient or outpatient care or services rendered any person in a medical emergency who was not eligible for such care or services as a veteran, if:

(1) The care or services were rendered as a humanitarian service, under §17.43(c)(1) or §17.95 to a person neither claiming eligibility as a veteran nor for whom the establishment of eligibility as a veteran was expected, or

(2) The person for whom care or services were rendered was a Department of Veterans Affairs employee or a member of a Department of Veterans Affairs employee’s family; or

(c) Furnished beneficiaries of the Department of Defense or other Federal agencies. Except as provided for in paragraph (f) of this section and the second sentence of this paragraph, charges at rates prescribed by the Office of Management and Budget shall be made for any inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty or for any beneficiary or designee of any other Federal agency. Charges for services provided a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, will be at rates prescribed by the Secretary (E.O. 11609, dated July 22, 1971, 36 FR 13747), or

(d) Furnished pensioners of allied nations. Charges at rates prescribed by the Under Secretary for Health shall be made for any inpatient or outpatient care or services rendered a pensioner of a nation allied with the United States in World War I and World War II; or

(e) Furnished under sharing agreements. Charges at rates agreed upon in an agreement for sharing specialized medical resources shall be made for all medical care or services, either on an inpatient or outpatient basis, rendered to a person designated by the other party to the agreement as a patient to be benefited under the agreement; or

(f) Furnished military retirees with chronic disability. Charges for subsistence at rates prescribed by the Under Secretary for Health shall be made for the period during which hospital care is rendered when such care is rendered to a member or former member of the
Armed Forces required to pay the subsistence rate under §17.47 (b)(2) and (c)(2).

(g) Furnished for research purposes. Charges will not be made for medical services, including transportation, furnished as part of an approved Department of Veterans Affairs research project, except that if the services are furnished to a person who is not eligible for the services as a veteran, the medical care appropriation shall be reimbursed from the research appropriation at the same rates used for billings under paragraph (b) of this section.

(h) Furnished for nonservice-connected disabilities. (1) Charges at rates prescribed by the Secretary shall be made for inpatient or outpatient care and services rendered a veteran for nonservice-connected disabilities,

(i) Incident to the veteran's employment and the disability is covered under a workers' compensation law or plan that provides reimbursement or indemnification for the cost of such care and services,

(ii) As the result of a motor vehicle accident in a State which required automobile accident reparations insurance, or

(iii) As the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person so injured is entitled to receive health care and services for that injury at the expense of the State or subdivision.


(2) Charges at rates prescribed by the Secretary shall be made for inpatient or outpatient care and services rendered to a veteran who has no service-connected disabilities and who is entitled to care, or reimbursement for the expenses of care, under an insurance policy, or contract medical, or hospital service agreement, membership, or subscription contract, or similar agreement for the purpose of providing, paying for, or reimbursing expenses for health service.

(i) No deductible and/or coinsurance charge prescribed by any such policy, contract, membership or agreement shall be made to or required from the otherwise eligible veteran as a condition to receiving care.

(ii) VA medical, financial, and other records shall, to the extent reasonably necessary and permitted by law, be made available for inspection and review by the parties to any kind of agreement referred to in paragraph (h) (1) and (2) of this section with respect to which recovery or collection sought by VA for the purpose of verifying that services for which recovery or collection is sought were furnished and that the provision of such services meets criteria generally applicable under the health plan contract involved.

(Authority: 38 U.S.C. 1729(h)(i); Pub. L. 99-272)

(3) The method for computing the charges for medical care and services is based on the Cost Distribution Report, which sets forth the actual basic costs and per diem rates by type of inpatient care and outpatient visit. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government employee retirement and disability costs. The current year billing rates are projected on prior year actual rates by applying the budgeted percentage increase. In addition, based on the detail available in the Cost Distribution Report, VA intends to, on each bill break down the all-inclusive rate into its three principal components; namely, physician cost, ancillary services cost, and nursing, room and board cost. The rates generated by the foregoing methodology are the same rates prescribed by the Office of Management and Budget and published in the Federal Register for use under the Federal Medical Care Recovery Act, 42 U.S.C. sections 2651-2653.


(4) The reasonable cost of care or services sought to be recovered or collected from a third party liable under a health plan contract may not exceed the amount that such third party demonstrates to the satisfaction of the Secretary it would pay for the care or
services in accordance with the prevailing rates at which the third party makes payments for comparable care under health plan contracts to facilities (other than facilities of departments or agencies of the United States) in the same geographic area.


(5) Any contract or agreement into which the Secretary enters with a person under 31 U.S.C. 3718 for collection services to recover indebtedness owed the United States under this section shall provide, with respect to such services, that such person is subject to 38 U.S.C. 5701 and 7332.


(6) Amounts collected or recovered on behalf of the United States under this section shall be deposited into the Treasury as miscellaneous receipts.


(i) Furnished at national conventions. Charges specified in contractual agreements with Department of Veterans Affairs recognized service organizations shall be made for emergency medical services furnished at national conventions of such organizations to individuals not eligible for such services under other provisions of this part.

(Authority: 38 U.S.C. 1713(c))

§ 17.102 Collection of claims.

The collection of claims against persons in default of payment of charges made under any provision of §17.101 shall be aggressive, on a timely basis with effective follow-up, and the provisions referable to claims collections in §1.900 series of this chapter are for application.


§ 17.103 Referrals of compromise settlement offers.

Any offer to compromise or settle any charges or claim for $20,000 or less asserted by the Department of Veterans Affairs in connection with the medical program shall be referred as follows:

(a) To Chiefs of Fiscal activities. If the debt represents charges made under §17.101(a), the compromise offer shall be referred to the Chief of the Fiscal activity of the facility for application of the collection standards in §1.900 et seq. of this chapter, provided:

(1) The debt does not exceed $1,000, and

(2) There has been a previous denial of waiver of the debt by a field station Committee on Waivers and Compromises.

(b) To Regional Counsel. If the debt in any amount represents charges for medical services for which there is or may be a claim against a third party tort-feasor or under workers' compensation laws or Pub. L. 87-693; 76 Stat. 593 (see §1.903 of this chapter) or involves a claim contemplated by §1.902 of this chapter over which the Department of Veterans Affairs lacks jurisdiction, the compromise offer (or request for waiver or proposal to terminate or suspend collection action) shall be promptly referred to the field station Regional Counsel having jurisdiction in the area in which the claim arose, or

(c) To Committee on Waivers and Compromises. If one of the following situations contemplated in paragraph (c)(1) through (3) of this section applies

(1) If the debt represents charges made under §17.101(a), but is not of a type contemplated in paragraph (a) of this section, or

(2) If the debt represents charges for medical services made under §17.101(b), or

(3) A claim arising in connection with any transaction of the Veterans Health Administration for which the instructions in paragraph (a) or (b) of this section or in §1.105(c) are not applicable, then, the compromise offer should be referred for disposition under §1.900 et seq. of this chapter to the field station Committee on Waivers and
Compromises which shall take final action.

§ 17.104 Terminations and suspensions.

Any proposal to suspend or terminate collection action on any charges or claim for $20,000 or less asserted by the Department of Veterans Affairs in connection with the medical program shall be referred as follows:

(a) Of charges for medical services. If the debt represents charges made under §17.101(a) or (b) questions concerning suspension or termination of collection action shall be referred to the Chief of the Fiscal activity of the station for application of the collection standards in §1.900 et seq. of this chapter, or

(b) Of other debts. If the debt is of a type other than those contemplated in paragraph (a) of this section, questions concerning suspension or termination of collection action shall be referred in accordance with the same referral procedures for compromise offers in such categories of claims, or

(c) Other debts. If the debt represents any claim or charges other than those contemplated in paragraphs (a) and (b) of this section, and is a debt for which waiver has been specifically provided for by law or under the terms of a contract, initial action shall be taken at the station level for referral of the request for waiver through channels for action by the appropriate designated official. If, however, the question of waiver may also involve a concurrent opportunity to negotiate a compromise settlement, the application shall be referred to the Committee on Waivers and Compromises.

§ 17.105 Waivers.

Applications or requests for waiver of debts or claims asserted by the Department of Veterans Affairs in connection with the medical program generally will be denied by the facility Fiscal activity on the basis there is no legal authority to waive debts, unless the question of waiver should be referred as follows:

(a) Of charges for medical services. If the debt represents charges made under §17.101(a), the application or request for waiver should be referred for disposition under §1.900 et seq. of this chapter to the field facility Committee on Waivers and Compromises which shall take final action, or

(b) Of claims against third persons and other claims. If the debt is of a type contemplated in §17.103(b), the waiver question should be referred in accordance with the same referral procedures for compromise offers in such categories of claims, or

(c) Other debts. If the debt represents any claim or charges other than those contemplated in paragraphs (a) and (b) of this section, and is a debt for which waiver has been specifically provided for by law or under the terms of a contract, initial action shall be taken at the station level for referral of the request for waiver through channels for action by the appropriate designated official. If, however, the question of waiver may also involve a concurrent opportunity to negotiate a compromise settlement, the application shall be referred to the Committee on Waivers and Compromises.

§ 17.106 Authority for disciplinary action.

The good conduct of beneficiaries receiving hospitalization for observation and examination or for treatment, or receiving domiciliary or nursing home care in facilities under direct and exclusive jurisdiction of the Department of Veterans Affairs, will be maintained by corrective and disciplinary procedure formulated by the Department of Veterans Affairs. Such corrective and disciplinary measures, to be selectively applied in keeping with the comparative gravity of the particular offense, will consist, in respect to hospital patients, of such penalties as the withholding for a determined period of pass privileges, exclusion from entertainments, or disciplinary discharge; and, in respect to domiciled members, such penalties as confinement to sections or grounds, deprivation of privileges, enforced furlough, or disciplinary discharge. Also, for any violation of the Department of Veterans Affairs rules set forth in §1.218, or other Federal laws on Department of Veterans Affairs property, a beneficiary is subject
§ 17.110  Services or ceremonies on Department of Veterans Affairs hospital or center reservations.

(a) Services or ceremonies on Department of Veterans Affairs hospital or center reservations are subject to the following limitations:

(1) All activities must be conducted with proper decorum, and not interfere with the care and treatment of patients. Organizations must provide assurance that their members will obey all rules in effect at the hospital or center involved, and act in a dignified and proper manner;

(2) Partisan activities are inappropriate and all activities must be non-partisan in nature. An activity will be considered partisan and therefore inappropriate if it includes commentary in support of, or in opposition to, or attempts to influence, any current policy of the Government of the United States or any State of the United States. If the activity is closely related to partisan activities being conducted outside the hospital or center reservations, it will be considered partisan and therefore inappropriate.

(b) Requests for permission to hold services or ceremonies will be addressed to the Secretary, or the Director of the Department of Veterans Affairs hospital or center involved. Such applications will describe the proposed activity in sufficient detail to enable a determination as to whether it meets the standards set forth in paragraph (a) of this section. If permission is granted, the Director of the hospital or center involved will assign an appropriate time, and render assistance where appropriate. No organization will be given exclusive permission to use the hospital or center reservation on any particular occasion. Where several requests are received for separate activities, the Director will schedule each so as to avoid overlapping or interference, or require appropriate modifications in the scope or timing of the activity.


§ 17.111  Conditions of custody.

When the personal effects of a patient who has been or is hospitalized or receiving nursing home care in a Department of Veterans Affairs hospital or center were or are duly delivered to a designated location for custody and loss of such personal effects has occurred or occurs by fire, earthquake, or other natural disaster, either during such storage or during laundering, reimbursement will be made as provided in §§17.113 and 17.114.


§ 17.112  Submittal of claim for reimbursement.

The claim for reimbursement for personal effects damaged or destroyed will be submitted by the patient to the Director. The patient will separately list and evaluate each article with a notation as to whether it meets the standards set forth in paragraph (a) of this section. If permission is granted, the Director of the hospital or center involved will assign an appropriate time, and render assistance where appropriate. No organization will be given exclusive permission to use the hospital or center reservation on any particular occasion. Where several requests are received for separate activities, the Director will schedule each so as to avoid overlapping or interference, or require appropriate modifications in the scope or timing of the activity.

have been secured, voucher will be prepared, signed, and certified, and forwarded to the Fiscal Officer for approval, payment to be made in accordance with fiscal procedure. The original list of property and certificate are to be attached to voucher.

§ 17.114 Claims in cases of incompetent patients.
Where the patient is insane and incompetent, the patient will not be required to make claim for reimbursement for personal effects lost by fire, earthquake, or other natural disaster as required under the provisions of § 17.113. The responsible official will make claim for the patient, adding the certification in all details as provided for in § 17.113. After countersignature of this certification by the Director, payment will be made as provided in § 17.113, and the amount thereby disbursed will be turned over to the Director for custody.

§ 17.120 Payment or reimbursement of the expenses of medical services not previously authorized.
To the extent allowable, payment or reimbursement of the expenses of care, not previously authorized, in a private or public (or Federal) hospital not operated by the Department of Veterans Affairs, or of any medical services not previously authorized including transportation (except prosthetic appliances, similar devices, and repairs) may be paid on the basis of a claim timely filed, under the following circumstances:
(a) For veterans with service connected disabilities. Care or services not previously authorized were rendered to a veteran in need of such care or services:
   (1) For an adjudicated service-connected disability;
   (2) For nonservice-connected disabilities associated with and held to be aggravating an adjudicated service-connected disability;
   (3) For any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability (does not apply outside of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico);
   (4) For any illness, injury or dental condition in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. ch. 31 and who is

(b) Such personal property was damaged or destroyed by a patient or domiciliary member while the employee was engaged in the performance of official duties.
Reimbursement or payment as provided in this paragraph will be made in a fair and reasonable amount, taking into consideration the condition and reasonable value of the article at the time it was damaged or destroyed.

§ 17.115 Adjudication of claims.
Claims comprehended. Claims for reimbursing Department of Veterans Affairs employees for cost of repairing or replacing their personal property damaged or destroyed by patients or members while such employees are engaged in the performance of their official duties will be adjudicated by the Director of the medical center concerned. Such claims will be considered under the following conditions, both of which must have existed and, if either one is lacking, reimbursement or payment for the cost or repair of the damaged article will not be authorized:
(a) The claim must be for an item of personal property normally used by the employee in his or her day to day employment, e.g. eyeglasses, hearing aids, clothing, etc., and,
§ 17.121 Limitations on payment or reimbursement of the costs of emergency hospital care and medical services not previously authorized.

Claims for payment or reimbursement of the costs of emergency hospital care or medical services not previously authorized will not be approved for any period beyond the date on which the medical emergency ended. For the purpose of payment or reimbursement of the expense of emergency hospital care or medical services not previously authorized, an emergency shall be deemed to have ended at that point when a VA physician has determined that, based on sound medical judgment, a veteran:

(a) Who received emergency hospital care could have been transferred from the non-VA facility to a VA medical center for continuation of treatment for the disability, or

(b) Who received emergency medical services, could have reported to a VA medical center for continuation of treatment for the disability.

From that point on, no additional care in a non-VA facility will be approved for payment by VA.

(Authority: 38 U.S.C. 501(c)(1))

§ 17.122 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of a veteran who is participating in a rehabilitation program under 38 U.S.C. ch. 31 and who is determined to be in need of the repairs for any of the reasons enumerated in §17.47(g) may be paid or reimbursed on the basis of a timely filed claim, if

(a) Obtaining the repairs locally was necessary, expedient, and not a matter of preference to using authorized sources, and

(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed $125.

(Authority: 38 U.S.C. 1728)

§ 17.123 Claimants.

A claim for payment or reimbursement of services not previously authorized may be filed by the veteran who received the services (or his/her guardian) or by the hospital, clinic, or community resource which provided the services, or by a person other than the veteran who paid for the services.


§ 17.124 Preparation of claims.

Claims for costs of services not previously authorized shall be on such forms as shall be prescribed and shall include the following:

(a) The claimant shall specify the amount claimed and furnish bills,
vouchers, invoices, or receipts or other documentary evidence establishing that such amount was paid or is owed, and

(b) The claimant shall provide an explanation of the circumstances necessitating the use of community medical care, services, or supplies instead of Department of Veterans Affairs care, services, or supplies, and

(c) The claimant shall furnish such other evidence or statements as are deemed necessary and requested for adjudication of the claim.

§ 17.126 Timely filing.

Claims for payment or reimbursement of the expenses of medical care or services not previously authorized must be filed within the following time limits:

(a) A claim must be filed within 2 years after the date the care or services were rendered (and in the case of continuous care, payment will not be made for any part of the care rendered more than 2 years prior to filing claim), or

(b) In the case of care or services rendered prior to a VA adjudication allowing service-connection:

(1) The claim must be filed within 2 years of the date the veteran was notified by VA of the allowance of the award of service-connection.

(2) VA payment may be made for care related to the service-connected disability received only within a 2-year period prior to the date the veteran filed the original or reopened claim which resulted in the award of service-connection but never prior to the effective date of the award of service-connection within that 2-year period.

(3) VA payment will never be made for any care received beyond this 2-year period whether service connected or not.

(Authority: 38 U.S.C. 7304)

§ 17.127 Date of filing claims.

The date of filing any claim for payment or reimbursement of the expenses of medical care and services not previously authorized shall be the postmark date of a formal claim, or the date of any preceding telephone call,
§ 17.128 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care, the expenses of which may be paid under §17.120 of this part, the payment of such expenses shall, except as otherwise provided in this section, be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made by using the HCFA PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in subparts D and G of 42 CFR part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, VA shall pay the transferring hospital an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the transferring hospital will receive a payment for each patient day of care not to exceed that provided in paragraph (i) of this section.

(c) VA shall pay the providing facility the full DRG-based rate without regard to any copayments or deductible required by any Federal law that is not applicable to VA.

(d) If the cost of length of a veteran’s care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with subpart F of 42 CFR part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital’s capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists in small rural hospitals. These amounts will be determined by the Under Secretary for Health on an annual basis and published in the “Notices” section of the Federal Register.

(f) Payment shall be made only for those services authorized by VA.

(g) Payment by VA shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR part 412) shall be paid or reimbursed only to the extent they are reasonable and not in excess of rates or fees the hospital or provider of services charges the general public for similar services in the community.

(i) Hospital or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost to charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of the rates or fees the hospital charges the general public for similar services in the community.

(j) A hospital participating in an alternative payment system that has been granted a Federal waiver from the prospective payment system under the provisions of 42 U.S.C. sections 1395f(b)(3) or 42 U.S.C. section 1395ww(c) for the purposes of Medicare payment shall not be subject to the payment methodology set forth in this section so long as such Federal waiver remains in effect. VA pays such a hospital in accordance with paragraph (i) of this section.

(k) Payments for episodes of hospital care furnished in Alaska that begin during the period starting on the effective date of this section through the
364th day thereafter will be in the amount determined by the HCFA PRICER plus 50 percent of the difference between the amount billed by the hospital and the amount determined by the PRICER. In order to cover this special dispensation period, claims for services provided on the enactment date of this regulation, and extending during this period, will be accepted for payment by VA until December 31 of the year following the year in which these regulations were enacted.

(Authority: Section 233, Pub. L. 99-576)


§ 17.129 Retroactive payments prohibited.

When a claim for payment or reimbursement of expenses of services not previously authorized has not been timely filed in accordance with the provisions of §17.126, the expenses of any such care or services rendered prior to the date of filing the claim shall not be paid or reimbursed. In no event will a bill or claim be paid or allowed for any care or services rendered prior to the effective date of any law, or amendment to the law, under which eligibility for the medical services at Department of Veterans Affairs expense has been established.


§ 17.130 Payment for treatment dependent upon preference prohibited.

No reimbursement or payment of services not previously authorized will be made when such treatment was procured through private sources in preference to available Government facilities.


§ 17.131 Payment of abandoned claims prohibited.

Any informal claim for the payment or reimbursement of medical expenses which is not followed by a formal claim, or any formal claim which is not followed by necessary supporting evidence, within 1 year from the date of the request for a formal claim or supporting evidence shall be deemed abandoned, and payment or reimbursement shall not be authorized on the basis of such abandoned claim or any future claim for the same expenses. For the purpose of this section, time limitations shall be computed from the date following the date of request for a formal claim or supporting evidence.


§ 17.132 Appeals.

When any claim for payment or reimbursement of expenses of medical care or services rendered in non-Department of Veterans Affairs facilities or from non-Department of Veterans Affairs resources has been disallowed, the claimant shall be notified of the reasons for the disallowance and of the right to initiate an appeal to the Board of Veterans Appeals by filing a Notice of Disagreement, and shall be furnished such other notices or statements as are required by part 19 of this chapter, governing appeals.


DELEGATIONS OF AUTHORITY

§ 17.140 Authority to adjudicate reimbursement claims.

The Department of Veterans Affairs medical installation having responsibility for the fee basis program in the region or territory (including the Republic of the Philippines) served by such medical installation shall adjudicate all claims for the payment or reimbursement of the expenses of services not previously authorized rendered in the region or territory.


§ 17.141 Authority to adjudicate foreign reimbursement claims.

The Health Administration Center in Denver, CO, shall adjudicate claims for the payment or reimbursement of the expenses of services not previously authorized rendered in any foreign country except Canada which will be referred to the VA Medical Center in

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§ 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

The Under Secretary for Health is delegated authority to enter into

(a) Sharing agreements authorized under the provisions of 38 U.S.C. 8153 and §17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8-3.204(c);

(b) Contracts with schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Department of Veterans Affairs health care facilities (including, but not limited to, services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel); and

(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 513 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in §17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR chapters 1 and 8.

(Authority: 38 U.S.C. 512, 513, 7409, 8153)


§ 17.143 Transportation of claimants and beneficiaries.

(a) If travel will be provided, it shall be paid in accordance with 38 U.S.C. 111 and this section.

(b) Transportation at Government expense shall be authorized for the following categories of VA beneficiaries, subject to the deductible established in §17.101, “Limitations”:

(1) A veteran or other person traveling in connection with treatment for a service-connected disability (irrespective of percent of disability).

(2) A veteran with a service-connected disability rated at 30 percent or more, for treatment of any condition.

(3) A veteran receiving VA pension benefits.

(4) A veteran whose annual income, as determined under 38 U.S.C. 1503, does not exceed the maximum annual rate of pension which would be payable if the veteran were eligible for pension, or who is unable to defray the expenses of travel.

(c) Transportation at Government expense shall be authorized for the following VA beneficiaries without their being subject to the deductible established in §17.101, “Limitations”:

(1) A veteran traveling in connection with a scheduled compensation or pension examination.

(2) A veteran or other person traveling by a specialized mode of transportation such as an ambulance, ambulette, air ambulance, wheelchair van, or other vehicle specially designed to transport disabled individuals provided:

(i) A physician determines that the special mode of travel is medically required;

(ii) The person is unable to defray the expenses of the travel; and

(iii) The travel is authorized in advance or was undertaken in connection with a medical emergency such that delay to obtain authorization would be
hazardous to the person's life or health.

(d) For the purposes of this section, the term "other person" refers to:

(1) An attendant when it has been determined in advance that the beneficiary's physical or mental condition requires the presence of an attendant.

(2) A dependent or survivor receiving care in a VA facility under 38 U.S.C. 1713.

(3) Members of the veteran's immediate family, the veteran's legal guardian, or the individual in whose household the veteran certifies an intention to live, when the veteran is receiving services under 38 U.S.C. 1701(6)(B).

(e) A veteran or other person shall be considered unable to defray the expenses of travel if:

(1) Annual income for the year immediately preceding the application for benefits does not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

(2) The person is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, income in the year of application will not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

(3) The person has a service-connected disability rated at least 30 percent; or

(4) The person is traveling in connection with treatment of a service-connected disability.

(Authority: 38 U.S.C. 111)

(f) Admission. (1) Admission of applicants under 38 U.S.C. 1710, 38 CFR 17.46 and 17.84.

(2) Hospital admission for observation and examination.

(g) Readmissions. Hospital readmissions, when medically determined necessary to observe progress, modify treatment or diet, etc.

(h) Preparatory and posthospital care. When necessary to the provision of medical services furnished veterans under 38 U.S.C. 1712(a)(5), and 1717.

(i) Authorized absence. Transportation will not be furnished beneficiaries who are on authorized absence, to depart from or return to Department of Veterans Affairs health care facilities, except that if a patient in such status develops an emergent condition and the patient (or guardian, if there be one) is without funds to return such patient to a Department of Veterans Affairs health care facility, travel may be approved by the Director of the Department of Veterans Affairs facility to which the patient is to be returned.

(j) Discharge. (1) Subject to the limitations of this section, upon regular discharge from hospitalization for treatment, observation and examination, or from nursing home care, return transportation to the point from which the beneficiary had proceeded; or to another point if no additional expense be thereby caused the Government.

(2) A patient in a terminal condition may be discharged to his or her home or transferred to a hospital suitable and nearer that home, regardless of whether travel so required exceeds that covered in proceeding to the hospital of original admission.

(3) Transportation may be furnished to a point other than that from which a patient had proceeded to a hospital upon a showing of bona fide change of address of the patient's residence during the period of hospital care.

(4) No return transportation will be supplied a patient who receives an irregular discharge from hospital or nursing home care, unless the patient executes an affidavit of inability to defray the expense of return transportation.

(k) Outpatient services. (1) Outpatient physical examination, subject to limitations described in 38 U.S.C. 111(c) and 38 CFR 17.144, "Limitations".

(2) Outpatient treatment for service-connected conditions, including adjunct treatment thereof; for veterans under §17.93 (a)(2) and (d)(3); and for nonservice-connected disabilities of veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 and who are medically determined to be in need of medical services for any of the reasons enumerated in 17.47(j), subject to limitations described in §17.144, "Limitations".

(Authority: 38 U.S.C. 111(b))

(l) Accessories of transportation. The accessories of transportation, meals
§ 17.144 Limitations.

(a) VA shall deduct from amounts payable to persons under §17.100(b), an amount equal to $3 for each one-way trip to a VA facility, up to a maximum of $18 in any calendar month. Persons required to make more than six one-way visits per calendar month will receive full travel reimbursement after the $18 cap is met.

(b) The provisions of paragraph (a) of this section may be waived when imposition of the deductible would cause severe financial hardship. Loss of employment, or sudden illness or disability causing the beneficiary’s income in the year of application to fall below the maximum level of VA pension, shall be deemed to constitute severe financial hardship.

(c) Transportation will not be authorized for the cost of travel by taxi or a hired car for visually impaired veterans (as a special mode), or by privately owned vehicle in any amount in excess of the cost of such travel by other forms of public transportation unless public transportation is not reasonably accessible or would be medically inadvisable.

(d) Transportation will not be authorized for the cost of travel in excess of the actual expense incurred by any person as certified by that person in writing.

(Authority: 38 U.S.C. 111)

§ 17.145 Approval of unauthorized travel of claimants and beneficiaries.

(a) Payment may be approved for travel performed under §17.143(a) through (g) without prior authorization only in those cases where the Department of Veterans Affairs determines that there was a need for prompt medical care which was approved and:

(1) The circumstances prevented a request for prior travel authorization, or
(2) Due to Department of Veterans Affairs delay or error prior authorization for travel was not given, or
(3) There was a justifiable lack of knowledge on the part of a third party acting for the veteran that a request for prior authorization was necessary.

(b) In other cases, payment may be approved for such travel without prior authorization only upon a finding by the Secretary or designee that failure to secure prior authorization was justified.

(Authority: 38 U.S.C. 111)

§ 17.149 Sensori-neural aids.

(a) Notwithstanding any other provision of this part, VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) only to veterans otherwise receiving VA care or services and only as provided in this section.

(b) VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) to the following veterans:

1. Those with a compensable service-connected disability;

2. Those who are former prisoners of war;

3. Those in receipt of benefits under 38 U.S.C. 1151;

4. Those in receipt of increased pension based on the need for regular aid and attendance or by reason of being permanently housebound;

5. Those who have a visual or hearing impairment that resulted from the existence of another medical condition for which the veteran is receiving VA care, or which resulted from treatment of that medical condition;

6. Those with a significant functional or cognitive impairment evidenced by deficiencies in activities of daily living, but not including normally occurring visual or hearing impairments; and

7. Those visually or hearing impaired so severely that the provision of sensori-neural aids is necessary to permit active participation in their own medical treatment.

(c) VA will furnish needed hearing aids to those veterans who have service-connected hearing disabilities rated 0 percent if there is organic conductive, mixed, or sensory hearing impairment, and loss of pure tone hearing sensitivity in the low, mid, or high-frequency range or a combination of frequency ranges which contribute to a loss of communication ability; however, hearing aids are to be provided only as needed for the service-connected hearing disability.

(Authority: 38 U.S.C. 1701(6)(A)(i))

62 FR 30242, June 3, 1997

§ 17.150 Prosthetic and similar appliances.

Artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, similar appliances including invalid lifts and therapeutic and rehabilitative devices, and special clothing made necessary by the wearing of such appliances, may be purchased, made or repaired for any veteran upon a determination of feasibility and medical need, provided:

(a) As part of outpatient care. The appliances or repairs are necessary part of outpatient care for which the veteran is eligible under 38 U.S.C. 1712 and 38 CFR 17.93 (or a necessary part of outpatient care authorized under § 17.94) or

(b) As part of hospital care. The appliances or repairs are a necessary part of inpatient care for any service-connected disability or any nonservice-connected disability, if:

1. The nonservice-connected disability is associated with an aggravating a service-connected disability, or

2. The nonservice-connected disability is one for which hospital admission was authorized, or

3. The nonservice-connected disability is associated with and aggravating a service-connected disability, or

4. The nonservice-connected disability is one for which treatment may be authorized under the provisions of § 17.48(f), or

(c) As part of domiciliary care. The appliances or repairs are necessary for continued domiciliary care, or are necessary to treat a member’s service-connected disability, or nonservice-connected disability associated with and aggravating a service-connected disability, or

(d) As part of nursing home care. The appliances or repairs are a necessary part of nursing home care furnished in facilities under the direct and exclusive jurisdiction of the Department of Veterans Affairs.

§ 17.151 Invalid lifts for recipients of aid and attendance allowance or special monthly compensation.

An invalid lift may be furnished if:

(a) The applicant is a veteran who is receiving (1) special monthly compensation (including special monthly compensation based on the need for aid and attendance) under the provisions of 38 U.S.C. 1114(r); (2) comparable compensation benefits at the rates prescribed under 38 U.S.C. 1134; or (3) increased pension based on the need for aid and attendance or a greater compensation benefit rather than aid and attendance pension to which he or she has been adjudicated to be presently eligible; and

(b) The veteran has loss, or loss of use, of both lower extremities and at least one upper extremity (loss of use may result from paralysis or other impairment to muscle power and includes all cases in which the veteran cannot use his or her extremities or is medically prohibited from doing so because of a serious disease or disability); and

(c) The veteran has been medically determined incapable of moving himself or herself from his or her bed to a wheelchair, or from his or her wheelchair to his or her bed, without the aid of an attendant, because of the disability involving the use of his or her extremities; and

(d) An invalid lift would be a feasible means by which the veteran could accomplish the necessary maneuvers between bed and wheelchair, and is medically determined necessary.

§ 17.152 Devices to assist in overcoming the handicap of deafness.

Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Department of Veterans Affairs) and is entitled to compensation on account of such hearing impairment.

§ 17.153 Training in the use of appliances.

Beneficiaries supplied prosthetic and similar appliances will be additionally entitled to fitting and training in the use of the appliances. Such training will usually be given in Department of Veterans Affairs facilities and by Department of Veterans Affairs employees, but may be obtained under contract if determined necessary.

§ 17.154 Dog-guides and equipment for blind.

(a) Blind ex-members of the Armed Forces entitled to disability compensation for a service-connected disability may be furnished a trained dog-guide. In addition, they may be furnished necessary travel expense to and from their places of residence to the point where adjustment to the dog-guide is available and meals and lodging during the period of adjustment, provided they are required to be away from their usual places of residence during the period of adjustment.

(b) Mechanical and/or electronic equipment considered necessary as aids to overcoming the handicap of blindness may also be supplied to beneficiaries defined in paragraph (a) of this section.

§ 17.155 Minimum standards of safety and quality for adaptive equipment.

(a) The Under Secretary for Health or designee is authorized to develop and establish minimum standards of safety and quality for adaptive equipment provided under 38 U.S.C. chapter 38.

(b) In the performance of this function, the following considerations will apply:
(1) Minimum standards of safety and quality will be developed and promulgated for basic adaptive equipment specifically designed to facilitate operation and use of standard passenger motor vehicles by persons who have specified types of disablement and for the installation of such equipment.

(2) In those instances where custom-built adaptive equipment is designed and installed to meet the peculiar needs of uniquely disabled persons and where the incidence of probable usage is not such as to justify development of formal standards, such equipment will be inspected and, if in order, approved for use by a qualified designee of the Under Secretary for Health.

(3) Adaptive equipment, available to the general public, which is manufactured under standards of safety imposed by a Federal agency having authority to establish the same, shall be deemed to meet required standards for use as adaptive equipment. These include such items as automatic transmissions, power brakes, power steering and other automotive options.

(c) For those items where specific Department of Veterans Affairs standards of safety and quality have not as yet been developed, or where such standards are otherwise provided as with custom-designed or factory option items, authorization of suitable adaptive equipment will not be delayed. Approval of such adaptive equipment, however, shall be subject to the judgment of designated certifying officials that it meets implicit standards of safety and quality adopted by the industry or as later developed by the Department of Veterans Affairs.

§ 17.156 Eligibility for automobile adaptive equipment.

Automobile adaptive equipment may be authorized if the Under Secretary for Health or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person’s safety and so as to satisfy the applicable standards of licensure established by the State of such person’s residency or other proper licensing authority.

(a) Persons eligible for adaptive equipment are:

(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one of both hips if the disability is the result of injury incurred or disease contracted in or aggravated by active military, naval or air service.

(2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during or aggravated by active military service are eligible to receive automobile adaptive equipment.

(b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Under Secretary for Health or designee.

(Authority: 38 U.S.C. 3902)

§ 17.157 Definition—adaptive equipment.

The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Under Secretary for Health or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.156 of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless...
§ 17.158 Limitations on assistance.

(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person’s physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Department of Veterans Affairs has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 3903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Under Secretary for Health.

(Authority: 38 U.S.C. 3902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment.

(Authority: 38 U.S.C. 3902)

§ 17.159 Obtaining vehicles for special driver training courses.

The Secretary may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle, or other conveyance deemed necessary to conduct special driver training courses at Department of Veterans Affairs health care facilities. The Secretary may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Department of Veterans Affairs holds title for such price or under such terms deemed appropriate by the Secretary. Any proceeds received from such disposition shall be credited to the applicable Department of Veterans Affairs appropriation.

(Authority: 38 U.S.C. 3903(e)(3))

§ 17.160 Authorization of dental examinations.

When a detailed report of dental examination is essential for a determination of eligibility for benefits, dental examinations may be authorized for the following classes of claimants or beneficiaries:

(a) Those having a dental disability adjudicated as incurred or aggravated in active military, naval, or air service.

(b) Those having disability from disease or injury other than dental, adjudicated as incurred or aggravated in active military, naval, or air service but with an associated dental condition that is considered to be aggravating the basic service-connected disorder.

(c) Those for whom a dental examination is ordered as a part of a general physical examination.
(d) Those requiring dental examination during hospital, nursing home, or domiciliary care.

(e) Those held to have suffered dental injury or aggravation of an existing dental injury, as the result of examination, hospitalization, or medical or surgical (including dental) treatment that had been awarded.

(f) Veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 are entitled to such dental services as are professionally determined necessary for any of the reasons enumerated in §17.47(g).

(g) Those for whom a special dental examination is authorized by the Under Secretary for Health or the Assistant Chief Medical Director for Dentistry.

(h) Persons defined in §17.60(d).


Outpatient dental treatment may be authorized by the Chief, Dental Service, for beneficiaries defined in 38 U.S.C. 1712(b) and 38 CFR 17.93 to the extent prescribed and in accordance with the applicable classification and provisions set forth in this section.

(a) Class I. Those having a service-connected compensable dental disability or condition, may be authorized any dental treatment indicated as reasonably necessary to maintain oral health and masticatory function. There is no time limitation for making application for treatment and no restriction as to the number of repeat episodes of treatment.

(b) Class II. (1)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place after September 30, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They served on active duty during the Persian Gulf War and were discharged or released, under conditions other than dishonorable, from a period of active military, naval, or air service of not less than 90 days, or they were discharged or released under conditions other than dishonorable, from any other period of active military, naval, or air service of not less than 180 days;

(B) Application for treatment is made within 90 days after such discharge or release.

(C) The certificate of discharge or release does not bear a certification that the veteran was provided, within the 90-day period immediately before such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental treatment indicated by the examination to be needed, and

(D) Department of Veterans Affairs dental examination is completed within six months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service after August 12, 1981, who had reentered active military service within 90 days after the date of a discharge or release from a prior period of active military service, may apply for treatment of service-connected noncompensable dental conditions relating to any such periods of service within 90 days from the date of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction.

(2)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place before October 1, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military,
§ 17.161

(B) Application for treatment is made within one year after such discharge or release.

(C) Department of Veterans Affairs dental examination is completed within 14 months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service before August 13, 1981, who had reentered active military service within one year from the date of a prior discharge or release, may apply for treatment of service-connected noncompensable dental conditions relating to any such prior periods of service within one year of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction.

(Authority: 38 U.S.C. 1712)

(c) Class II (a). Those having a service-connected noncompensable dental condition or disability adjudicated as resulting from combat wounds or service trauma may be authorized any treatment indicated as reasonably necessary for the correction of such service-connected noncompensable condition or disability.

(d) Class II(b). Those having a service-connected noncompensable dental condition or disability and who have been detained or interned as prisoners of war for a period of less than 90 days may be authorized any treatment as reasonably necessary for the correction of such service-connected dental condition or disability.


(e) Class II(c). Those who were prisoners of war for 90 days or more, as determined by the concerned military service department, may be authorized any needed dental treatment.


(f) Class IIR (Retroactive). Any veteran who had made prior application for and received dental treatment from the Department of Veterans Affairs for noncompensable dental conditions, but was denied replacement of missing teeth which were lost during any period of service prior to his/her last period of service may be authorized such previously denied benefits under the following conditions:

(1) Application for such retroactive benefits is made within one year of April 5, 1983.

(2) Existing Department of Veterans Affairs records reflect the prior denial of the claim.

All Class IIR (Retroactive) treatment authorized will be completed on a fee basis status.

(Authority: 38 U.S.C. 1712)

(g) Class III. Those having a dental condition professionally determined to be aggravating disability from an associated service-connected condition or disability may be authorized dental treatment for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon the associated basic condition or disability.

(h) Class IV. Those whose service-connected disabilities are rated at 100% by schedular evaluation or who are entitled to the 100% rate by reason of individual unemployability may be authorized any needed dental treatment.

(Authority: 38 U.S.C. 1712)

(i) Class V. A veteran who is participating in a rehabilitation program under 38 U.S.C. chapter 31 may be authorized such dental services as are professionally determined necessary for any of the reasons enumerated in §17.47(g).

(Authority: 38 U.S.C. 1712(b); chapter 31)

(j) Class VI. Any veterans scheduled for admission or otherwise receiving care and services under chapter 17 of 38 U.S.C. may receive outpatient dental care which is medically necessary, i.e., is for dental condition clinically determined to be complicating a medical condition currently under treatment.
§ 17.162 Eligibility for Class II dental treatment without rating action.

When an application has been made for class II dental treatment under §17.161(b), the applicant may be deemed eligible and dental treatment authorized on a one-time basis without rating action if:

(a) The examination to determine the need for dental care has been accomplished within the specified time limit after date of discharge or release unless delayed through no fault of the veteran, and sound dental judgment warrants a conclusion the condition originated in or was aggravated during service and the condition existed at the time of discharge or release from active service, and

(b) The treatment will not involve replacement of a missing tooth noted at the time of Department of Veterans Affairs examination except:

1. In conjunction with authorized extraction replacement, or
2. When a determination can be made on the basis of sound professional judgment that a tooth was extracted or lost on active duty.
3. Individuals whose entire tour of duty consisted of active or inactive duty for training shall not be eligible for treatment under this section.

§ 17.163 Posthospital outpatient dental treatment.

The Chief, Dental Service may authorize outpatient dental care which is reasonably necessary to complete treatment of a nonservice-connected dental condition which was begun while the veteran was receiving Department of Veterans Affairs authorized hospital care.

§ 17.164 Patient responsibility in making and keeping dental appointments.

Any veteran eligible for dental treatment on a one-time completion basis only and who has not received such treatment within 3 years after filing the application shall be presumed to have abandoned the claim for dental treatment.

§ 17.165 Emergency outpatient dental treatment.

When outpatient emergency dental care is provided, as a humanitarian service, to individuals who have no established eligibility for outpatient dental care, the treatment will be restricted to the alleviation of pain or extreme discomfort, or the remediation of a dental condition which is determined to be endangering life or health. The provision of emergency treatment to persons found ineligible for dental care will not entitle the applicant to further dental treatment. Individuals provided emergency dental care who are found to be ineligible for such care will be billed.

§ 17.166 Dental services for hospital or nursing home patients and domiciled members.

Persons receiving hospital, nursing home, or domiciliary care pursuant to the provisions of §§17.46 and 17.47, will be furnished such dental services as are professionally determined necessary to the patients' or members' overall hospital, nursing home, or domiciliary care.
§ 17.170 Autopsies.

(a) Except as provided in this section, no autopsy will be performed by the Department of Veterans Affairs unless there is no known surviving spouse or known next of kin; or without the consent of the surviving spouse or, in a proper case, the next of kin, unless the patient or domiciled person was abandoned by the spouse, if any, or, if no spouse, by the next of kin for a period of not less than 6 months next preceding death. Where no inquiry has been made for or in regard to the decedent for a period of 6 months next preceding his death, he or she shall be deemed to have been abandoned.

(b) If there is no known surviving spouse or known next of kin, or if the decedent shall have been abandoned or if the request is sent and the spouse or, in proper cases, the next of kin fails to reply within the reasonable time stated in such request of the Department of Veterans Affairs for permission to perform the autopsy, the Director is hereby authorized to cause an autopsy to be performed if in the Director’s discretion he or she concludes that such autopsy is reasonably required for any necessary purpose of the Department of Veterans Affairs, including the completion of official records and advancement of medical knowledge.

(c) If it is suspected that death resulted from crime and if the United States has jurisdiction over the area where the body is found, the Director of the Department of Veterans Affairs facility will inform the appropriate Regional Counsel of the known facts concerning the death. Thereupon the Regional Counsel will transmit all such information to the United States Attorney for such action as may be deemed appropriate and will inquire whether the United States Attorney objects to an autopsy if otherwise it be appropriate. If the United States Attorney has no objection, the procedure as to autopsy will be the same as if the death had not been reported to him or her.

(d) If the United States does not have exclusive jurisdiction over the area where the body is found the local medical examiner/coroner will be informed.

If the local medical examiner/coroner declines to assume jurisdiction the procedure will be the same as is provided in paragraph (c) of this section. If a Federal crime is indicated by the evidence, the procedure of paragraph (c) of this section will also be followed.

(e) The laws of the decedent’s domicile are determinative as to whether the spouse or the next of kin is the proper person to grant permission to perform an autopsy and of the question as to the order of preference among such persons. Usually the spouse is first entitled, except in some situations of separation; followed by children, parents, brothers and sisters, etc. When the next of kin as defined by the laws of decedent’s domicile consists of a number of persons as children, parents, brothers and sisters, etc., permission to perform an autopsy may be accepted when granted by the person in the appropriate class who assumes the right and duty of burial.

(f) The Director of a Department of Veterans Affairs facility is authorized to cause an autopsy to be performed on a veteran who dies outside of a Department of Veterans Affairs facility while undergoing post-hospital care under the provisions of 38 U.S.C. 1712 and 38 CFR 17.93, if the Director determines such autopsy is reasonably required for any necessary purpose of the Department of Veterans Affairs, including the completion of official records and advancement of medical knowledge. Such authority also encompasses the furnishing of transportation of the body at Department of Veterans Affairs expense to the Department of Veterans Affairs facility and return of the body. Consent for the autopsy will be obtained as provided for in paragraph (e) of this section.

Health is hereby delegated authority as follows:

(a) To exercise the powers and functions of the Secretary with respect to the maintenance and operation of the Veterans Canteen Service.

(b) To designate the Assistant Chief Medical Director for Administration to administer the overall operation of the Veterans Canteen Service and to designate selected employees of the Veterans Canteen Service to perform the functions described in the enabling statute, 38 U.S.C. ch. 75, so as to effectively maintain and operate the Veterans Canteen Service.

Filing applications.

Applications for Department of Veterans Affairs recognition of a State home may be filed with the Under Secretary for Health, Department of Veterans Affairs. After arranging for an inspection of the State home's facilities for furnishing domiciliary, nursing home or hospital care, the Under Secretary for Health will make a recommendation to the Secretary who will notify the State official in writing of a decision.

Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of a recognized home which is not on the same or contiguous grounds on which the parent facility is located. When a recognized State home establishes nursing home or hospital care facilities which have not been inspected and approved by the Department of Veterans Affairs, a request for separate approval of such facilities must be made.

Recognition of a State home.

A State-operated facility which provides hospital, domiciliary or nursing home care to veterans must be formally recognized by the Secretary as such. Any agency of a State (exclusive of a territory or possession) responsible for the maintenance or administration of a State home may apply for recognition by the Department of Veterans Affairs for the purpose of receiving aid for the care of veterans in such State home. A State home may be recognized if:

1. The State home is a facility which exists primarily for the accommodation of veterans incapable of earning a living and who are in need of domiciliary or nursing home care, and
2. The majority of such veterans who are nursing home care patients or domiciliary members in the home are veterans who may be included in the computation of the amount of aid payable from the Department of Veterans Affairs, and
3. The personnel, building and other facilities and improvements at the home are devoted primarily to the care of veterans, and
4. In the case of recognition of State homes having nursing home care facilities the requirements of §17.195(b) are met.

Prerequisites for payments to State homes.

No payment or grant may be made to any State home unless the State home meets the standards prescribed by the Secretary. These standards, with respect to nursing home care, shall be no less stringent than those prescribed by the Secretary for community nursing homes.


§ 17.194 Aid for domiciliary care.

Aid may be paid to the designated State official for domiciliary care furnished in a recognized State home for any veteran if the veteran is eligible for domiciliary care in a Department of Veterans Affairs facility.

(Authority: 38 U.S.C. 1741)


§ 17.195 Aid for nursing home care.

Aid may be paid to the designated State official for nursing home care furnished in a recognized State home for any veteran if:

(a) The veteran needs nursing home care and:
   (1) Has a service-connected disability for which nursing home care is being provided, or
   (2) Has a nonservice-connected disability and is unable to defray the expenses of nursing home care and so states under oath, or
   (3) Was discharged or released from active military, naval or air service for disability incurred or aggravated in line of duty, or
   (4) Is in receipt of, or but for the receipt of retirement pay would be entitled to receive, disability compensation, and
   (b) The quarters in which the nursing home care is provided are in an area clearly designated for such care and not intermingled with those of either hospital patients or domiciliary members.

(Authority: 38 U.S.C. 1741, 1742(a))


§ 17.196 Aid for hospital care.

Aid may be paid to the designated State official for hospital care furnished in a recognized State home for any veteran if:

(a) The veteran is eligible for hospital care in a Department of Veterans Affairs facility, and

(b) The quarters in which the hospital care is carried out are in an area clearly designated for such care, specifically established, staffed and equipped to provide hospital type care, are not intermingled with the quarters of nursing home care patients or domiciliary members, and meet such other minimum standards as the Department of Veterans Affairs may prescribe.


§ 17.197 Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates established by title 38 U.S.C., section 1741(a)(1) for domiciliary care; section 1741(a)(2) for nursing home care; and section 1741(a)(3) for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home. VA will publish the actual per diem rates, whenever they change, in a Federal Register notice.

(Authority: 38 U.S.C. 1741)


§ 17.198 Department of Veterans Affairs approval of eligibility required.

Federal aid will be paid only for the care of veterans whose separate eligibility for hospital, domiciliary or nursing home care has been approved by the Department of Veterans Affairs. To obtain such approval, State homes will complete a Department of Veterans Affairs application form for each veteran for the type of care to be provided and submit it to the Department of Veterans Affairs office of jurisdiction for determination of eligibility. Payments shall be made only from the date the Department of Veterans Affairs office of jurisdiction receives such application; however, if such request is received by the Department of Veterans Affairs office of jurisdiction within 10 days after the beginning of the care of such veteran for which he or she is determined to be eligible, payment shall be made on account of such veteran from the date care began.

(Authority: 38 U.S.C. 1743)

§ 17.199 Inspection of recognized State homes.

Representatives of the Department of Veterans Affairs may inspect any State home at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any State home.

(Authority: 38 U.S.C. 8131)


§ 17.200 Audit of State homes.

The State must comply with the Single Audit Act of 1984 (part 41 of this chapter).

(Authority: 31 U.S.C. 7501-7507)


GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOME FACILITIES

NOTE: The purpose of the regulations concerning grants to States for construction or acquisition of State home facilities is to effectuate the provisions of 38 U.S.C. 8131-8137 and to assist the several States to construct or acquire State home facilities for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home or hospital care to veterans in State homes.

§ 17.210 Definitions.

For the purpose of the regulations concerning grants to States for construction or acquisition of State home facilities:

(a) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce.

(Authority: 38 U.S.C. 8131(a))

(b) The term State means each of the several States, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico.

(c) The term construction means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or hospital care in State homes and the provision of initial equipment for any such buildings. The term includes necessary support systems and work performed over and above that required for maintenance and repair. Generally, facilities such as parking lots, landscaping, sidewalks, streets, storm sewers, etc., are excluded except to the extent the work is inextricably involved with new construction or the remodeling, modification or alteration of existing facilities.

(Authority: 38 U.S.C. 8131(c))

(d) The term cost of construction means the amount which the Secretary determines to be necessary for a State home construction project, including architect fees, supervision and site inspection services, printing and advertising costs, but excluding land acquisition costs.

(Authority: 38 U.S.C. 8131(d))

(e) The term State agency means that State agency or instrumentality of a State designated by a State as authorized to apply for assistance to construct or acquire State home facilities for veterans and thereafter administer those facilities.

(f) The term acquisition means the purchase of a facility for use as a State veterans home for the provision of domiciliary and/or nursing home care to veterans. An acquisition includes any remodeling or alteration needed to meet existing standards.

(g) The term cost of acquisition means the amount which the Secretary determines to be necessary to acquire and renovate a facility for the provision of domiciliary or nursing home care as a State home.

(h) As used in connection with a request from a State for a grant to assist in the construction or acquisition of a State veterans home:

(1) The term preapplication means the State's submission to the Secretary of a preapplication for Federal Assistance
on Standard Form 424 with an accompanying space program and schematics for the project; and

(2) The term application means the submission to the Secretary of an application for Federal Assistance for a project on Standard Form 424 after the Department of Veterans Affairs has reviewed the State's preapplication for the project and informed the State that it is a feasible project for Federal participation.

(i) The term life safety project means a State veterans nursing home or domiciliary project which would remedy an existing condition which has been cited by the Department of Veterans Affairs, a State or local agency (including a Fire Marshal), or the Joint Commission on Accreditation of Hospitals, as threatening to the lives or safety of patients within the facility.

(j) The term renovation project means a project to expand, remodel, or alter a State veterans nursing home or domiciliary which is not a life safety project and does not result in the addition of domiciliary or nursing home beds.


§ 17.211 Maximum number of nursing home beds for veterans by State.

(a) For purposes of these regulations, appendix A prescribes the maximum number of beds which may be necessary to provide adequate nursing home care and domiciliary care to veterans residing in each State. When the nursing home beds to be constructed or acquired in a State will result in more than 2½ beds per 1,000 veterans, the State shall provide sufficient justification for the Secretary to determine that the additional beds are required in that State. In making this determination, the Secretary shall consider the following factors: (1) Demographic characteristics of the State's veteran population, (2) availability, suitability and cost of alternative nursing home beds to meet the needs of veterans in the State, (3) waiting lists for existing State nursing home facilities, and (4) any other criteria which the Secretary shall deem appropriate to provide adequate nursing home care.

(Authority: 38 U.S.C. 8134(1))

(b) At the time an application is filed by a State for a grant under the regulations concerning grants to States for construction of State home facilities, such State must submit a certified statement listing the total number of State-operated nursing home care beds for veterans together with all other State projects under construction for beds to furnish nursing home care to veterans in such State.

(Authority: 38 U.S.C. 8135(a)(3))

APPENDIX A TO §17.211—STATE HOME FACILITIES FOR FURNISHING NURSING HOME CARE

The maximum number of beds to provide adequate nursing home care and domiciliary care to veterans residing in each State not to exceed four beds per 1,000 veteran population for nursing home care and two beds per 1,000 veteran population for domiciliary care is established as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Veteran population in thousands</th>
<th>No. of beds: NHC 2.5/1000</th>
<th>No. of beds: NHC 4/1000</th>
<th>No. of beds: Dom 2/1000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>405</td>
<td>1,013</td>
<td>1,620</td>
<td>810</td>
</tr>
<tr>
<td>Alaska</td>
<td>63</td>
<td>158</td>
<td>252</td>
<td>126</td>
</tr>
<tr>
<td>Arizona</td>
<td>420</td>
<td>1,050</td>
<td>1,660</td>
<td>840</td>
</tr>
<tr>
<td>Arkansas</td>
<td>252</td>
<td>630</td>
<td>1,008</td>
<td>504</td>
</tr>
<tr>
<td>California</td>
<td>2,829</td>
<td>7,073</td>
<td>11,316</td>
<td>5,658</td>
</tr>
<tr>
<td>Colorado</td>
<td>395</td>
<td>968</td>
<td>1,580</td>
<td>790</td>
</tr>
<tr>
<td>Connecticut</td>
<td>386</td>
<td>965</td>
<td>1,544</td>
<td>772</td>
</tr>
<tr>
<td>Delaware</td>
<td>80</td>
<td>200</td>
<td>320</td>
<td>160</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>57</td>
<td>143</td>
<td>228</td>
<td>114</td>
</tr>
<tr>
<td>Florida</td>
<td>1,524</td>
<td>3,810</td>
<td>6,096</td>
<td>3,048</td>
</tr>
<tr>
<td>Georgia</td>
<td>666</td>
<td>1,665</td>
<td>2,664</td>
<td>1,332</td>
</tr>
<tr>
<td>Hawaii</td>
<td>100</td>
<td>250</td>
<td>400</td>
<td>200</td>
</tr>
<tr>
<td>Idaho</td>
<td>109</td>
<td>273</td>
<td>426</td>
<td>218</td>
</tr>
<tr>
<td>Illinois</td>
<td>1,227</td>
<td>3,068</td>
<td>4,908</td>
<td>2,454</td>
</tr>
<tr>
<td>Indiana</td>
<td>640</td>
<td>1,600</td>
<td>2,500</td>
<td>1,280</td>
</tr>
<tr>
<td>Iowa</td>
<td>325</td>
<td>819</td>
<td>1,300</td>
<td>650</td>
</tr>
</tbody>
</table>
(b) The Department of Veterans Affairs may offer a State a grant which is less than the amount requested and the State refuses to accept it, these Federal funds will be applied to other applications which have met all Federal requirements in the order of their priority on the list which was established by the Secretary under §17.213(d) of this part for that fiscal year.

(c) If a State accepts the grant for less than the amount requested, the State may request that its application for additional funds be ranked on the next priority list for additional Federal funds.

(d)(1) Notwithstanding paragraph (c) of this section and the provisions for ranking projects within a priority group in §17.213(c)(3)(i), the Secretary shall give an application first priority within the priority group to which it is

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§ 17.212 Scope of grants program.

(a) Subject to the availability of an appropriation, a grant may be made to a State which has submitted an application for assistance to construct (or to acquire) State home facilities (if the application has been approved by the Secretary) as prescribed in 38 U.S.C. 8131 through 8137 and §§17.210 through 17.216.

(b) The Department of Veterans Affairs may offer a State a grant which is less than the amount requested and the State refuses to accept it, these Federal funds will be applied to other applications which have met all Federal requirements in the order of their priority on the list which was established by the Secretary under §17.213(d) of this part for that fiscal year.

(c) If a State accepts the grant for less than the amount requested, the State may request that its application for additional funds be ranked on the next priority list for additional Federal funds.

(d)(1) Notwithstanding paragraph (c) of this section and the provisions for ranking projects within a priority group in §17.213(c)(3)(i), the Secretary shall give an application first priority within the priority group to which it is

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Department of Veterans Affairs

§ 17.212

<table>
<thead>
<tr>
<th>State</th>
<th>Veteran population in thousands</th>
<th>No. of beds: NHC 2.5/1000</th>
<th>No. of beds: NHC 4/1000</th>
<th>No. of beds: Dom 2/1000</th>
</tr>
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<tbody>
<tr>
<td>Kansas</td>
<td>282</td>
<td>705</td>
<td>1,128</td>
<td>564</td>
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<tr>
<td>Kentucky</td>
<td>359</td>
<td>898</td>
<td>1,436</td>
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<td>Louisiana</td>
<td>417</td>
<td>1,043</td>
<td>1,668</td>
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<tr>
<td>Maine</td>
<td>154</td>
<td>385</td>
<td>616</td>
<td>308</td>
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<td>Maryland</td>
<td>543</td>
<td>1,358</td>
<td>2,172</td>
<td>1,086</td>
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<tr>
<td>Massachusetts</td>
<td>666</td>
<td>1,665</td>
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<td>Minnesota</td>
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<td>1,984</td>
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<td>575</td>
<td>920</td>
<td>460</td>
</tr>
<tr>
<td>Missouri</td>
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<td>Montana</td>
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<td>400</td>
<td>200</td>
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<tr>
<td>Nebraska</td>
<td>178</td>
<td>445</td>
<td>712</td>
<td>356</td>
</tr>
<tr>
<td>Nevada</td>
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<td>365</td>
<td>584</td>
<td>292</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>146</td>
<td>365</td>
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<td>292</td>
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<tr>
<td>New Jersey</td>
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<td>North Dakota</td>
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<tr>
<td>Oregon</td>
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<td>1,424</td>
<td>712</td>
</tr>
<tr>
<td>Pennsylvania</td>
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<td>3,770</td>
<td>6,032</td>
<td>3,016</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>119</td>
<td>298</td>
<td>476</td>
<td>238</td>
</tr>
<tr>
<td>South Carolina</td>
<td>354</td>
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<td>1,416</td>
<td>708</td>
</tr>
<tr>
<td>South Dakota</td>
<td>77</td>
<td>193</td>
<td>308</td>
<td>154</td>
</tr>
<tr>
<td>Tennessee</td>
<td>530</td>
<td>1,325</td>
<td>2,120</td>
<td>1,060</td>
</tr>
<tr>
<td>Texas</td>
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<td>4,368</td>
<td>6,988</td>
<td>3,494</td>
</tr>
<tr>
<td>Utah</td>
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<td>350</td>
<td>560</td>
<td>260</td>
</tr>
<tr>
<td>Vermont</td>
<td>64</td>
<td>160</td>
<td>256</td>
<td>128</td>
</tr>
<tr>
<td>Virginia</td>
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<tr>
<td>Washington</td>
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<td>1,196</td>
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<tr>
<td>West Virginia</td>
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<td>Wisconsin</td>
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</tr>
<tr>
<td>Wyoming</td>
<td>54</td>
<td>135</td>
<td>216</td>
<td>108</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>124</td>
<td>310</td>
<td>436</td>
<td>248</td>
</tr>
</tbody>
</table>

Estimate as of March 31, 1989.
Source: Office of Reports and Statistics, VA. (Based on last available Bureau of the Census data.)

§ 17.213 Applications with respect to projects.

(a) A State desiring to receive Federal assistance for construction or acquisition of a State home facility shall submit to the Secretary a preapplication (if the need for Federal funding exceeds $100,000) and an application for such assistance in compliance with the uniform requirements for grant-in-aid to State and local governments prescribed in the Office of Management and Budget Circular No. A-102, Revised. The applicant will submit as part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction or acquisition and construction of such project.

(2) A description of the site for such project.

(3) Plans and specifications as required by 38 U.S.C. 8135 and 38 CFR 17.210 through 17.216.

(4) Any comments or recommendations made by appropriate State (and areawide) clearinghouses pursuant to policies outlined in Executive Order 12372, Intergovernmental Review of Federal Programs (part 40 of this chapter).

(5) The State application for Federal assistance shall include environmental documentation for the project by submitting a Categorical Exclusion (CE), Environmental Assessment (EA), or an Environmental Impact Statement (EIS). The environmental documentation will require approval by the Department of Veterans Affairs before final award of a construction or acquisition grant for a State veterans home. (See §26.6 of this chapter for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a Categorical Exclusion. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an environmental assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. When the application submission requires an environmental assessment, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;

(ii) Air quality;

(iii) Noise;

(iv) Solid waste;

(v) Utilities;

(vi) Geology (soils/hydrology/flood plains);

(vii) Water quality;

(viii) Land use;

(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;

(x) Economic activities;

(xi) Cultural resources;

(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.
If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the environmental assessment.

(Authority: 38 U.S.C. 8135(a))

(b) The applicant must furnish reasonable assurance that:

1. Upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made, and that not more than 25 per centum of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans, and that such level of care will meet the standards prescribed by the Secretary.

2. Title to such site is or will be vested solely in the applicant, State home, or other agency or instrumentality of the State.

3. Adequate financial support will be available for the construction of the project, and for its maintenance, repair and operation when complete.

4. The State will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and give the Secretary, upon demand, access to the records upon which such information is based.

5. The rates of pay for laborers and mechanics engaged in construction of the project will not be less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a through 276a–5) known as the Davis-Bacon Act.

(Authority: 38 U.S.C. 8135(a)(8))

6. Contractors engaged in the construction of the project will be required to comply with the provisions of Executive Order 11246 of September 24, 1965 (30 FR 12319), as amended by Executive Order 11375 of October 13, 1967 (32 FR 14303), and by Executive Order 12086 of October 5, 1978 (43 FR 46501), and rules, regulations, or orders as the Secretary of Labor may issue or adopt.


(Authority: 38 U.S.C. 8135(a))

8. The structures constructed will be of fire, earthquake, and other natural disaster resistant construction.

(Authority: 38 U.S.C. 8105)

9. In the case of a project for acquisition of a facility, the State agency must provide reasonable assurance that the total cost of acquisition of the facility, including any expansion, remodeling and alteration to meet all building requirements and codes, and for all other purposes, shall not be greater than the estimated cost of construction of an equivalent new State home facility.

(Authority: 38 U.S.C. 8135(a)(9))

10. An audit will be performed in compliance with the Single Audit Act of 1984 (See part 41 of this chapter).

(Authority: 31 U.S.C. 7501–7507)

(c) Upon receipt of an application for a grant for a project for construction or acquisition of a State veterans home, the Secretary or designee shall:

1. Determine whether the application meets the requirements of 38 U.S.C. 8135 and §§17.210 through 17.216 and appendix A to §17.211 of this title and whether the application contains sufficient information for the Secretary to establish its priority. The Secretary shall consider the following factors when making a determination for purposes of this section that a project is primarily a State veterans nursing home, domiciliary or hospital project:

   (i) The number of State veterans nursing home, domiciliary, and/or hospital beds that would be constructed or acquired by the project;

   (ii) The amount of nursing home, domiciliary, or hospital project space that will result from the construction or acquisition project;
(iii) The estimated number of veteran patients who would benefit from the construction or acquisition project. 

(Authority: 38 U.S.C. 8135(b))

(2) Notify the State submitting the application whether the application conforms with such requirements, and, if it does not, notify the State

(i) Of the actions necessary to bring the application into conformance with those requirements; and

(ii) If the application provides insufficient information for the Secretary to establish its priority under subparagraph (1) of this paragraph; and

(3)(i) If such application provides sufficient information for the Secretary to establish its priority, determine the priority of the project described in the application in relation to all other projects in accordance with the criteria set forth in this paragraph. In establishing a project’s priority, the Secretary shall rank projects from the highest to the lowest priority in the order of priority groups set forth in this paragraph, giving the projects in Group 1 the highest priority and the projects in Group 6 the lowest. Where more than one project is ranked in a single priority group, the Secretary shall rank those projects by applying the criteria applicable to the next lower priority group. If a State's application for Federal assistance for a project that exceeds 50 percent of the next fiscal year's estimated appropriation for State home grants will be placed at the bottom of the priority group in which it is ranked. Where such ranking results in more than one project being given the same priority, the Secretary shall rank those projects, except as otherwise provided, in accordance with the criteria applicable to the next lowest priority group until all projects are ranked with a different priority.

(ii) The priority groups are:

(A) Priority Group 1: A State veterans nursing home or domiciliary project for which a State, in the judgment of the Secretary, has made sufficient funds available for construction and/or acquisition so that the project may proceed upon approval of the grant which the State has requested without further action required by the State to make such funds available for that purpose, shall be accorded first priority. For the purpose of the priority list, the Secretary will accept the following as demonstrating that a State has made sufficient funds available:

(1) A copy of the Act, as approved by the Governor, making available at least one-half of the State's matching funds for the project; and

(2) A letter from an authorized State budget official certifying that at least one-half of the State funds are, or will be, available for the project, so that if VA approves the grant during the next fiscal year, the project may proceed without further State action to make such funds available.

(B) Priority Group 2: A State veterans nursing home or domiciliary project from a State which has not received a construction or acquisition grant from the Secretary under 38 U.S.C. 15035 shall be accorded second priority.

(C) Priority Group 3: A State veterans nursing home or domiciliary bed producing or non-bed producing project from a State, which the Secretary determines, pursuant to this paragraph, to have a greater need for State veterans nursing home or domiciliary beds than other States which have submitted applications, shall be accorded third priority. The Secretary shall base such determinations on the Secretary's calculation, pursuant to this paragraph, of the State's unmet need for such beds. A State which has submitted an application for a project which the Secretary determines to be primarily a nursing home project will be deemed to have a greater need for State veterans nursing home beds than other States if the Secretary determines that the State has an unmet need for such beds of between 91 percent and 100 percent. The Secretary shall determine a State's unmet need for such beds by dividing the number of that State's nursing home beds authorized by the Department of Veterans Affairs in State veterans Homes as of August 15 of the current year by the number of beds needed to provide adequate nursing home care to veterans residing in
that State as prescribed by the Secretary in appendix A. The quotient, expressed as a percentage will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans nursing home beds for purposes of this section. The Secretary shall determine a State's unmet need for domiciliary beds by dividing the number of that State's domiciliary beds authorized by the Department of Veterans Affairs as of August 15 of the current year by the number of beds needed to provide adequate domiciliary care to veterans residing in that State prescribed by the Secretary in appendix A. The quotient, expressed as a percentage will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans domiciliary beds for purposes of this section.

(D) Priority Group 4: A State veterans nursing home or domiciliary project, which is not assigned a higher priority under this section, shall be accorded fourth priority. If there is more than one project in this priority group, the Secretary shall assign each project a value as set forth in the following table in accordance with the Secretary's determination of the type of project:

<table>
<thead>
<tr>
<th>Type of project</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life-safety project for nursing home facility</td>
<td>10</td>
</tr>
<tr>
<td>Project resulting in the construction or acquisition of nursing home beds</td>
<td>10</td>
</tr>
<tr>
<td>Life-safety project for domiciliary facility</td>
<td>9</td>
</tr>
<tr>
<td>Project resulting in the construction or acquisition of domiciliary beds</td>
<td>8</td>
</tr>
<tr>
<td>Nursing home renovation project</td>
<td>6</td>
</tr>
<tr>
<td>Domiciliary renovation project</td>
<td>4</td>
</tr>
</tbody>
</table>

If the Secretary determines that a project could be included in two or more of the above-listed types so that the project, in the judgment of the Secretary, cannot be accurately characterized as to type by reference to any single type listed above, the Secretary shall determine the numerical value to be assigned a project by calculating the average of all the numerical values associated with all types of projects in which the project could be included. The Secretary shall rank projects in accordance with the numerical values assigned, with the highest priority being assigned to the project with the highest numerical valuation. Where this results in two or more projects with the same priority, these projects shall be ranked in the order in which the Secretary received the State's preapplication for that project giving highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Secretary for a project, the project shall be ranked with other projects using the date on which the Secretary received the application for the project.

(E) Priority Group 5: A project which is primarily designed to renovate a State veterans hospital facility but which would not expand a State's capacity to furnish hospital care in a State veterans home shall be accorded fifth priority. Where more than one project is ranked in this priority group, the Secretary shall rank them in the order in which the Secretary received the State's preapplication for the project and shall give highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Secretary for a project, the project shall be ranked with other projects using the date on which the Secretary received the application for the project.

(F) Priority Group 6: A hospital project which would expand a State's capacity to furnish hospital care in a State veterans home shall be accorded no priority. Where more than one such project has been submitted, the Secretary shall rank them in the order in which the Secretary received the State's preapplication for the projects and shall assign the lowest ranking to the project for which a preapplication was received last. If a preapplication was not received by the Secretary for a project, the project shall be ranked with other projects using the date on which the Secretary received the application for the project.

(Authority: 38 U.S.C. 8135(b))

(d) The Secretary shall establish after August 15 of each year a list of projects, including projects that have been conditionally approved under paragraph (e) of this section, in the order of their priority on August 15 of that year as determined pursuant to
§ 17.213  38 CFR Ch. I (7-1-98 Edition)

paragraph (c) of this section. To the extent that Federal funds are available, the Secretary shall award grants in the order of their priority on this list during the fiscal year beginning on October 1 of the calendar year in which the list is made. Once the list is established for the purpose of awarding grants, the Secretary shall not add projects or change the list in any way except to delete a project at the request of the State which has applied for grant assistance for that project or upon the award by the Secretary of a grant for a project on the list.

(Authority: 38 U.S.C. 8135(b)(4))

(e) The Secretary may conditionally approve a project, conditionally award a grant for the project, and obligate funds for the grant if:

(1) The grant application is sufficiently complete to warrant the conditional award;

(2) The State requests conditional approval for its application and provides the Department of Veterans Affairs written assurance that it will complete the application and meet all requirements not later than 90 days after the date of conditional approval by the Secretary of the Department of Veterans Affairs.

The final grant award shall not exceed 10 percent of the amount conditionally approved, and in no case shall the total amount of the grant exceed 65 percent of the total estimated cost of the project. If the State fails to complete the remaining requirements within the 90 days from the date of conditional approval, the Secretary shall rescind the conditional approval and grant award, and deobligate the funds previously obligated for the project.

(Authority: 38 U.S.C. 8135(b)(4), (6)(A)–(7)(B))

(f) (1) The Secretary shall defer approval of an application that otherwise meets the requirements of 38 U.S.C. 8135, if the State which submitted the application does not, by July 1 of the Federal fiscal year in which the State is notified by the Assistant Chief Medical Director for Geriatrics and Extended Care of the availability of Federal funding for a grant for the project described in the application, demonstrate that the State has provided adequate financial support (matching funds) for such project. A State's enactment into law of a bill appropriating the State's share of funding for the project is acceptable to demonstrate that the State has provided adequate financial support (matching funds) for the project. The Department of Veterans Affairs will evaluate other types of assurances on a case by case basis.

(2) The Secretary will apply Federal funds, which had been intended for an application which has been deferred pursuant to subparagraph (1) of this paragraph to applications for State veterans nursing home or domiciliary projects that:

(i) Would not have been funded during the fiscal year but for the deferral,

(ii) Will meet the requirements of these regulations by the end of the Federal fiscal year, and

(iii) The Secretary has accorded the highest priority under paragraph (c) of this section.

(3) An application deferred in accordance with paragraph (e)(1) of this section shall be accorded priority in any subsequent Federal fiscal year ahead of applications that had not been approved before the first day of the Federal fiscal year in which the deferred application was first approved.

(Authority: 38 U.S.C. 8135(b)(5))

(g) The amount of a grant under these regulations shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being developed or any other agency or instrumentality of the applicant. Funds paid for an approved project will be used solely for carrying out such project as so approved.

(Authority: 38 U.S.C. 8135(d)(1))

(h) Any amendment of any application whether or not approved under paragraph (d) of this section will be subject to review and approval pursuant to the regulations concerning grants to States for construction of State home facilities in the same manner as an original application.

(Authority: 38 U.S.C. 8135(e))

(i) Any amendment of any application whether or not approved under paragraph (c) of this section will be
subject to review and approval pursuant to the regulations concerning grants to States for construction of State home facilities in the same manner as an original application.

(Authority: 38 U.S.C. 8135(e))

Information collection requirements contained in §17.213 were approved by the Office of Management and Budget under control number 2900-0502


§17.214 Disallowance of a grant application and notice of a right to hearing.

(a) Before disapproving an application submitted under §17.213, the Secretary shall notify the applicant of the opportunity for a hearing. The notice shall state:

(1) That the application’s disapproval has been proposed;
(2) The basis for the proposed disapproval;
(3) That a request for a hearing should be received in writing by the Secretary within 40 days from the date of this notice;
(4) That failure of an applicant to request a hearing as provided for by this section or to appear at a hearing for which a date has been set shall be deemed a waiver of the opportunity for a hearing.

(b) If an applicant requests a hearing after the expiration of the 40-day period, the Secretary may accept the request.

(c) An applicant who requests a hearing under the procedures specified by this section shall be notified of the time and place for the hearing. If the time or place set is inconvenient for the applicant, the Secretary may change the time or place for the hearing.

(d) The Secretary shall conduct the hearing. The hearing will be informal. The rules of evidence will not be followed. Witnesses shall testify under oath or affirmation. A record or transcript of the hearing shall be made. The Secretary who conducts the hearing may exclude from consideration irrelevant, immaterial, or unduly repetitious evidence or testimony.

(Authority: 38 U.S.C. 8135(c))


§17.215 Recapture provisions.

(a) Except as provided in paragraph (b) of this section, if within 20 years after completion of any project with respect to which a grant has been made under the regulations concerning grants to States for construction or acquisition of State home facilities, a facility constructed or acquired as part of such project ceases to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction 65 percent of the current value of such facility (but in no event an amount greater than the amount of assistance provided for such under these regulations), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated.

(Authority: 38 U.S.C. 8136)

(b) In the case of a grant where the Department of Veterans Affairs would provide between 50 and 65 percent of the estimated cost of expansion, remodeling, or alteration of an existing State Home facility recognized by the Department of Veterans Affairs in accordance with §17.190, the Secretary may at the time of the grant provide for the following recovery periods associated with the following grant amounts.

<table>
<thead>
<tr>
<th>Grant amount (dollars in thousands)</th>
<th>Recovery period (in years)</th>
</tr>
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<tbody>
<tr>
<td>0-250</td>
<td>7</td>
</tr>
<tr>
<td>251-500</td>
<td>8</td>
</tr>
<tr>
<td>501-750</td>
<td>9</td>
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<tr>
<td>751-1,000</td>
<td>10</td>
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<tr>
<td>1,001-1,250</td>
<td>11</td>
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<tr>
<td>1,251-1,500</td>
<td>12</td>
</tr>
<tr>
<td>1,501-1,750</td>
<td>13</td>
</tr>
<tr>
<td>1,751-2,000</td>
<td>14</td>
</tr>
<tr>
<td>2,001-2,250</td>
<td>15</td>
</tr>
<tr>
<td>2,251-2,500</td>
<td>16</td>
</tr>
<tr>
<td>2,501-2,750</td>
<td>17</td>
</tr>
</tbody>
</table>
If the magnitude of the Department of Veterans Affairs contribution is below 50 percent of the estimated cost of the expansion, remodeling, or alteration of an existing State home facility recognized by the Department of Veterans Affairs in accordance with § 17.190, the Secretary may authorize a recovery period between 7 and 20 years depending on the grant amount involved and the magnitude of the project.

(Authority: 38 U.S.C. 8136)

§ 17.216 General program requirements for construction and acquisition of and equipment for State home facilities.

(a) Introduction. (1) The general program requirements set forth in this section have been established to guide the State agencies and their architects in preparing drawings, specifications, cost estimates, and the equipment list for the grant application.

(2) States shall apply the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of State home projects. UFAS standards establish requirements for facility accessibility by physically handicapped persons for Federal and Federally-funded facilities and were jointly developed by the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service, under the authority of sections 2, 3, 4, and 4a of the Architectural Barriers Act of 1968, as amended, Public Law 90-480, 42 U.S.C. 4151-4157.

(3) States must comply with these requirements where they exceed any National, State, or local codes. If the State or local codes exceed these general requirements, compliance with the more stringent standard is required.

(4) The space allotted to the various services (i.e., medical, nursing, dietary, and the like) will depend upon the requirements of the facility. Some services that are required by these regulations to be in separate spaces or rooms, may be combined if the result will not compromise safety and medical and nursing practices. The Department of Veterans Affairs shall accept a design and waive minimum requirements where a service or services will have minimal renovations and remain in their present locations.

(Authority: 38 U.S.C. 8134(2))

(b) General conditions of the contract for construction. The applicant may use the general conditions of the contract for construction of the American Institute of Architects (AIA) or other general conditions as required by the State in awarding contracts for State home grant projects. (See 37 CFR part 43 for contract requirements.)

(c) Program criteria. The State will use the program criteria in §§ 17.217 and 17.218, as required by the scope of the project, subject to the approval of the Department of Veterans Affairs.

(Authority: 38 U.S.C. 8134(2))

§ 17.217 Domiciliary and nursing home care program.

(a) Objective. Domiciliary and nursing home care facilities should provide a therapeutic, rehabilitative, safe and home-like environment to assist in maintaining or restoring veterans to the highest level of functioning. Long-term care facilities shall be designed to encourage and facilitate participation in therapeutic programs.

(Authority: 38 U.S.C. 8134(2))

(b) General. All newly constructed domiciliary beds shall meet nursing home care construction standards and be suitable to provide for future conversion to nursing home care if needed. The Department of Veterans Affairs may waive this requirement if the State shows that it will need domiciliary beds more than nursing home beds for eligible veterans. See § 17.222 of this part.

(Authority: 38 U.S.C. 8134(2))

(c) Nursing units. A nursing unit with related facilities will normally be constructed so that nurses may supervise

<table>
<thead>
<tr>
<th>Grant amount (dollars in thousands)</th>
<th>Recovery period (in years)</th>
</tr>
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<tbody>
<tr>
<td>2,751–3,000 .......................................................</td>
<td>18</td>
</tr>
<tr>
<td>Over 3,000 .........................................................</td>
<td>20</td>
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30 to 60 patients. If there are design limitations, fewer beds are permissible. A 30-bed unit with a centrally located nursing station is preferred on skilled care units to provide efficient use of staff. A design that minimizes the distance between rooms and nursing stations is recommended. Patient storage may be planned in each nursing unit for bulky clothing that will not fit into patients’ closets. A nurses’ call system shall be required for nursing units. Each patient shall be furnished with an audiovisual or visual nurses’ call system which will register a call from the patient with the signal light above the corridor door and at the nursing station in hospitals and nursing homes. An empty conduit system shall be installed for domiciliaries for use in a potential future conversion to a nursing home. A nursing call system shall also be provided in each patient’s toilet room and bathroom. Wiring for a nurses’ call system shall be installed in conduit.

(Authority: 38 U.S.C. 8134(2))

(d) Bed configurations. At least 80 percent of the total beds should be in single and/or double bed rooms. Rooms shall have no more than four beds. Two large two-bed rooms are allowed for a 50-60 bed unit. Adequate space should be provided to allow access to three sides of each bed for the staff to work and utilize medical and emergency equipment.

(Authority: 38 U.S.C. 8134(2))

(e) Patient bedrooms. Each bedroom shall have direct access to an enclosed toilet and lavatory. The percentage of the patient bedrooms that shall be accessible to the physically handicapped must comply with UFAS requirements. These rooms must include UFAS clearances around beds and 5-foot wheelchair turning radius. Individual privacy should be provided by screens, privacy curtains, or similar approaches in bedrooms for more than one patient. No patient room shall be located on a floor which is more than 50 percent below grade level. It is desirable that patient rooms include:

1. Wardrobes with closets and drawers large enough to accommodate the personal clothing of patients who require care for an extended period of time.
2. Room for a desk, lounge chair, television, and other personal belongings.
3. Total electric beds.
4. A sink and mirror.
5. Piped oxygen and vacuum suction for patients as required.
6. Operable windows to allow access to air. The sill shall be low enough to permit patients to view the ground while sitting.

(Authority: 38 U.S.C. 8134(2))

(f) Patient room toilets. Patient toilets must be designed for maximum accessibility and safety for the patients and to facilitate staff assistance. One toilet/bathroom for each bedroom is preferred with a maximum of four beds for each bathroom. Shower/tub rooms should provide an area for setting clean clothes and supplies. Adequate ventilation should be provided to prevent condensation and mildew. The percentage of the patient toilets/bathrooms that are accessible to the physically handicapped must comply with UFAS requirements. These rooms must include UFAS clearances, grab bar configurations, and mounting heights. Alternative grab bar configurations may be used for the remaining percentage of patient toilets/bathrooms as approved by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 8134(2))

(g) Reception and control. Information, telephone, switchboard, mailboxes, and control center facilities should be located adjacent to the main lobby entrance. The information desk serves as a first point of contact, information, and control area for those entering for admission, a visit, or business.

(Authority: 38 U.S.C. 8134(2))

(h) Administrator/Director’s suite. The project may include an administrator/director’s suite to include all administrative activities required by the Director, Assistant Director, and their immediate staffs, including secretaries, analysts, administrative assistants, and/or trainees.

(Authority: 38 U.S.C. 8134(2))
§ 17.218  State home hospital program.

(a) General. The Department of Veterans Affairs cannot participate in the construction of new State home hospitals. However, the Department of Veterans Affairs may participate in the remodeling, alteration, or expansion of existing State home hospitals.

(38 U.S.C. 8134(2))

(b) General. The Department of Veterans Affairs cannot participate in the construction of new State home hospitals. However, the Department of Veterans Affairs may participate in the remodeling, alteration, or expansion of existing State home hospitals.

(38 U.S.C. 8134(2))
§ 17.219 Preapplication phase.

A State shall submit to the Department of Veterans Affairs a preapplication (SF-424, 424C, and 424D) for Federal assistance for each State home project if Federal participation exceeds $100,000. An original and two copies are required. Costs incurred for the project by the State after the date the Department of Veterans Affairs notifies the State that the project is feasible for Department of Veterans Affairs participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees.

(a) Purpose. A preapplication is required to determine the applicant’s general eligibility, to establish communication between the Federal agency and the applicant, and to identify those proposals which are not feasible for Department of Veterans Affairs participation before the applicant incurs significant expenditures in preparing a formal application. Filing a preapplication by April 15 of each year will give the Department sufficient time to accomplish these purposes. The State shall submit to the Department of Veterans Affairs a letter designating the State Official authorized to apply for a State home construction or acquisition grant and a point of contact for all matters relating to a State home grant. If the authorized State official is changed, notice shall be provided in writing to the Department of Veterans Affairs.

(b) Preapplication requirements. The preapplication shall include schematic drawings, a space program, and a needs assessment. States applying for Federal assistance for new State home beds shall provide justification for the beds by addressing the following areas:

(1) Demographic characteristics of the veteran population of the area;
(2) Availability and suitability of alternative health care providers and facilities in the area;
(3) Waiting lists for existing State home beds;
(4) Documentation that existing State home facilities in the State meet current codes and standards;
(5) Availability of acute medical care services and qualified medical care personnel to staff the proposed facility;
(6) Other information that may be required by the Assistant Chief Medical Director for Geriatrics and Extended Care in the Department of Veterans Affairs.

(c) Revisions to preapplications. GranteeS shall request approval from the Department of Veterans Affairs for significant revisions after preapplications have been submitted to the Department of Veterans Affairs. If the scope changes and/or cost estimates increase by more than 10 percent, a new preapplication may be required which will be subject to the same review and approval procedure as for the original preapplication.
§ 17.220  

(Authority: 38 U.S.C. 8134(2))

Information collection requirements contained in §17.219 were approved by the Office of Management and Budget under control number 2900–0520)


§ 17.220 Application phase.

(a) General. The applicant shall submit an original and two copies of the formal application (SF 424, 424C, and 424D) after the preapplication has been reviewed by the Department of Veterans Affairs and determined feasible for Department of Veterans Affairs participation. The application must meet the requirements of parts 43 and 44 of this chapter and include an updated space program, design development plans (35 percent), and specifications as outlined in paragraph (b) of this section.

(Authority: 38 U.S.C. 8134(2))

(b) VA review. (1) Program. The applicant shall provide a narrative description of existing or planned program(s) at the facility and how this project will affect the operation of the existing State home (if applicable).

(2) Cultural resources. The applicant shall provide a letter and two copies from the State Historic Preservation Officer (SHPO) stating whether the project area includes any properties on, eligible for, or likely to meet the criteria for the National Register of Historic Places. If the property does, or may include, National Register quality properties, the letter from the SHPO should discuss the determination of effect of the proposed project on such property.

(3) Design development site plan. The applicant shall submit a site survey which has been performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(4) Design development (35 percent) drawings. The applicant shall provide to the Department of Veterans Affairs one set of sepias and eight sets of prints, rolled individually per set, to expedite the review process. The drawings shall indicate the designation of all spaces, size of areas and rooms and indicate in outline the fixed and movable equipment and furniture. The drawings shall be drawn at 1/8" or 1/4" scale. Bedroom and toilet layouts, showing clearances and UFAS requirements, should be shown 1/4" scale. The floor and room areas shall be shown in the drawings. The drawings shall include:

(i) Plan of any proposed demolition work;

(ii) A plan of each floor. For renovations, the existing conditions and extent of new work should be clearly delineated;

(iii) Elevations;

(iv) Sections and typical details;

(v) Roof plan;

(vi) Fire protection plans; and

(vii) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the building’s current use and type of construction.

(5) Space program. The State shall submit a space program which includes a list of each room or area and the square feet proposed. The plan should note special or unusual services or equipment. The format should be similar to the Chart of Net Square Feet Allowed and room titles contained in §17.222 (c)(5)(i) through (c)(5)(iii) of this part.

(6) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical, and mechanical
systems such as elevators, nurses' call system, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(7) Design development cost estimates. Three copies of cost estimates shall be included in the application to the Department of Veterans Affairs. Estimates shall show the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees, and construction supervision and inspection. Unless justified by the State, the Department of Veterans Affairs allowance for equipment not included in the construction contract shall not exceed 10 percent of the construction or acquisition contract cost. The Department of Veterans Affairs allowance for contingencies shall not exceed 5 percent of the total project cost for new construction or 8 percent of the total project cost for remodeling or renovation projects. If the project involves non-Federal participating areas, such costs should be itemized separately.

(8) Design development conference. After Department of Veterans Affairs review of the design development documents, a design development conference is recommended for all major projects. This will provide an opportunity for the applicants and their architects to learn Department of Veterans Affairs procedures and requirements for the project and to discuss Department of Veterans Affairs review comments. The material in paragraphs (b)(1) through (b)(7) of this section should be submitted for Department of Veterans Affairs review at least three weeks before the design development conference in the Department of Veterans Affairs Central Office in Washington, DC.

(Authority: 38 U.S.C. 8134(2))

(c) Final review and approval (100% construction documents, bid tabulations and cost estimates). (1) The applicant shall submit to the Department of Veterans Affairs for review and approval one labeled set of microfiche aperture cards, microfilm, or Compact Disc/Read Only Memory (CD ROM) compact laser disc with 100% construction documents (plans and specifications). The applicant shall also submit three copies of: itemized bid tabulations; assurances of compliance with Federal requirements, and revised budget page (SF 424C) based on the selected bids. This should include final cost estimates for all item in the project. Three signed copies of the Memorandum of Agreement shall be submitted which reflect the total estimated cost of the project and the Department of Veterans Affairs participation in the total cost.

(2) Following approval of final construction documents, bid tabulations, and costs estimates, the Secretary will sign the Memorandum of Agreement awarding the grant and committing available Federal funds.

(Authority: 38 U.S.C. 8134(2))

(d) Construction or acquisition. The State shall enter into a construction or acquisition contract and begin construction or acquisition of the State home within 90 days after the final grant has been awarded by the Secretary of Veterans Affairs. Any delays beyond 90 days must be fully justified by the State and approved by the Department of Veterans Affairs or the grant may be rescinded.

(Authority: 38 U.S.C. 8134(2))

(e) Grant revisions. When significant deviations occur in the approved program or budget, the procedures set forth in paragraphs (e) (1) and (2) of this section shall apply.

(1) If a State has received the award of a construction or acquisition grant, the State shall request prior approval from the Department of Veterans Affairs for programmatic or budgetary revisions when the scope or objective of the project changes in a significant manner or when an approved line item budgeted amount increases or decreases by more than 10 percent. All grant modifications of this type shall be within the total contingency allowance of 5 percent for new construction or 8 percent for remodeling or renovation.
§ 17.221

(a) General. Equipment necessary for the State home’s planned effective operation shall be included in the cost of the project.

(b) Definition of equipment. The term equipment as used in this section means all items necessary for the functioning of all services of the State home, including equipment as needed to provide for accounting and other records, and maintenance of buildings and grounds. The term equipment does not include consumable supplies such as food, drugs, dressings paper, printed forms, soap, and the like which are routinely required to operate the State home.

(c) Classification of equipment. All equipment shall be classified in two groups as indicated in paragraphs (c) (1) and (2) of this section:

(1) Fixed equipment (included in construction/acquisition contract). Fixed equipment is permanently affixed to the building or is connected to service distribution systems designed and installed during construction (e.g., kitchen and intercommunication equipment, built-in casework, and cubicle curtain rods). The Federal share in the cost of such equipment, included in the construction contract, will be determined by the Department of Veterans Affairs.

(2) Movable and fixed equipment (not included in construction/acquisition contract). Movable and fixed equipment may be purchased separately from the construction or acquisition contract and includes furniture, furnishings, wheeled equipment, kitchen utensils, linens, draperies, venetian blinds, electric clocks, pictures, and trash cans. The Federal share in the cost of such equipment not included in the project contract will be limited to 10 percent of the project contract cost unless justified by the State and approved by the Department of Veterans Affairs.

(2) In unusual and unanticipated circumstances, the Department of Veterans Affairs may participate in modifications to a grant that exceeds the contingency allowance by awarding a grant increase for the project. A grant increase will require an amended application from the State and complete justification, subject to the approval of the Department of Veterans Affairs. The amended application for a grant increase will be treated as an original application for the purpose of the priority list and the award of any additional Federal funds for the project.

(3) Final architectural and engineering inspection. The grantee shall notify the Department of Veterans Affairs immediately upon completion of the project and request a final architectural and engineering inspection. This inspection is required prior to final payment under the construction or acquisition grant.

(Authority: 38 U.S.C. 8134(2))

(4) Information collection requirements contained in §17.220 were approved by the Office of Management and Budget under control number 2900-0520.

§ 17.222 General design guidelines and standards.

(a) General. Nursing homes and domiciliaries should be planned to approximate the home atmosphere as closely as possible. These guidelines and standards include minimum requirements for site selection and development; architectural design including handicapped accessibility and allowable space criteria; structural, mechanical, and electrical design; plumbing systems and elevator requirements; fire safety criteria; and asbestos abatement rules. State homes to be constructed or acquired with Federal financial assistance shall comply with applicable National, State, and local codes. Such codes include building codes, electrical codes, seismic codes, fire and life safety codes, plumbing codes, and others. Both nursing homes and domiciliaries are health care occupancies, and all space shall be protected with a sprinkler system as well as quick response sprinklers for all smoke compartments containing patient sleeping rooms.

(1) Except as provided in paragraphs (a)(1)(i) and (a)(1)(ii) of this section, in no case shall the total cost of remodeling exceed the cost of constructing a comparable new building or facility.

(i) If a building or facility is on or eligible for the National Register of Historic Places, the total cost of remodeling, renovating, or adapting it may exceed the cost of comparable new construction by five percent.

(ii) If the demolition of a building on or eligible for the National Register of Historic Places is necessary, the cost to professionally record the building for the Historic American Buildings Survey (HABS) plus the total cost for demolition and site restoration shall be included by the State in calculating the total cost of new construction.

(2) The cost of routine maintenance and replacement of mechanical, electrical, structural and architectural work, or maintenance and repair of any building system or equipment will not be considered as a cost for construction or acquisition for a State home grant application. The Department of Veterans Affairs may waive this requirement if it is determined that the work is necessary to comply with standards of life safety or quality patient care or is involved inextricably with the construction or acquisition project.

(b) Site selection and development.—(1) Site accessibility. The site should be located in a safe, secure, residential-type area which is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.

(2) Mineral rights. The State shall establish whether the site is subject to mineral rights which have not been developed and include a report on the mineral rights as part of the formal application.
§ 17.222 38 CFR Ch. I (7-1-98 Edition)

(3) Limitations. The State should avoid sites that are near insect-breeding areas, noise or other industrial developments: airports, railways or highways producing noise or air pollution; or potential flood hazards. In the event that these site related disadvantages cannot be avoided, adequate provision will be made to eliminate or minimize the condition.

(4) Alternatives. The State shall look at alternative sites for the State home unit and submit a report on these sites to the Department of Veterans Affairs for review early in the application phase.

(5) Demolition plan. The cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project. If the State believes that this cost may be included in the cost of the construction project, a demolition plan should be submitted which includes the extent and cost of existing site features to be removed, stored, or relocated.

(6) Asbestos abatement. For existing buildings, a certified industrial hygienist shall be hired for assessment, design, cost estimate, and construction monitoring for asbestos abatement. The abatement process shall follow EPA, OSHA, State, and local regulations and guidelines.

(c) Architectural requirements. (1) Finishes. Walls shall be washable or easily cleaned and smooth. Walls in kitchens and related spaces shall have glazed materials or similar finish and bases shall be waterproof and free from voids. Walls subjected to wetting should also be glazed to a point above the splash or spray line. Wainscots of durable material should be used in patient corridors and other corridors where there is considerable wheeled traffic. Emphasis should be placed on the use of materials for walls and floors that are safe, sanitary, and noise-reducing. The color scheme should provide an attractive and therapeutic environment for elderly patients.

(2) Handicapped accessibility. All State home facilities shall provide necessary ingress, egress, and movement throughout the facility for the physically handicapped and elderly in compliance with the Uniform Federal Accessibility Standards (UFAS). Disabled persons shall be provided with access and use that is independent, convenient, and substantially equivalent to that provided other persons.

(3) Doors. All doors should be easy to open and in accordance with UFAS requirements.


(5) Space program criteria. (i) General. The chart at paragraph (c)(5)(iii) of this section shows the net square footage allowed for Department of Veterans Affairs participation in the cost of the State nursing homes and domiciliaries.

(ii) Deviations. Any deviation from these space criteria of more or less than 10 percent, except to meet a more stringent State or local requirement, must be justified by the State and approved by the Department of Veterans Affairs if the space is to be included in the cost of construction. The Assistant Chief Medical Director for the Office of Geriatrics and Extended Care may approve a deviation if it will improve the safety, quality of care, or quality of life provided to veterans in a State home. If a deviation is not approved by the Department of Veterans Affairs, the cost of questionable space will not
be included and the percentage of Federal participation may be reduced.

### I. Support facilities (maximum allowable square feet per facility for VA participation):

<table>
<thead>
<tr>
<th>Facility Description</th>
<th>Non-Convertible Domiciliary (DOM)</th>
<th>Convertible DOM/Nursing Home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator’s office</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Assistant administrator</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Medical officer, director of nursing or equivalent</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Nurse’s office and dictation area</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>General administration (each office/person)</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Clerical staff (each)</td>
<td>300</td>
<td>500</td>
</tr>
<tr>
<td>Computer area</td>
<td>80</td>
<td>80</td>
</tr>
<tr>
<td>Conference room (consultation area, in-service training)</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Lobby/waiting area</td>
<td>3 (per bed) (150 min./600 max. per facility)</td>
<td>3 (per bed)</td>
</tr>
<tr>
<td>Public/patient toilets (male/female)</td>
<td>25 (per fixture)</td>
<td>25 (per fixture)</td>
</tr>
<tr>
<td>Pharmacy</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dietary service</td>
<td>(As required)</td>
<td>(As required)</td>
</tr>
<tr>
<td>Dining area</td>
<td>20 (per bed)</td>
<td>20 (per bed)</td>
</tr>
<tr>
<td>Canteen/retail sales</td>
<td>2 (per bed)</td>
<td>2 (per bed)</td>
</tr>
<tr>
<td>Vending machines</td>
<td>1 (per bed) (450 maximum per facility)</td>
<td>1 (per bed)</td>
</tr>
<tr>
<td>Resident toilets (male/female)</td>
<td>25 (per fixture)</td>
<td>25 (per fixture)</td>
</tr>
<tr>
<td>Child day care</td>
<td>(As required)</td>
<td>(As required)</td>
</tr>
<tr>
<td>Medical support (offices/exam/treatment room/family counseling, etc.)</td>
<td>140 (each)</td>
<td>140 (each)</td>
</tr>
<tr>
<td>Barber and/or beauty shops</td>
<td>140</td>
<td>140</td>
</tr>
<tr>
<td>Mail room</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Janitor’s closet</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Multiple room</td>
<td>15 (per bed)</td>
<td>15 (per bed)</td>
</tr>
<tr>
<td>Employee lockers</td>
<td>6 (per employee)</td>
<td>6 (per employee)</td>
</tr>
<tr>
<td>Employee lounge</td>
<td>120 (maximum 500 per facility)</td>
<td>120</td>
</tr>
<tr>
<td>Employee toilets</td>
<td>25 (per fixture)</td>
<td>25 (per fixture)</td>
</tr>
<tr>
<td>Chapel</td>
<td>450</td>
<td>450</td>
</tr>
<tr>
<td>Physical therapy</td>
<td>2.5 (per bed)</td>
<td>2.5 (per bed)</td>
</tr>
<tr>
<td>Office if required</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Occupational therapy</td>
<td>5 (per bed)</td>
<td>5 (per bed)</td>
</tr>
<tr>
<td>Office if required</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Library</td>
<td>1.5 (per bed)</td>
<td>1.5 (per bed)</td>
</tr>
<tr>
<td>Building maintenance storage</td>
<td>2.5 (per bed)</td>
<td>2.5 (per bed)</td>
</tr>
<tr>
<td>Resident storage</td>
<td>6 (per bed)</td>
<td>6 (per bed)</td>
</tr>
<tr>
<td>General warehouse storage</td>
<td>6 (per bed)</td>
<td>6 (per bed)</td>
</tr>
<tr>
<td>Medical/dietary</td>
<td>7 (per bed)</td>
<td>7 (per bed)</td>
</tr>
<tr>
<td>General laundry</td>
<td>(As required)</td>
<td>(As required)</td>
</tr>
</tbody>
</table>

### II. Bed units (50 Beds):

<table>
<thead>
<tr>
<th>Facility Description</th>
<th>Non-Convertible Domiciliary (DOM)</th>
<th>Convertible DOM/Nursing Home</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Two</td>
<td>230</td>
<td>245</td>
</tr>
<tr>
<td>Large two-bed (2 per unit)</td>
<td>340</td>
<td>370</td>
</tr>
<tr>
<td>Three</td>
<td>450</td>
<td>460</td>
</tr>
<tr>
<td>Four</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Lounge areas (resident lounge with storage)</td>
<td>8 (per bed)</td>
<td>8 (per bed)</td>
</tr>
<tr>
<td>Resident quiet room</td>
<td>3 (per bed)</td>
<td>3 (per bed)</td>
</tr>
<tr>
<td>Clean utility</td>
<td>105</td>
<td>105</td>
</tr>
<tr>
<td>Linen storage</td>
<td>90</td>
<td>150</td>
</tr>
<tr>
<td>General storage</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Nurses station, ward secretary</td>
<td>0</td>
<td>260</td>
</tr>
<tr>
<td>Medication room</td>
<td>0</td>
<td>75</td>
</tr>
<tr>
<td>Waiting area</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Unit supply and equipment</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Staff toilet</td>
<td>25 (per fixture)</td>
<td>25 (per fixture)</td>
</tr>
<tr>
<td>Stretcher/wheelchair storage</td>
<td>75</td>
<td>100</td>
</tr>
<tr>
<td>Kitchenette</td>
<td>150</td>
<td>120</td>
</tr>
<tr>
<td>Janitor’s closet</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Resident laundry</td>
<td>125</td>
<td>125</td>
</tr>
<tr>
<td>Trash collection</td>
<td>60</td>
<td>60</td>
</tr>
</tbody>
</table>

### III. Bathing and Toilet Facilities:

(A) Private or shared facilities:

<table>
<thead>
<tr>
<th>Facility Description</th>
<th>Non-Convertible Domiciliary (DOM)</th>
<th>Convertible DOM/Nursing Home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheelchair facilities</td>
<td>25 (per fixture)</td>
<td>25 (per fixture)</td>
</tr>
<tr>
<td>Standard facilities</td>
<td>15 (per fixture)</td>
<td>15 (per fixture)</td>
</tr>
</tbody>
</table>

(B) Full bathroom:

<table>
<thead>
<tr>
<th>Facility Description</th>
<th>Non-Convertible Domiciliary (DOM)</th>
<th>Convertible DOM/Nursing Home</th>
</tr>
</thead>
<tbody>
<tr>
<td>First tub/shower</td>
<td>80</td>
<td>80</td>
</tr>
</tbody>
</table>
§ 17.230 Sharing of medical facilities, equipment, and information

(a) Priority care to active duty personnel. The Secretary, during and/or immediately following a period of war or national emergency declared by the Congress or the President that involves the use of United States Armed Forces in armed conflict, is authorized to furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. The Secretary may give higher priority in the furnishing of such care and services in VA facilities to members of the Armed Forces on active duty than to any other group of persons eligible for such care and services with the exception of veterans with service-connected disabilities.

(b) Contract authority. During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under paragraph (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements, may authorize VA facilities to enter into contracts with private facilities for the provision during such period of hospital care and medical services for certain veterans. These veterans include only those who are receiving hospital care under 38 U.S.C. 1710 or, in emergencies, for those who are eligible for treatment under that section, or who are receiving care under 38 U.S.C. 1712 (f) and (g). This authorization pertains only to circumstances in which VA facilities are not capable of furnishing or continuing to furnish the care or services required because of the furnishing of care and services to members of the Armed Forces.

§ 17.240 Sharing specialized medical resources.

Subject to such terms and conditions as the Under Secretary for Health shall prescribe, agreements may be entered into for sharing medical resources with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a medical community with geographical limitations determined by the Under Secretary for Health, provided:

(a) The agreement will achieve one of the following purposes: (1) It will secure the use of a specialized medical resource which otherwise might not be feasibly available by providing for the mutual use or exchange of use of specialized medical resources when such an agreement will obviate the need for a similar resource to be installed or provided at a facility operated by the Department of Veterans Affairs, or

(b) Contract authority. During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under paragraph (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements, may authorize VA facilities to enter into contracts with private facilities for the provision during such period of hospital care and medical services for certain veterans. These veterans include only those who are receiving hospital care under 38 U.S.C. 1710 or, in emergencies, for those who are eligible for treatment under that section, or who are receiving care under 38 U.S.C. 1712 (f) and (g). This authorization pertains only to circumstances in which VA facilities are not capable of furnishing or continuing to furnish the care or services required because of the furnishing of care and services to members of the Armed Forces.

(2) It will secure effective use of Department of Veterans Affairs specialized medical resources by providing for the mutual use, or exchange of use, of specialized medical resources in a facility operated by the Department of Veterans Affairs, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity; and

(b) The agreement is determined to be in the best interest of the prevailing standards of the Department of Veterans Affairs Medical Program; and

(c) The agreement provides for reciprocal reimbursement based on a charge which covers the full cost of the use of

[Authority: 38 U.S.C. 8111A]

[Authority: Sec. 501 and 1720(a) of Title 38, U.S.C.]

§ 17.242 Coordination of programs with Department of Health and Human Services.

Programs for sharing specialized medical resources or medical information services shall be coordinated to a
§ 17.250 Scope of the grant program.

The provisions of §17.250 through §17.266 are applicable to grants under 38 U.S.C. 8155 for programs for the exchange of medical information. The purpose of these grants is to assist medical schools, hospitals, and research centers in planning and carrying out agreements for the exchange of medical information, techniques, and information services. The grant funds may be used for the employment of personnel, the construction of facilities, the purchasing of equipment, research, training or demonstration activities when necessary to implement exchange of information agreements.

§ 17.252 Ex officio member of subcommittee.

The Assistant Chief Medical Director for Academic Affairs shall be an ex officio member of the Subcommittee on Academic Affairs.

§ 17.253 Applicants for grants.

Applicants for grants generally will be persons authorized to represent a medical school, hospital, or research center which has in effect or has tentatively approved an agreement with the Department of Veterans Affairs to exchange medical information.

§ 17.254 Applications.

Each application for a grant shall be submitted to the Under Secretary for Health on such forms as shall be prescribed and shall include the following evidence, assurances, and supporting documents:

(a) To specify amount. Each application shall show the amount of the grant requested, and if the grant is to be for more than one objective, the amounts allocated to each objective (e.g., to training, demonstrations, or construction) shall be specified, and

(b) To include copy of agreement. Each application shall be accompanied by a copy of the agreement for the exchange of information or information services which the grant funds applied for will implement, and

(c) To include descriptions and plans. Each application shall include a description of the use to which the grant funds will be applied in sufficient detail to show need, purpose, and justifications, and shall be illustrated by financial and budgetary data, and

(d) To include cost participation information. Each application shall show the amount of the grant requested to be used for direct expenses by category of direct expenses, the amount requested for indirect expenses related to the direct expenses, any additional amounts which will be applied to the program or planning from other Federal agencies, and from other sources, and amounts or expenses which will be borne by the applicant, and

(e) To include assurance records will be kept. Each application shall include
Department of Veterans Affairs

§ 17.257

Applications for grants for programs which include construction projects.

In addition to the documents and evidence required by §17.254, any application for a grant for the construction of any facility, structure or system which is part of an exchange of information program shall include the following:

(a) Each application shall include complete descriptions, maps, and surveys of the construction site, and documentary evidence and explanations showing ownership, and

(b) Each application shall include complete plans and specifications for the construction project, and where applicable, sufficient explanations of technical applications so that they may be understood by the layman, and

(c) Each application shall contain assurance that the rates of pay for laborers and mechanics engaged in construction activities will not be less than the prevailing local wage rates for similar work as determined in accordance with the provisions of 40 U.S.C. 276a—276a-5 (The Davis-Bacon Act).

§ 17.256 Amended or supplemental applications.

An amended application, or an application for a supplemental grant, may be considered either before or after final action has been taken on the original application. Amended applications and applications for supplemental grants shall be subject to the same terms, conditions and requirements necessary for original applications.

§ 17.257 Awards procedures.

Applications for grants for planning or implementing agreements for the exchange of medical information or information facilities shall be reviewed by the Under Secretary for Health or designee. If it is determined approval of the grant is warranted, recommendations to that effect shall be made to the Secretary in writing and shall be accompanied by the following:

(a) The recommendation for approval shall be accompanied by the written...
§ 17.258

recommendation of the Subcommittee
on Academic Affairs, and
(b) The recommendation for approval
shall be accompanied by the written
draft of the certificate of award stating
all conditions which the grantee is re-
quired to agree to under the provisions
of §17.258 and all other conditions to
which it has been determined the grant
will be subject, and
(c) The recommendation shall in-
clude a certification that sufficient ap-
propriated funds are available, and
that the application for the grant is
sufficient in all details as specified in
§§17.254 through 17.256.
[33 FR 6012, Apr. 19, 1968, as amended at 42
FR 54805, Oct. 11, 1977. Redesignated and
amended at 61 FR 21966, 21969, May 13, 1996]

§ 17.259 Terms and conditions to
which awards are subject.

Each certificate of award of a grant
for planning or implementing an agree-
ment for the exchange of information
or information facilities shall specify
that the grant is subject to the follow-
ing terms and conditions:
(a) Grants subject to terms of agreement
for exchange of information. Each grant
shall be subject to, and the certificate
shall incorporate by reference, all
terms, conditions, and obligations
specified in the agreement or planning
protocols which the grant will imple-
ment, and
(b) Grants subject to assurances in ap-
plication. Each grant shall be subject to
all assurances made by the grantee in
its application for the grant as re-
quired by §§17.254 through 17.256, and
(c) Grants subject to limitations on use
of funds. Each grant shall be subject to
the limitations on the use of grant
funds, either for direct or indirect
costs, as prescribed in §§17.259 through
17.261, and
(d) Grants subject to special provisions.
Each grant shall be subject to any spe-
cial terms or conditions which may be
warranted by circumstances applicable
to individual applications, and speci-
fied in the certificate of award.
[33 FR 6012, Apr. 19, 1968. Redesignated and
amended at 61 FR 21966, 21969, May 13, 1996]

§ 17.260 Patient care costs to be ex-
cluded from direct costs.

Grant funds for planning or imple-
menting agreements for the exchange
of medical information shall not be
available for the payment of any hos-
pital, medical, or other costs involving
the care of patients except to the ex-
tent that such costs are determined to
be incident to research, training, or
demonstration activities carried out in
connection with an exchange of infor-
mation program.
[33 FR 6012, Apr. 19, 1968. Redesignated at 61
FR 21966, May 13, 1996]

§ 17.261 Indirect costs.

The grantee shall allocate expendi-
tures as between direct and indirect
costs according to generally accepted
accounting procedures. The amount al-
located for indirect costs may be com-
puted on a percentage basis or on the
basis of a negotiated lump-sum allow-
ance. In the method of computation
used, only indirect costs shall be in-
cluded which bear a reasonable rela-
tionship to the planning or program
funded by the grant and shall not ex-
ceed a percentage greater than the per-
centage the total institutional indirect
cost is of the total direct salaries and
wages paid by the institution.
[33 FR 6012, Apr. 19, 1968. Redesignated at 61
FR 21966, May 13, 1996]

§ 17.262 Authority to approve applica-
tions discretionary.

Notwithstanding any recommenda-
tion by the Subcommittee on Aca-
demic Affairs of the Special Medical
Advisory Group, or any recommenda-
tion by the Under Secretary for Health
or designee, the final determination on
§ 17.263 Suspension and termination procedures.

Termination of a grant means the cancellation of Department of Veterans Affairs sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. Suspension of a grant is an action by the Department of Veterans Affairs which temporarily suspends Department of Veterans Affairs sponsorship under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the Department of Veterans Affairs.

(a) Posttermination appeal. The following procedures are applicable for reviewing postaward disputes which may arise in the administration or carrying out of the Exchange of Medical Information Grant Program.

(1) Reviewable decisions. The Department of Veterans Affairs reserves the right to terminate any grant in whole or in part at any time before the date of completion, whenever it determines that the grantee has failed to comply with conditions of the agreement, or otherwise failed to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) Notice. The Department of Veterans Affairs shall promptly notify the grantee in writing of the determination. The notice shall set forth the reason for the determination in sufficient detail to enable the grantee to respond, and shall inform the grantee of his or her opportunity for review by the Assistant Chief Medical Director for Academic Affairs.

(3) Request for appeal. A grantee with respect to whom a determination described in paragraph (a)(1) of this section has been made, and who desires review, may file with the Assistant Chief Medical Director for Academic Affairs an application for review of such determination. The grantee's application for review must be post-marked no later than 30 days after the postmarked date of notification provided pursuant to paragraph (a)(2) of this section.

(4) Contents of request. The application for review must clearly identify the question or questions in dispute, contain a full statement of the grantee's position in respect to such question or questions, and provide pertinent facts and reasons in support of his or her position. The Assistant Chief Medical Director for Academic Affairs will promptly send a copy of the grantee's application to the Department of Veterans Affairs official responsible for the determination which is to be reviewed.

(5) Effect of submission. When an application for review has been filed no action may be taken by the Department of Veterans Affairs pursuant to such determination until such application has been disposed of, except that the filing of the application shall not affect the authority which the constituent agency may have to suspend the system under a grant during proceedings under this section or otherwise to withhold or defer payments under the grant.

(6) Consideration of request. When an application for review has been filed with the Assistant Chief Medical Director for Academic Affairs, and it has been determined that the application meets the requirements stated in this paragraph, all background material of the issues shall be reviewed. If the application does not meet the requirements, the grantee shall be notified of the deficiencies.

(7) Presentation of case. If the Assistant Chief Medical Director for Academic Affairs believes there is no dispute as to material fact, the resolution of which would be materially assisted by oral testimony, both parties shall be notified of the issues to be considered, and take steps to afford both parties the opportunity for presenting their cases, at the option of the Assistant Chief Medical Director for Academic Affairs, in whole or in part in writing, or in an informal conference. Where it is concluded that oral testimony is required to resolve a dispute over a material fact, both parties shall be afforded an opportunity to present and cross-examine witnesses at a hearing.

(8) Decision. After both parties have presented their cases, the Assistant Chief Medical Director for Academic Affairs shall promptly notify the grantee in writing of the decision.
Affairs shall prepare an initial written decision which shall include findings of fact and conclusions based thereon. Copies of the decision shall be mailed promptly to each of the parties together with a notice informing them of their right to appeal the decision of the Secretary, or to the officer or employee to whom the Secretary has delegated such authority, by submitting written comments thereon within a specified reasonable time.

(9) Final decision. Upon filing comments with the Secretary, or designated officer or employee, the review of the initial decision shall be conducted on the basis of the decision, the hearing record, if any, and written comments submitted by both parties. The decision shall be final.

(10) Participation by a party. Either party may participate in person, or by counsel pursuant to the procedure set forth in this section.

(b) Termination for convenience. The Department of Veterans Affairs or the grantee may terminate a grant in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department of Veterans Affairs shall allow full credit to the grantee for the Department of Veterans Affairs share of the noncancellable obligations, properly incurred by the grantee prior to termination.

(c) Suspension procedures. When a grantee has failed to comply with the terms of the grant agreement and conditions or standards, the Department of Veterans Affairs may, on reasonable notice to the grantee, suspend the grant and withhold further payments, prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee, or make a decision to terminate as described in paragraph (a) of this section. The Department of Veterans Affairs shall allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal cost principles.


§ 17.264 Recoupments and releases.

In any case where the Department of Veterans Affairs or a grantee’s obligations under an exchange of information agreement implemented by grant funds are terminated, or where grant-financed equipment or facilities cease to be used for the purposes for which grant support was given, or when grant-financed property is transferred, the grantee shall return the proportionate value of such equipment or facility as was financed by the grant. When it is determined the Department of Veterans Affairs equitable interest is greater than proportionate value, then a claim in such greater amount shall be asserted. If it is determined an amount less than proportionate value or less than the Department of Veterans Affairs equitable interest should be recouped, or that the Department of Veterans Affairs should execute any releases, then a proposal concerning such a settlement or releases complete with explanations and justifications shall be submitted to the Assistant Chief Medical Director for Academic Affairs for a final determination.


§ 17.265 Payments.

Payments of grant funds are made to grantees through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check, as appropriate. A letter-of-credit is an instrument certified by an authorized official of the Department of Veterans Affairs which authorizes the grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and shall be used by the Department of Veterans Affairs where all the following conditions exist:
(a) When there is or will be a con-
tinuing relationship between the grant-
ee and the Department of Veterans Af-
fairs for at least a 12-month period and
the total amount of advance payments
expected to be received within that pe-
riod is $250,000, or more;
(b) When the grantee has established
or demonstrated the willingness and
ability to maintain procedures that
will minimize the time elapsing be-
tween the transfer of funds and their
disbursement by the grantee; and
(c) When the grantee’s financial man-
agement meets the standards for fund
control and accountability. An advance
by Treasury check is a payment made
to a grantee upon its request before
outlays are made by the grantee, or
through use of predetermined payment
schedules and shall be used by the De-
partment of Veterans Affairs when the
grantee meets all of the above require-
ments of this section except that ad-
vances will be less than $250,000, or for
a period less than 12 months. Reim-
bursement by Treasury check is a pay-
ment made to a grantee upon request
for reimbursement from the grantee
and shall be the preferred method when
the grantee does not meet the require-
ments of paragraphs (b) and (c) of this
section. This method may be used on
any construction agreement, or if the
major portion of the program is accom-
plished through private market financ-
ing or Federal loans, and the Federal
assistance constitutes a minor portion
of the program. When the reimburse-
ment method is used, the Department
of Veterans Affairs shall make pay-
ment within 30 days after receipt of the
billing, unless billing is improper. Un-
less otherwise required by law, pay-
ments shall not be withheld for proper
charges at any time during the grant
period unless a grantee has failed to
comply with the program objectives,
award conditions, or Federal reporting
requirements; or the grantee is in-
debted.

§ 17.351 Grants for the replacement
and upgrading of equipment at Vet-
erans Memorial Medical Center.
Grants to assist the Republic of the
Philippines in the replacement and up-
grading of equipment and in rehabili-
tating the physical plant and facilities
of the Veterans Memorial Medical Cen-
ter, which the Secretary may make
under the authority cited in §17.350,
shall be subject to such terms and con-
ditions as the Secretary may prescribe.
Among such terms and conditions to
which the grants will be subject, will
be advance approval by the U.S. De-
partment of Veterans Affairs of equip-
ment purchases, maintenance or repair
projects. The awarding of such grants

§ 17.350 The program of assistance to
the Philippines.
The provisions of this section
through §17.370 are applicable to grants
to the Republic of the Philippines and
to furnishing medical services under 38
U.S.C. 1724 and 1732, and 38 CFR 17.36
through 17.40, and implement the
"Agreement between the Government
of the United States of America and
the Government of the Republic of the
Philippines on the Use of the Veterans
Memorial Medical Center and the Pro-
vision of Inpatient and Outpatient
Medical Care and Treatment of Veter-
ans by the Government of the Phil-
ippines and Furnishing of Grants-in-
Aid Thereof by the Government of the
United States of America," dated April
25, 1967 (Treaties and Other Inter-
national Acts Series 6248), and a sub-
sidiary agreement of the same date,
both of which were entered into pursu-
ant to the provisions of 38 U.S.C. 1731-
1734. All such implementing regula-
tions have been approved by the Direc-
tor of the Office of Management and
Budget.

§ 17.266 Copyrights and patents.
If a grant-supported program results
in copyrightable material or patent-
able inventions or discoveries, the
United States Government shall have
the right to use such publications or
inventions on a royalty-free basis.

[42 FR 54806, Oct. 11, 1977. Redesignated at 61
FR 21966, May 13, 1996]
§ 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment.

Grants awarded under §17.351 shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for the purpose. Funds appropriated for the upgrading and replacement of equipment at the Veterans Memorial Medical Center, or for rehabilitating its equipment, shall remain available in consecutive fiscal years until expanded, but in no event shall exceed the amount of $500,000 per year. It is not intended that such funds will be utilized to expand the medical center facilities. Upgrading of equipment, however, would permit purchase of new and additional equipment not now possessed by the medical center.

(Authority: 38 U.S.C. 1732)


§ 17.355 Awards procedures.

All applications for grants to the Republic of the Philippines under the provisions of §17.351 shall be submitted to the Under Secretary for Health or a designee for consideration.

(Authority: 38 U.S.C. 1732)

[47 FR 58250, Dec. 30, 1982]

§ 17.362 Acceptance of medical supplies as payment.

Upon request of the Government of the Republic of the Philippines, payment for medical and nursing home services provided to eligible United States veterans may consist in whole or in part, of available medicines, medical supplies, or equipment furnished by the Department of Veterans Affairs to the Veterans Memorial Medical Center at valuations determined by the Secretary. Such valuations shall not be less than the cost of the items and shall include the cost of transportation, arrastre, brokerage, shipping and handling charges.

(Authority: 38 U.S.C. 1732(a)(2))

[47 FR 58250, Dec. 30, 1982]

§ 17.363 Length of stay.

In computing the length of stay for which payment will be made, the day of admission will be counted, but not the day of discharge, death, or transfer. Where a veteran for whom hospitalization has been authorized in Veterans Memorial Medical Center or a contract facility, is absent from the hospital for a period longer than 24 hours, no payment will be made for hospital care during that absence.

(Authority: 38 U.S.C. 1732)

[47 FR 58250, Dec. 30, 1982]

§ 17.364 Eligibility determinations.

Determinations of legal eligibility and medical need for hospitalization of United States veterans for treatment rest exclusively with the United States Department of Veterans Affairs. Determinations as to various factors upon which eligibility may depend shall be made as follows:

(a) Determinations of service connection. For the purpose of meeting any requirement in 38 U.S.C. 1724 and 1732, and 38 CFR 17.36 through 17.37 for service-connected disability, the United States Department of Veterans Affairs shall determine that under laws it administers the disability in question was incurred in or aggravated by service, and

(b) Determinations of valid service. For the purpose of determining the necessary prerequisite service, determinations by the Department of Defense of the United States as to military service shall be accepted. In those cases in which the United States Department of Veterans Affairs shall have information which it deems reliable and in conflict with the information upon which the Department of Defense determination was made, the conflicting information shall be referred to the Department of Defense for reconsideration and redetermination. Such determinations and redeterminations as to military service shall be conclusive.

(Authority: 38 U.S.C. 1712)

§ 17.365 Admission priorities.
Appropriate provisions of § 17.49 apply.
(Authority: 38 U.S.C. 1712)
(47 FR 58251, Dec. 30, 1982)

§ 17.366 Authorization of emergency admissions.
The Secretary of National Defense of the Republic of the Philippines shall make determinations as to whether any patient should be admitted in emergency circumstances before the U.S. Department of Veterans Affairs has made a legal determination of eligibility, except that liability for payment will not accrue to the United States until such eligibility determination has been made. Eligibility determinations will be given effect retroactively to the date of admission when the U.S. Department of Veterans Affairs has been notified by telephone, telegram, letter, or other communication of the emergency admission within 72 hours of the hour of admission. The Clinic Director of the VA Regional Office, Manila, may make an exception to the 72-hour limitation when it is determined that the delay in notification was fully justified. When any authorization cannot be made effective retroactively to the date of admission, it shall be effective from the date of receipt of notification.

§ 17.367 Republic of the Philippines to print forms.
The Secretary of National Defense of the Republic of the Philippines will, with the concurrence of the Secretary of Veterans Affairs, print all forms for applications for hospitalization, forms for physical examination reports, forms for billings for services rendered, and such other forms as may be necessary and incident to the efficient execution of the program governed by the provisions of 38 U.S.C. 1724 and 1732, and 38 CFR 17.36 through 17.40 and §§ 17.350 through 17.370. The forms will be used whenever applicable in the general operation of the program.

§ 17.369 Inspections.
The U.S. Department of Veterans Affairs, through authorized representatives, has the right under the agreements cited in § 17.350, to inspect the Veterans Memorial Medical Center, its premises and all appurtenances and records to determine completeness and correctness of such records, and to determine according to the provisions of the cited agreements whether standards maintained conform to the necessary requirements.

§ 17.370 Termination of payments.
Payments may be terminated if the U.S. Department of Veterans Affairs determines the Veterans Memorial Medical Center has not replaced and upgraded as needed equipment during the period in which the agreements cited in § 17.50 are in effect or has not rehabilitated the existing physical plant and facilities to place the medical center on a sound and effective operating basis, or has not maintained the medical center in a well-equipped and effective operating condition. Payments, however, will not be stopped unless the Veterans Memorial Medical Center has been given at least 60 days advance written notice of intent to stop payments.
(Authority: 38 U.S.C. 1732)

Chapter I — THE DEPARTMENT OF VETERANS AFFAIRS

Part 17 — VETERANS MEMORIAL MEDICAL CENTER, MANILA, PHILIPPINES

§ 17.500 General.
(a) Section 5705, title 38, United States Code was enacted to protect the integrity of the VA's medical quality assurance program by making confidential and privileged certain records and documents generated by this program and information contained therein. Disclosure of quality assurance records and documents made confidential and privileged by 38 U.S.C. 5705 and...
§ 17.501 Confidential and privileged documents.

(a) Documents and parts of documents are considered confidential and privileged if they were produced by or for the VA in the process of conducting systematic healthcare reviews for the purpose of improving the quality of healthcare or improving the utilization of healthcare resources in VA healthcare facilities and meet the criteria in paragraphs (b) and (c) of this section. The four classes of healthcare quality assurance reviews with examples are:

(i) Monitoring and evaluation reviews conducted by a facility:
   (i) Medical records reviews,
   (ii) Drug usage evaluations,
   (iii) Blood usage reviews,
   (iv) Surgical case/invasive procedure reviews,
   (v) Service and program monitoring including monitoring performed by individual services or programs, several services or programs working together, or individuals from several services or programs working together as a team,
   (vi) Mortality and morbidity reviews,
   (vii) Infection control review and surveillance,
   (viii) Occurrence screening,
   (ix) Tort claims peer reviews (except reviews performed to satisfy the requirements of a governmental body or a professional health care organization which is licensing practitioners or monitoring their professional performance),
   (x) Admission and continued stay reviews,
   (xi) Diagnostic studies utilization reviews,
   (xii) Reports of special incidents (VA Form 10-2633 or similar forms) and follow-up documents unless developed during or as a result of a Board of Investigation;

(b) The Under Secretary for Health, Regional Director or facility Director will describe in advance in writing those quality assurance activities included under the classes of healthcare quality assurance reviews listed in

38 CFR Ch. I (7-1-98 Edition)
paragraph (a) of this section. Only documents and parts of documents resulting from those activities which have been so described are protected by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511. If an activity is not described in a VA Central Office or Regional policy document, this requirement may be satisfied at the facility level by description in advance of the activity and its designation as protected in the facility quality assurance plan or other policy document.

(c) Documents and parts of documents generated by activities which meet the criteria in paragraphs (a) and (b) of this section shall be confidential and privileged only if they:

(1) Identify, either implicitly or explicitly, individual practitioners, patients, or reviewers except as provided in paragraph (g)(6) of this section; or

(2) Contain discussions relating to the quality of VA medical care or utilization of VA medical resources by healthcare evaluators during the course of a review of quality assurance information or data, even if they do not identify practitioners, patients, or reviewers; or

(3) Are individual committee, service, or study team minutes, notes, reports, memoranda, or other documents either produced by healthcare evaluators in deliberating on the findings of healthcare reviews, or prepared for purposes of discussion or consideration by healthcare evaluators during a quality assurance review; or

(4) Are memoranda, letters, or other documents from the medical facility to the Regional Director or VA Central Office which contain information generated by a quality assurance activity meeting the criteria in §17.501 (a) and (b); or

(5) Are memoranda, letters, or other documents produced by the Regional Director or VA Central Office which either respond to or contain information generated by a quality assurance activity meeting the criteria in §17.501 (a) and (b).

(d) Documents which meet the criteria in this section are confidential and privileged whether they are produced at the medical facility, Regional or VA Central Office levels, or by external contractors performing healthcare quality assurance reviews.

(e) Documents which are confidential and privileged may be in written, computer, electronic, photographic or any other form.

(f) Documents which contain confidential and privileged material in one part, but not in others, such as Clinical Executive Board minutes, should be filed and maintained as if the entire document was protected by 38 U.S.C. 5705. This is not required if the confidential and privileged material is deleted.

(g) The following records and documents and parts of records and documents are not confidential even if they meet the criteria in paragraphs (a) through (c) of this section:

(1) Statistical information regarding VA healthcare programs or activities that does not implicitly or explicitly identify individual VA patients or VA employees or individuals involved in the quality assurance process;

(2) Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, and/or major overall findings, but which do not identify individual healthcare practitioners, even by implication;

(3) The contents of Credentialing and Privileging folders as described in VACO policy documents (38 U.S.C. 5705-protected records shall not be filed in Credentialing and Privileging folders);

(4) Records and documents developed during or as a result of Boards of Investigations;

(5) Completed patient satisfaction survey questionnaires and findings from patient satisfaction surveys;

(6) Records and documents which only indicate the number of patients treated by a practitioner, either by diagnosis or in aggregate, or number of procedures performed by a practitioner, either by procedure or in aggregate;

(7) Records and documents developed during or as a result of reviews performed to satisfy the requirements of a governmental body or a professional healthcare organization which is licensing practitioners or monitoring their professional performance, e.g.,
§ 17.502 Applicability of other statutes.

(a) Disclosure of quality assurance records and documents which are not confidential and privileged under 38 U.S.C. 5705 and the confidentiality regulations in §§ 17.500 through 17.511 will be governed by the provisions of the Freedom of Information Act, and, if applicable, the Privacy Act and any other VA or federal confidentiality statutes.

(b) When included in a quality assurance review, confidential records protected by other confidentiality statutes such as 5 U.S.C. 552a (the Privacy Act), 38 U.S.C. 7332 (drug and alcohol abuse, sickle cell anemia, HIV infection), and 38 U.S.C. 5701 (veterans' names and addresses) retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 5701 or 7332 or the Privacy Act is incorporated into quality assurance records, the information in the quality assurance records is still protected by these statutes.

(Authority: 38 U.S.C. 5705)

§ 17.503 Improper disclosure.

(a) Improper disclosure is the disclosure of confidential and privileged healthcare quality assurance review records or documents (or information contained therein), as defined in §17.501, to any person who is not authorized access to the records or documents under the statute and the regulations in §§ 17.500 through 17.511.

(b) "Disclosure" means the communication, transmission, or conveyance in any way of any confidential and privileged quality assurance review records or documents or information contained in them to any individual or organization in any form by any means.

(Authority: 38 U.S.C. 5705)

§ 17.504 Disclosure methods.

(a) Disclosure of confidential and privileged quality assurance records
§ 17.508 Access to quality assurance records and documents within the agency.

(a) Access to confidential and privileged quality assurance records and documents within the Department pursuant to this section is restricted to VA employees (including consultants and contractors of VA) who have a need for such information to perform their government duties or contractual responsibilities and who are authorized access by the VA medical facility Director, Regional Director, the Under Secretary for Health, or their designee or by the regulations in §§17.500 through 17.511 expressly provide for disclosure.

(b) To foster continuous quality improvement, practitioners on VA rolls, whether paid or not, will have access to confidential and privileged quality assurance records and documents relating to evaluation of the care they provided.

(c) Any quality assurance record or document, whether confidential and privileged or not, may be provided to the General Counsel or any attorney within the Office of General Counsel, wherever located. These documents may also be provided to a Department of Justice (DOJ) attorney who is investigating a claim or potential claim.

§ 17.507 Employee responsibilities.

(a) All VA employees and other individuals who have access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511 shall bear the following statement: "These documents or records (or information contained herein) are confidential and privileged under the provisions of 38 U.S.C. 5705, which provide for fines up to $20,000 for unauthorized disclosures thereof, and the implementing regulations. This material shall not be disclosed to anyone without authorization as provided for by that law or the regulations in §§17.500 through 17.511."

(b) All individuals who have had access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511 will not disclose such records or information therein to any person or organization after voluntary or involuntary termination of their relationship to the VA.

(Authority: 38 U.S.C. 5705)

§ 17.506 Appeal of decision by Veterans Health Administration to deny disclosure.

When a request for records or documents subject to the regulations in §§17.500 through 17.511 is denied in whole or in part by the VA medical facility Director, Regional Director or Under Secretary for Health, the VA official denying the request in whole or in part will notify the requestor in writing of the right to appeal this decision to the General Counsel of the Department of Veterans Affairs within 60 days of the date of the denial letter. The final Department decision will be made by the General Counsel or the Deputy General Counsel.

(Authority: 38 U.S.C. 5705)
§ 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests.

(a) Requests for confidential and privileged quality assurance records and documents from organizations or individuals outside VA must be made to the Department and must specify the nature and content of the information requested, to whom the information should be transmitted or disclosed, and the purpose listed in paragraphs (b) through (j) of this section for which the information requested will be used. In addition, the requestor will specify to the extent possible the beginning and final dates of the period for which disclosure or access is requested. The request must be in writing and signed by the requester. Except as specified in paragraphs (b) and (c) of this section, these requests should be forwarded to the Director of the facility in possession of the records or documents for response. The procedures outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.

(b) Disclosure shall be made to Federal agencies upon their written request to permit VA’s participation in healthcare programs including healthcare delivery, research, planning, and related activities with the requesting agencies. Any Federal agency may apply to the Under Secretary for Health for approval. If the VA decides to participate in the healthcare program with the requestor, the requesting agency will enter into an agreement with VA to ensure that the agency and its staff will ensure the confidentiality of any quality assurance records or documents shared with the agency.

(c) Qualified persons or organizations, including academic institutions, engaged in healthcare program activities, shall, upon request to and approval by the Under Secretary for Health, Regional Director, medical facility Director, or their designees, have access to confidential and privileged medical quality assurance records and documents to permit VA participation in a healthcare activity with the requestor, provided that no records or documents are removed from the VA facility in possession of the records.

(d) When a request under paragraphs (b) or (c) of this section concerns access for research purposes, the request, together with the research plan or protocol, shall first be submitted to and approved by an appropriate VA medical facility Research and Development Committee and then approved by the Director of the VA medical facility. The VA medical facility staff together with the qualified person(s) conducting the research shall be responsible for the preservation of the anonymity of the patients, clients, and providers and shall not disseminate any records or
documents which identify such individuals directly or indirectly without the individual’s consent. This applies to the handling of data or information as well as reporting or publication of findings. These requirements are in addition to other applicable protections for the research.

(e) Individually identified patient medical record information which is protected by another statute as provided in § 17.502 may not be disclosed to a non-VA person or organization, including disclosures for research purposes under paragraph (d), except as provided in that statute.

(f) Under paragraph (b), the Under Secretary for Health or designee or under paragraph (c), the Under Secretary for Health, Regional Director, medical facility Director, or their designees may approve a written request if it meets the following criteria:

(1) Participation by VA will benefit VA patient care; or
(2) Participation by VA will enhance VA medical research; or
(3) Participation by VA will enhance VA health services research; or
(4) Participation by VA will enhance VA healthcare planning or program development activities; or
(5) Participation by VA will enhance related VA healthcare program activities; and
(6) Access to the record by the requester is required for VA to participate in a healthcare program with the requester.

(g) Protected quality assurance records or documents, including records pertaining to a specific individual, will for purposes authorized under law be disclosed to a civil or criminal law enforcement governmental agency or instrumentality charged under applicable law with the protection of public health or safety, including state licensing and disciplinary agencies, if a written request for such records or documents is received from an official of such an organization. The request must state the purpose authorized by law for which the records will be used. The Under Secretary for Health, Regional Director, medical facility Director, or their designees will determine the extent to which the information is disclosable.

(h) Federal agencies charged with protecting the public health and welfare, federal and private agencies which engage in various monitoring and quality control activities, agencies responsible for licensure of individual health care facilities or programs, and similar organizations will be provided confidential and privileged quality assurance records and documents if a written request for such records or documents is received from an official of such an organization. The request must state the purpose for which the records will be used. The Under Secretary for Health, Regional Director, medical facility Director, or their designees will determine the extent to which the information is disclosable.

(i) J CAHO (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by VA to assess the effectiveness of quality assurance program activities or to consult regarding these programs are entitled to disclosure of confidential and privileged quality assurance documents with the following qualifications:

(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., J CAHO, may have access to all confidential and privileged quality assurance records and documents.
(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged records and documents as are relevant to their respective focus.

(j) Confidential and privileged quality assurance records and documents shall be released to the General Accounting Office if such records or documents pertain to any matter within its jurisdiction.

(k) Confidential and privileged quality assurance records and documents shall be released to both VA and non-VA healthcare personnel upon request to the extent necessary to meet a medical emergency affecting the health or safety of any individual.
§ 17.510

(l) For any disclosure made under paragraphs (a) through (l) of this section, the name of and other identifying information regarding any individual VA patient, employee, or other individual associated with VA shall be deleted from any confidential and privileged quality assurance record or document before any disclosure under these quality assurance regulations in §§ 17.500 through 17.511 is made, if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

(m) Disclosure of the confidential and privileged quality assurance records and documents identified in § 17.501 will not be made to any individual or agency until that individual or agency has been informed of the penalties for unauthorized disclosure or redisclosure.

(Authority: 38 U.S.C. 5705)

§ 17.511 Penalties for violations.

Any person who knows that a document or record is a confidential and privileged quality assurance document or record described in §§ 17.500 through 17.511 and willfully discloses such confidential and privileged quality assurance record or document or information contained therein, except as authorized by 38 U.S.C. 5705 or the regulations in §§ 17.500 through 17.511, shall be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of each subsequent offense.

(Authority: 38 U.S.C. 5705)

VA HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM


§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirements for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. Disciplines include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.

[55 FR 40170, Oct. 2, 1990]

§ 17.601 Definitions.

For the purpose of these regulations:

(a) Acceptable level of academic standing means the level at which a student retains eligibility to continue in attendance in school under the school's standards and practices in the course of study for which the scholarship was awarded.


(c) Affiliation agreement means a Memorandum of Affiliation between a Department of Veterans Affairs health care facility and a school of medicine or osteopathy.

(d) Advanced clinical training means those programs of graduate training in medicine including osteopathy which (1) lead to eligibility for board certification or which provide other evidence of completion, and (2) have been approved by the appropriate body as determined by the Administrator.

(e) Secretary means the Secretary of Veterans Affairs or designee.

(f) Under Secretary for Health means the Under Secretary for Health for Veterans Health Administration or designee.
(g) Citizen of the United States means any person born, or lawfully naturalized in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

(h) Degree means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or an associate degree, baccalaureate degree, or master’s degree in a nursing specialty needed by VA; or a baccalaureate or master’s degree in another direct or indirect health-care service discipline needed by VA.

(i) Full-time student means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

(j) Other educational expenses means a reasonable amount of funds determined by the Secretary to cover expenses such as books, and laboratory equipment.

(k) Required educational equipment means educational equipment which must be rented or purchased by all students pursuing a similar curriculum in the same school.

(l) Required fees means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

(m) Scholarship Program or Scholarship means the Department of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.

(n) Participant or Scholarship Program Participant means an individual whose application to the Scholarship Program has been approved and whose contract has been accepted by the Secretary and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of the Scholarship Contract.

(o) School means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Department of Veterans Affairs, and (2) which is accredited by a body or bodies recognized for accreditation by the Secretary.

(AF Authority: 38 U.S.C. 7602(a))

(p) School year means, for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.

(q) State means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(r) Part-time student means an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

(s) Department of Veterans Affairs employee means an individual employed and permanently assigned to a VA health care facility.

(t) Degree completion date means the date on which a participant completes all requirements of the degree program.

(AF Authority: 38 U.S.C. 7452)

(u) VA health care facility means Department of Veterans Affairs medical centers, medical and regional office centers, domiciliaries, independent outpatient clinics, and outpatient clinics in regional offices.

(AF Authority: 38 U.S.C. 7633)

(Approved by the Office of Management and Budget under control number 2900-0352)


§ 17.602 Eligibility.

(a) To be eligible for a scholarship under this program an applicant must—
§ 17.603 Availability of scholarships.

Scholarships will be awarded only when necessary to assist the Department of Veterans Affairs in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Under Secretary for Health. The Secretary has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(Authority: 38 U.S.C. 7612(b)(4) and 7603(b)(1))


§ 17.604 Application for the scholarship program.

Each individual desiring a scholarship under this program must submit an accurate and complete application in the form and at the time prescribed by the Secretary. Included with the application will be a signed written contract to accept payment of a scholarship and to serve a period of obligated service (as defined in §17.607) if the application is approved and if the contract is accepted by the Secretary.

(Authority: 38 U.S.C. 7612(c)(1)(B))

[47 FR 10810, Mar. 12, 1982]

§ 17.605 Selection of participants.

(a) General. In deciding which Scholarship Program applications will be approved by the Secretary, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d) of this section), applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Secretary may, at the Secretary’s discretion—

(Authority: 38 U.S.C. 7612(b)(5))

(1) Award scholarships geographically to part-time students so that available scholarships may be distributed on a relatively equal basis to students working throughout the VA health care system, and/or
§ 17.606 Award procedures.

(a) Amount of scholarship. (1) A scholarship award will consist of (i) tuition and required fees, (ii) other educational expenses, including books and laboratory equipment, and (iii) except as provided in paragraph (a)(2) of this section, a monthly stipend, for the duration of the scholarship award. All such payments to scholarship participants are exempt from Federal taxation.

(b) Selection of part-time students. Factors in addition to those specified in paragraph (b) of this section, which may be considered in awarding scholarships to part-time students may include, but are not limited to:

(1) Length of service of a VA employee in a health care facility;
(2) Honors and awards received from VA, and other sources;
(3) VA work performance evaluation;
(4) A recommendation for selection for a part-time scholarship from a VA Medical District.

(c) Duration of scholarship award. Subject to the availability of funds for the Scholarship Program, the Secretary will award a participant a full-time scholarship under these regulations for a period of from 1 to 4 school years and a participant of a part-time scholarship for a period of 1 to 6 school years.

(d) Continuation awards. Subject to the availability of funds for the Scholarship Program and selection, the Secretary will award a continuation scholarship for completion of the degree for which the scholarship was awarded if—

(1) The award will not extend the total period of Scholarship Program support beyond 4 years for a full-time scholarship, and beyond 6 years for a part-time scholarship; and

(2) The participant remains eligible for continued participation in the Scholarship Program.

(e) The participant remains eligible for continued participation in the Scholarship Program.

Authority: 38 U.S.C. 7603(d)

[Approved by the Office of Management and Budget under control number 2900-0352]

(b) Leave-of-absence, repeated course work. The Secretary may suspend scholarship payments to or on behalf of a participant if the school (1) approves a leave-of-absence for the participant for health, personal, or other reasons, or (2) requires the participant to repeat course work for which the Secretary previously has made payments under the Scholarship Program. Additional costs relating to the repeated course work will not be paid under this program. Any scholarship payments suspended under this section will be resumed by the Secretary upon notification by the school that the participant has returned from the leave-of-absense or has satisfactorily completed the repeated course work and is proceeding as a full-time student in the course of study for which the scholarship was awarded.

(Authority: 38 U.S.C. 7633)

§ 17.607 Obligated service.

(a) General. Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant’s discipline in an assignment or location determined by the Secretary.

(Authority: 38 U.S.C. 7616(a))

(b) Beginning of service. (1) Except as provided in paragraph (b)(2) of this section, a participant’s obligated service shall begin on the date the Secretary appoints the participant as a full-time VA employee in the Department of Veterans Affairs Veterans Health Administration in a position for which the degree program prepared the participant. The Secretary shall appoint the participant to such position within 60 days after the participant’s degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Secretary shall notify the participant of the work assignment, its location, and the date work must begin.

(2) Obligated service shall begin on the degree completion date for a participant who, on that date, is a full-time VA employee working in a capacity for which the degree program prepared the participant.

(Authority: 38 U.S.C. 7636 (b) and (c))

(c) Duration of service. The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 7612(c)(1)(B) and (3)(A))

(d) Location for service. The Secretary reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 7616(a))

(e) Creditability of advanced clinical training. No period of advanced clinical training will be credited toward satisfying the period of obligated service incurred under the Scholarship Program.


§ 17.608 Deferment of obligated service.

(a) Request for deferment. A participant receiving a degree from a school...
of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 7616(a)(A)(i))

(b) Deferment requirements. Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility.

(Authority: 38 U.S.C. 7616(b)(4))

(c) Additional service obligation. A participant who has requested and received deferment for approved advanced clinical training may, at the time of approval of such deferment and at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service—

1. At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Administration; Department of Veterans Affairs; or

2. At the rate of three-quarters of a calendar year for each year of approved graduate training (or a proportionate ratio thereof) if the training is in a medical specialty determined not to be necessary to meet the health care requirements of the Veterans Health Administration. Specialties necessary to meet the health care requirements of the Veterans Health Administration will be prescribed periodically by the Secretary when, and if, this provision for an additional period of obligated service is to be used.

(Authority: 38 U.S.C. 7616(b)(4)(B))

(d) Altering deferment. Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration.

(Authority: 38 U.S.C. 7633)

(e) Beginning of service after deferment. Any participant whose period of obligated service has been deferred under paragraph (a) or (b) of this section must begin the obligated service effective on the date of appointment under title 38 in full-time clinical practice in an assignment or location in a Department of Veterans Affairs health care facility as determined by the Secretary. The assignment will be made by the Secretary within 120 days prior to or no later than 30 days following the completion of the requested graduate training for which the deferment was granted. Travel and relocation regulations will apply.

(Authority: 38 U.S.C. 7616(b)(2))

§ 17.609 Pay during period of obligated service.

The initial appointment of physicians for obligated service will be made in a grade commensurate with qualifications as determined in section 7404(b)(1) of title 38 U.S.C. A physician serving a period of obligated service is not eligible for incentive special pay during the first three years of such obligated service. A physician may be paid primary special pay at the discretion of the Secretary upon the recommendation of the Under Secretary for Health.


§ 17.610 Failure to comply with terms and conditions of participation.

(a) If a participant, other than one described in paragraph (b) of this section fails to accept payment or instructs the school not to accept payment of the scholarship provided by the Secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of $1,500 liquidated damages. Payment of this amount must be made within 90 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment.

(b) If a participant:

(1) Fails to maintain an acceptable level of academic standing;

(2) Is dismissed from the school for disciplinary reasons;

(3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(5) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.

(b) If a participant:

(1) Fails to maintain an acceptable level of academic standing;

(2) Is dismissed from the school for disciplinary reasons;

(3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(5) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

\[
A = 3\phi \left( \frac{t - s}{t} \right)
\]

in which:

- ‘A’ is the amount the United States is entitled to recover;

- ‘\phi’ is the sum of the amounts paid to or on behalf of the applicant and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

- ‘t’ is the total number of months in the applicant’s period of obligated service; and

- ‘s’ is the number of months of the period of obligated service served by the participant.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.

(b) If a participant:

(1) Fails to maintain an acceptable level of academic standing;

(2) Is dismissed from the school for disciplinary reasons;

(3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(5) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

\[
A = 3\phi \left( \frac{t - s}{t} \right)
\]

in which:

- ‘A’ is the amount the United States is entitled to recover;

- ‘\phi’ is the sum of the amounts paid to or on behalf of the applicant and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

- ‘t’ is the total number of months in the applicant’s period of obligated service; and

- ‘s’ is the number of months of the period of obligated service served by the participant.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.
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(b)(1) A participant may seek a waiver or suspension of the service or payment obligation incurred under this program by written request to the Secretary setting forth the basis, circumstances, and causes which support the requested action. The Secretary may approve an initial request for a suspension for a period of up to 1 year. A renewal of this suspension may also be granted.

(2) The Secretary may waive or suspend any service or payment obligation incurred by a participant whenever compliance by the participant (i) is impossible, due to circumstances beyond the control of the participant or (ii) whenever the Secretary concludes that a waiver or suspension of compliance would be in the best interest of the Department of Veterans Affairs.

(c) Compliance by a participant with a service or payment obligation will be considered impossible due to circumstances beyond the control of the participant if the Secretary determines, on the basis of such information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in permanent inability to perform the service or other activities which would be necessary to comply with the obligation.

(d) Waivers or suspensions of service or payment obligations, when not related to paragraph (c) of this section, and when considered in the best interest of the Department of Veterans Affairs, will be determined by the Secretary on an individual basis.

VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

SOURCE: 59 FR 28265, June 1, 1994, unless otherwise noted.

§ 17.700 Purpose and scope.

(a) General. The VA Homeless Providers Grant and Per Diem Program is authorized by sections 3 and 4 of Pub. L. 102-590, the Homeless Veterans Comprehensive Service Programs Act of 1992. The VA Homeless Providers Grant and Per Diem Program is designed to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans. Section 3 of the Act provides for grants to eligible entities of up to 65 percent of the estimated cost to construct, expand, remodel or alter existing buildings; to acquire facilities for use as service centers, transitional housing or other facilities to serve homeless veterans; or to procure vans to provide transportation for and support outreach to homeless veterans. A grant may not be used to support operational costs. In addition, §4 of Pub. L. 102-590 authorizes VA to provide to a recipient of a grant under §3 (or entity eligible for such a grant as described in §17.716 of this part) per diem payments for homeless veterans whom VA has referred to that entity; or for whom VA has authorized the provision of services. In lieu of per diem payments, VA may provide in-kind assistance through services of VA employees and the use of other VA resources. This program does not provide for funding to acquire buildings located on VA-owned property. The program does provide for grant funds to be used to construct, expand or remodel buildings located on VA-owned property.

(b) Components. (1) Grants may be used for the three components described in §17.702:

(2) Grant recipients or eligible entities may apply for per diem payments or receive in-kind assistance through VA as described in §17.715.

(3) Applicants may apply for a grant for more than one component described in §17.702 and/or per diem payments.


§ 17.701 Definitions.

As used in this part:

Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately
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identifiable population of homeless veterans.

Capital lease means a lease that satisfies one of the following criteria:

1. The lease transfers ownership to the lessee at the expiration of the lease term.
2. The lessor bears no risk.
3. The term of the lease exceeds 75 percent of the economic life of the asset.
4. The lease contains a bargain purchase option.
5. The present value of lease payments is equal to or greater than 90 percent of the fair market value of the asset.

Eligible entity means a public or nonprofit private entity with the capacity to effectively administer a grant under this section; which has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant; and which has agreed to, and has demonstrated the capacity to, meet the applicable criteria and requirements of the grant program.

Expansion of an existing building means an addition to an existing structure that does not increase the floor area by more than 100 percent.

Federally recognized Indian tribal government includes the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Homeless or homeless individual (1) includes:

1. An individual who lacks a fixed, regular and adequate nighttime residence;
2. An individual who has a primary nighttime residence that is—
   A. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
   B. An institution that provides a temporary residence for persons intended to be institutionalized; or
   C. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term “homeless” or “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law. An individual on probation, parole or under electronic custody is not considered “imprisoned or otherwise detained”.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

New program/new component of an existing program means a proposed program of supportive services, or a proposed addition of supportive services to an existing program, which services are not currently being provided by the entity proposing it, and for which there is a demonstrated need in the area or community served by that entity.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

1. Have a voluntary board;
2. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
3. Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

1. Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA and obtaining program audits; and similar costs related to administering the grant after the award), maintenance,
repair and security for the supportive housing;
(2) Van or building rent (except under capital leases), utilities, insurance, fuel, furnishings, and equipment;
(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services;
(4) Relocation assistance under §17.730 of this part, including payments and services; and
(5) Other costs associated with operating the supportive housing.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person who receives services provided at sites funded with assistance provided under this part.

Project means a structure or structures (or portion of such structure or structures) acquired, rehabilitated, or constructed with assistance provided under this part. A project may be used to provide supportive housing or supportive services in single room occupancy dwelling units which may or may not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing.

Recipient means any governmental or nonprofit entity that receives assistance under this part.

Rehabilitation means the improvement or repair of an existing structure. Rehabilitation does not include minor or routine repairs.

Secretary means the Secretary of Veterans Affairs.

Seriously mentally ill means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently. This may include an impairment related to substance (alcohol and/or drug) abuse.

Service center means a project which provides the supportive services specified at §17.724(k) to homeless veterans for a minimum of 40 hours per week over a minimum of five days per week as well as on an as-needed, unscheduled basis.

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a public or nonprofit organization which owns or leases dwelling units in buildings acquired and/or renovated with funds from this grant program, and which makes such units available to eligible homeless veterans.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing in conjunction with which supportive services are provided for homeless veterans where:
(1) The housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located, and the requirements of this part; and
(2) The housing is:
(i) Transitional housing; or
(ii) Is, or is a part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services (1) Means services, which may be designed by the recipient or program participants, that
(i) address the special needs of homeless veterans to be served by the project, and
(ii) provide appropriate services or assist such persons in obtaining appropriate services.
(2) Supportive services include:
(i) Outreach activities;
(ii) Providing food, nutritional counseling, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;
(iii) Establishing and operating child care services for dependents of homeless veterans;
(iv) Providing supervision and security arrangements necessary for the protection of residents of supportive
housing and for homeless veterans using the housing or services;

(v) Providing assistance in obtaining permanent housing;

(vi) Providing education, employment counseling, job training, establishing and operating an employment assistance program;

(vii) Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling, veterans’ benefits, medical assistance, and income support assistance such as Supplementary Security Income benefits, Aid to Families with Dependent Children, General Assistance, Food Stamps, etc.; and

(viii) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(ix) Inpatient acute hospital care does not qualify as a supportive service.

Transitional housing means housing that will facilitate the movement of homeless veterans and their dependents to permanent housing within 24 months, or within a longer period as described in §17.724(i) of this part.

Unit of general local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veteran with disabilities means a veteran with a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions. This may include a disability related to substance (alcohol and/or drug) abuse. A veteran may be considered to have a disability regardless of whether VA has or has not awarded compensation or a pension for the disability.

§17.702 Types and uses of assistance.

(a) Grant assistance. Grant assistance is available to:

(1) Construct structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers;

(2) Acquire, expand and remodel/alter structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers; and

(3) Procure vans to provide transportation for the purpose of providing supportive services to homeless veterans.

(b) Limitation on non-veteran participants. Up to 25 percent of services available in projects funded through this grant program may be provided to participants who are not receiving those services as veterans.

(c) Structures used for multiple purposes. Structures funded through this grant program that are used to provide supportive housing, supportive services, or used as service centers may also be used for other purposes, except that assistance under this part will be available only in proportion to the use of the structure for supportive housing, supportive services, or as a service center.

(d) Maximum amount of grant. The amount of a grant under this part may not exceed 65 percent of the cost of acquisition, rehabilitation, acquisition and rehabilitation, construction or procurement.

§17.703 Grants for acquisition and rehabilitation.

(a) Use. VA will grant funds to recipients to:

(1) Pay a portion of the cost of the acquisition of real property selected by the recipients for use in the provision of supportive housing or supportive
services, or to establish service centers, including the repayment of any outstanding debt on a loan made to purchase property that has not been used previously for supportive housing, supportive services, or service centers; and

(2) Pay a portion of the cost of rehabilitation of structures, including cost-effective energy measures, selected by the recipients to provide supportive housing or supportive services or to establish service centers.

(b) If grant funds are proposed to be used for acquisition or rehabilitation, the applicant must demonstrate that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction.

§ 17.704 Grants for new construction.

(a) Use. VA will grant funds to recipients to pay a portion of the cost of new construction, including cost-effective energy measures and the cost of land associated with that construction, for use in the provision of supportive housing or supportive services, or for service centers. If grant funds are proposed to be used for new construction, the applicant must demonstrate that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. The applicant must also demonstrate that new construction is less costly than acquisition of an existing building. For purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition.

(b) Demolition plan. The cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project. If the applicant believes that this cost may be included in the cost of the construction project, a demolition plan should be submitted which includes the extent and cost of existing site features to be removed, stored, or relocated.

§ 17.705 Grants for procurement of vans.

(a) Use. VA will grant funds to recipients to pay a portion of the cost of procuring vans to provide transportation for and support outreach to homeless veterans.

(b) Insurance. Recipients of grants to procure vans who are nonprofit entities must insure vans to the same extent they would insure a van bought with their own funds.

(c) Amount. The estimated total costs of purchasing the van may include the purchase price, sales taxes, and title and licensing fees.

§ 17.706 Matching requirements.

(a) General. The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the acquisition, rehabilitation, construction or procurement not funded by the grant. This matching share shall constitute at least 35 percent of the total cost.

(b) Maintenance of effort. State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 17.707(a) of this part.

§ 17.707 Limitations on use of assistance.

(a) Maintenance of effort. No assistance provided under this part may be used to replace Federal, State or local funds previously used, or designated for use, to assist homeless veterans.

(b) Primarily religious organizations. VA will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing and supportive services in a manner that is free from religious influences and the organization complies with the following principles:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion.
§ 17.708 Notice of fund availability
(NOFA).

When funds are made available for assistance, VA will publish a notice of fund availability in the Federal Register. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;
(b) Specify the date, time, and place for submitting completed applications; and
(c) State the amount and status of funding available under the notice.

§ 17.709 Grant award process.

General. The grant award process for assistance under this part consists of the following:

(1) Reviewing applications for eligibility for assistance;
(2) Rating applications (see §17.711 of this part);
(3) Selecting applications conditionally (see §17.712 of this part);
(4) Obtaining additional information and awarding grants (see §17.713 of this part).

§ 17.710 Application requirements.

(a) General. Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under §17.708 of this part. The application packet includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the project by addressing items listed in §17.711(c) of this part;
(2) Site description, design, and cost estimates (VA Forms 10-0362G, 10-0362H);
(3) Documentation on eligibility to receive assistance under this part (VA Form 10-0362J);
(4) Documentation on matching funds committed to the projects (VA Forms 10-0362N, 10-0362M);
(5) Documentation on operating budget and cost sharing (VA Form 10-0362P);
(6) Documentation on supportive services committed to the project (VA Form 10-0362b);
(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served (VA Form 10-0362Q);
(8) Applicants who are States must submit any comments or recommendations by appropriate State (and areawide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197) (Standard Form SF 424); and
(9) Reasonable assurances with respect to receipt of assistance under this part that (VA Form 10-0362K):

   (i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet standards prescribed by VA;
   (ii) Title to such site or van will vest solely in the applicant;
   (iii) Each recipient will keep those records and submit those reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and
   (iv) Adequate financial support will be available for the purchase of the van or completion of the project, and for its maintenance, repair and operation.

(b) Pre-award expenditures. Costs incurred for a project after the date VA notifies an applicant that the project is feasible for VA participation are allowable costs if the application is approved and the grant is awarded. These
§ 17.711 Rating criteria for applications.

(a) General. Applications will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraphs (b) through (d) of this section.

(b) Threshold review. Applicants will undergo a threshold review prior to rating and ranking, to ensure they meet the following:

(1) Forms, time, and adequacy. Applications must be filed in the form prescribed by VA in the application process and within the time established in the Notice of Funding Availability (NOFA).

(2) Application eligibility. The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(3) Eligible population to be served. The population proposed to be served must be homeless veterans and meet other eligibility requirements of the specific program.

(4) Eligible activities. The activities for which assistance is requested must be eligible for funding under this part (e.g., new programs or new components of existing programs).

(c) Rating and ranking of first submission. Applicants that pass the threshold review will then be rated using the eight selection criteria listed in paragraphs (c)(1) through (c)(8) of this section. Applicants must receive at least 600 points (out of a possible 1,200) and must receive points under criteria 1, 2, 3, 4, and 8. Applicants that are applying as an innovative supportive housing project must achieve points under the innovative quality of the proposal criterion.

(1) Quality of the project—300 points (VA Forms 10-0362A, 10-0362D);

(2) Targeting to persons on streets and in shelters—150 points (VA Form 10-0362C);

(3) Ability of the applicants to develop and operate a project—200 points (VA Form 10-0362E);

(4) Need for the type of project proposed in the area to be served—150 points (VA Form 10-0362B);

(5) Innovative quality of the proposal—50 points (VA Forms 10-0362A, 10-0362D);

(6) Leveraging—50 points (VA Form 10-0362F);

(7) Cost-effectiveness—100 points (VA Form 10-0362A); and

(8) Coordination with other programs—200 points (VA Form 10-0362D-1).

(d) Selection criteria—(1) Quality of the project. VA will award up to 300 points based on the extent to which the application presents a clear, well-conceived and thorough plan for assisting homeless veterans to achieve residential stability, increased skills and/or income, and more influence over decisions that affect their lives. Higher ratings will be assigned to those applications that clearly describe:

(i) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(ii) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(iii) How program participants will be involved in making project decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individuals goals and developing plans to achieve these goals so that they achieve greater self-determination;

(iv) How permanent affordable housing will be identified and made available to participants upon leaving the
transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(v) How the service needs of participants will be assessed on an ongoing basis;

(vi) How the proposed housing, if any, will be managed and operated;

(vii) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities and services;

(viii) How and when the progress of participants toward meeting their individual goals will be monitored and evaluated;

(ix) How and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and

(x) How the proposed project will be implemented in a timely fashion.

(2) Targeting to persons on streets and in shelters. VA will award up to 150 points based on:

(i) The extent to which the project will serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(ii) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(3) Ability of applicant to develop and operate a project. VA will award up to 200 points based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. Ratings will be assigned based on the extent to which the application demonstrates experience in the following areas:

(i) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(ii) Assessing the housing and relevant supportive service needs of homeless veterans;

(iii) Accessing housing and relevant supportive service resources;

(iv) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(v) If applicable, administering a rental assistance program;

(vi) Providing supportive services for homeless veterans;

(vii) Monitoring and evaluating the progress of persons toward meeting their individual goals; and

(viii) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements.

(4) Need. VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served in the specified area or community. Ratings will be made based on the extent to which applicants demonstrate:

(i) Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation (e.g., streets) and in emergency shelters, based on reliable data from surveys of homeless populations, a Comprehensive Housing Affordability Strategy (CHAS), or other reports or data gathering mechanisms that directly support claims made;

(ii) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(5) Innovative quality of the proposal. Applicants who have indicated in their application that they are applying under the innovative supportive housing component must receive points under this criteria to be eligible for award. VA will award up to 50 points based on the innovative quality of the proposal, when compared to other applications and projects; in terms of:

(i) Helping homeless veterans or homeless veterans with disabilities to be served to reach residential stability, increase their skill level and/or income and increase the influence they have over decisions that affect their lives; and

(ii) A clear link between the innovation(s) and its proposed effect(s); and

(iii) Its ability to be used as a model for other projects.

(6) Leveraging. VA will award up to 50 points based on the extent to which resources from other public and private
sources, including cash and the value of third party contributions, have been committed to support the project at the time of application. Note: Any applicant who wishes to receive points under this criterion must submit documentation of leveraged resources which meets the requirements stated in the application. This is optional; applicants who cannot, or choose not to, provide firm documentation of resources as part of the application will forego any points for leveraging.

(7) Cost-effectiveness. VA will award up to 100 points for cost-effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high-cost areas. Cost-effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(8) Coordination with other programs. VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other programs relevant to the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. Higher points will be given to those applicants who can demonstrate that:

(i) They are part of an ongoing community-wide planning process which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(ii) They have consulted directly with other providers regarding coordination of services for project participants. VA will award up to 50 points of the 200 points for this criterion based on the extent to which commitments to provide supportive services are available at the time of application. Applicants who wish to receive points under this optional criterion must submit documentation of supportive service resources.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0554.)

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.713

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in §17.706 of this part.

(3) Documentation showing site control, as described in §17.731 of this part.

(4) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), as described in §17.714 of this part.

(5) A site survey performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(6) Design development (35 percent) drawings. (i) The applicant shall provide to VA one set of sepias and two sets of prints, rolled individually per set, to expedite the review process. The drawing shall indicate the designation of all spaces, size of the areas and rooms, and indicate in outline the fixed and moveable equipment and furniture. The drawings shall be drawn at ¼” or ¼” scale. Bedroom and toilet layouts, showing clearances and Uniform Federal Accessibility Standards requirements, should be shown at ¼” scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(A) A plan of any proposed demolition work;

(B) A plan of each floor. For renovation, the existing conditions and extent of new work should be clearly delineated;

(C) Elevations;

(D) Sections and typical details;

(E) Roof plan;

(F) Fire protection plans; and

(G) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

(ii) If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the building’s current use and type of construction.

(7) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical and mechanical systems such as elevators, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(8) Design development cost estimates. The applicant shall provide three copies of cost estimates showing the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect’s fees and construction supervision and inspection.

(9) A design development conference. After VA reviews design development documents, a design development conference may be recommended in order to provide applicants and their architects an opportunity to learn VA procedures and requirements for the project and to discuss VA review comments.

(10) Such other documentation as specified by VA in writing to the applicant that confirms or clarifies information provided in the application.

(b) Receipt of additional information. The required additional information must be received in acceptable form within the time frame established by VA in a notice of fund availability published in the Federal Register. VA reserves the right to remove any proposed project from further consideration for grant assistance if the required additional project information is not received in acceptable form by the established deadline.
(c) Grant award. Following receipt of the additional information in acceptable form (and, where applicable, provided that the environmental review described in §17.714 of this part indicates that the proposed project is environmentally acceptable to VA), to the extent funds are available VA will approve the application and send a grant agreement for execution to the applicant.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0554.)

(Authority: 38 U.S.C. 501, 7721, note)


§17.714 Environmental review requirements.

(a) General. Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) as implemented pursuant to the Council on Environmental Quality’s applicable regulations (40 CFR parts 1500-1508) and VA’s applicable implementing regulations (38 CFR part 26).

(b) Responsibility for review. (1) VA will perform the environmental review, in accordance with part 26 of this title, for conditionally selected applications received directly from private non-profit organizations and governmental entities with special or limited purpose powers. VA is not permitted to approve such applications prior to its completion of this review. Because of time constraints, any applications subject to environmental review by VA that requires an Environmental Impact Statement (EIS) (generally, an application that VA determines would result in a major Federal action significantly affecting the quality of the human environment in accordance with the environmental assessment procedures at 38 CFR part 26) will not be eligible for assistance under this part.

(2) Applicants that are States, metropolitan cities, urban counties, Indian tribes, or other governmental entities with general purpose powers shall include environmental documentation for the project submitting information establishing a Categorical Exclusion (CE), a proposed Environmental Assessment (EA), or a proposed Environmental Impact Statement (EIS). The environmental documentation will require approval by VA before final award of a construction or acquisition grant under this part. (See 38 CFR 26.6 for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a CE. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an EA to determine if an EIS is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act 1969. When the application submission requires an EA, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;
(ii) Air quality;
(iii) Noise;
(iv) Solid waste;
(v) Utilities;
(vi) Geology (soils/hydrology/flood plains);
(vii) Water quality;
(viii) Land use;
(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;
(x) Economic activities;
(xi) Cultural resources;
(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.

(3) If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the EA. An entity covered by this section that believes that it does not have the legal capacity to carry out the responsibilities required by 38 CFR part 26 should contact the VA Homeless Providers Grant and Per
§ 17.715 Aid for supportive services and supportive housing.

(a) Per diem payments. Aid in the form of per diem payments may be paid to an entity meeting the requirements of the regulations of this part under the heading “VA Homeless Providers Grant and Per Diem Program,” including the specific criteria of §17.716 of this part, if:

(1) VA referred the homeless veteran to a recipient of a grant under this part (or entity eligible for such a grant as described in §17.716 of this part); or

(2) VA authorized the provision of supportive services or supportive housing for the homeless veteran.

(b) In-kind assistance. In lieu of per diem payments under this section, VA may, with approval of the grant recipient (or entity eligible for such a grant as described in §17.716 of this part), provide in-kind assistance through the services of VA employees and the use of other VA resources, to a grant recipient (or entity eligible for such a grant as described in §17.716 of this part).

(c) Selection of per diem applicants. In awarding per diem assistance, applications from grant recipients and nongrant recipients will be reviewed and ranked separately. Funds will first be awarded to grant recipients who request such assistance. If funds are still available for nongrant recipients, VA will announce funding through a Notice of Funding Availability (NOFA) process as described in §17.708 of this part. VA will not award per diem payments when doing so would decrease funding to those entities already receiving such payments. For both grant recipients and non-grant recipients, eligibility will be determined by the criteria described in §17.716 of this part, and applications will be ranked according to the minimum 500 points on the portions of the application described in §17.716(b)(4) of this part. Applicants must score a minimum of 500 points on these portions to be eligible for per diem. Those applications that meet the eligibility criteria will be conditionally selected for per diem assistance. Funds will be allocated to the highest-ranked, conditionally selected applicants in descending order until funds are expended. Payments will be contingent upon meeting the requirements of a site inspection conducted by VA pursuant to §17.721 of this part.

(d) Continued receipt of per diem assistance. (1) Continued receipt of per diem assistance for both grant recipients and nongrant recipients will be contingent upon maintaining the program for which per diem is provided so that it would score at least the required minimum 500 points as described in §17.716(b)(4) of this part on the application. VA will ensure compliance by conducting inspections as described in §17.721 of this part.

(2) Where the recipient fails to comply with paragraph (d)(1) of this section, VA will issue a notice of the Department’s intent to discontinue per diem payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision on termination of per diem payment.

(3) Continued payment is subject to availability of funds. When necessary due to funding limitations, VA will, in proportion to the decrease in funding available, decrease the per diem payment for each authorized veteran.


§ 17.716 Eligibility to receive per diem payments.

An entity must be formally recognized by VA as eligible to receive per diem payments under this section before per diem payments can be made for the care of homeless veterans, except that per diem payments may be made on behalf of a veteran up to three days prior to this recognition.
Department of Veterans Affairs

§ 17.719

(a) A grant recipient will be eligible if it receives the minimum score as described in paragraph (b)(4) of this section.

(b) A nongrant recipient will be eligible if it is an entity eligible to receive a grant, which for the purposes of this section means:

(1) At least 75 percent of persons who are receiving supportive services or supportive housing from the entity are veterans who may be included in computation of the amount of aid payable from VA;

(2) The supportive services or supportive housing program for which per diem payments is requested was established after November 10, 1992;

(3) The entity is a public or nonprofit private entity; and

(4) The entity score at least 500 cumulative points on the following sections of the Grant/Per Diem application: Quality (1); Targeting (2); Ability (3); Description of Need (4); and Coordination with Other Programs (8). These sections correspond to the selection criteria of §17.711(c) of this part.

(c) For grant recipients, only those programs that provide supportive services or supportive housing (or the portions thereof) created with grant funds will be considered for per diem assistance. For nongrant recipients, only those portions of the supportive services or supportive housing described in the application will be considered for per diem assistance.

(Authority: 38 U.S.C. 501, 7721, note)


§ 17.717 Request for recognition of eligibility.

(a) Requests for recognition of eligibility may be addressed to the VA Homeless Providers Grant and Per Diem Programs, Mental Health Strategic Healthcare Group (116E), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(b) For nongrant recipients, the receipt of application for per diem will constitute the request for recognition of eligibility. Grant recipients seeking per diem assistance will indicate this request on the application. Grant recipients are not required to complete a separate application for per diem assistance. VA will review those portions of the grant application that pertain to per diem. Those entities already receiving a grant must submit a request for recognition to initiate the scoring of their application for per diem payments.

(Authority: 38 U.S.C. 501, 7721, note)


§ 17.718 Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of the site of service provision of an eligible entity’s facility which is not on the same or contiguous grounds on which the parent facility is located. When an eligible entity establishes sites which have not been inspected and approved by VA, a request for separate approval of such sites must be made. The prohibitions in §17.720 of this part are also applicable to applications for aid on behalf of any veterans cared for in a new annex, branch or enlarged, expanded or relocated facility.

(Authority: 38 U.S.C. 501, 7721, note)


§ 17.719 Amount of aid payable.

The per diem amount payable for supportive housing is the current VA State Home Program per diem rate for domiciliary care as set forth in 38 U.S.C. 1741. The per diem amount payable for supportive services, not provided in conjunction with supportive housing, is $1.10 for each half-hour during which supportive services are provided, up to $17.60 per day. These rates will be paid provided, however, the per diem amount for supportive housing or supportive services (not provided in conjunction with supportive housing) does not exceed one-half of the cost to the per diem recipient of providing the services. Also, provided further, per diem payment of supportive housing and supportive services may be lessened because of budget restriction as described in §17.715(d)(3) of this part. Per diem payments may not be paid for a veteran for both supportive housing and supportive services (not in conjunction with supportive housing).
§ 17.720 Approval of eligibility.

(a) Eligibility determinations. A grant recipient (or entity eligible for such a grant as described in §17.716 of this part) will receive per diem payments or in-kind assistance from VA only for the care of veterans whose separate eligibility has been determined by VA, and only where VA has referred the veteran under §17.715(a)(1) or has authorized the provision of supportive housing or supportive services under §17.715(a)(2) of this part. A veteran does not have to be eligible for VA medical care in order for the Department to make per diem payments for that veteran.

(1) VA shall determine the eligibility of each veteran referred to a grant recipient (or entity eligible for such a grant as described in §17.716 of this part) prior to making such referral.

(2) To obtain such determination for veterans not referred by VA, the grant recipient (or entity eligible for such a grant as described in §17.716 of this part) will complete a VA application for medical benefits for each veteran and submit it to the VA medical care facility office of jurisdiction for determination of eligibility.

(b) Retroactive payments. Per diem payments may be paid retroactively for services provided not more than three days before VA approval is given where VA authorized the provision of services pursuant to §17.715(a)(2).

§ 17.721 Inspections.

The Secretary may inspect any facility of an entity eligible for per diem payments under this section at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any entity eligible for per diem payments under this section.

§ 17.722 Prerequisite for payment of aid.

No aid may be paid to eligible entities unless they meet the requirement and standards described in §§17.724 through 17.726 of this part.

§ 17.723 Audit of recipients of aid.

(a) State and local government entities. State, local and Indian tribal governments that receive $25,000 or more in assistance under this part shall have an audit made in accordance with the requirements of 38 CFR part 41.

(b) Nonprofit entities. Nonprofit entities receiving assistance under this part shall be subject to the audit requirements contained in OMB Circular A-133.

§ 17.724 General operation.

(a) State and local requirements. Each recipient of assistance under this part must provide housing or services that are in compliance with all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the housing or services.

(b) Habitable standards. Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) Structure and materials. The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements.

(2) Access. Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire. Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required.

(i) The Architectural Barriers Act requires that Federal and Federally-assisted buildings, the intended use for which either will require that such building be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, be accessible to the disabled. This requirement applies to buildings to be constructed or altered by or on behalf of the United States, and to buildings to be leased in whole or in part by the United States (42 U.S.C. 4151).

(ii) Accessibility guidelines for buildings and facilities are set forth in 36 CFR part 1191.

(3) Space and security. Each resident must be afforded appropriate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep that is in compliance with local codes and regulations.

(4) Interior air quality. Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) Water supply. The water supply must be free from contamination.

(6) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) Illumination and electricity. The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) Food preparation and refuse disposal. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) Sanitary condition. The housing and any equipment must be maintained in a sanitary manner.

(c) Meals. Each recipient of assistance under this part who provides supportive housing for homeless veterans with disabilities must provide meals or meal preparation facilities for residents.

(d) Ongoing assessment of supportive services. Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and the availability of such services, and make adjustments as appropriate.

(e) Residential supervision. Each recipient of assistance under this part must provide residential supervision necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment or volunteer services of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(f) Participation of homeless veterans. (1) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(2) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans
§ 17.725 Outreach activities.

Recipients must use their best efforts to ensure that eligible hard-to-reach persons are served in the facility funded under this part. Recipients are expected to make sustained efforts to engage eligible persons so that they may be brought into the program. Outreach should be directed primarily toward eligible persons who have a nighttime residence that is an emergency shelter or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., persons living in cars, streets and parks).

§ 17.726 Resident rent.

(a) Calculation of resident rent. Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the resident’s monthly adjusted income (adjustment factors include the number of relatives in the family residing with the veteran, medical expenses, and child care expenses);

(2) 10 percent of his or her family’s monthly income or

over a minimum of five days per week, as well as on an as-needed, unscheduled basis. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area;

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

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(2) 10 percent of his or her family’s monthly income or

over a minimum of five days per week, as well as on an as-needed, unscheduled basis. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area;

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.
§ 17.729 Obligation and deobligation of funds.

(a) Obligation of funds. When VA and the applicant execute a grant agreement, funds are obligated to cover the amount of the approved assistance under §§17.702 through 17.707 of this part. The recipient will be expected to carry out the supportive housing or supportive services activities as proposed in the application.

(b) Increases. After the initial obligation of funds, VA will not make revisions to increase the amount obligated.

(c) Deobligation. (1) VA may deobligate all or parts of grants awarded under this part:

(i) If the actual total cost of acquisition, rehabilitation, acquisition and rehabilitation, or new construction of facilities, or the cost of procurement of a van, is less than the total cost anticipated in the application, or

(ii) Where a recipient materially fails to comply with the terms and conditions of an award under this part.

(2) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed. Such sanctions may include, among
other remedies: temporarily withholding cash payments pending correction of a deficiency, denying the use of grant or matching funds for all or part of the cost of an activity not in compliance, wholly or partly suspending an award, and withholding further awards to the recipient.

(3) Where a recipient has no control over causes for delays in implementing a project, any delays due to causes beyond a recipient’s control may, with VA approval, suspend the running of any period in which the recipient must implement a program or risk deobligation of funds or other VA remedies.

(4) VA may:
   (i) Readvertise in a notice of fund availability under §17.708 of this part, the availability of funds awarded that were deobligated in the same fiscal year as obligated; or
   (ii) Award funds deobligated in the same fiscal year as obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§17.708 through 17.714 of this part; or
   (iii) If legally authorized, award amounts deobligated in a fiscal year later than the fiscal year in which they were obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§17.708 through 17.714 of this part.

§ 17.730 Displacement, relocation, and acquisition.

(a) Minimizing displacement. Consistent with other goals and objectives of this part, recipients must take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of supportive housing, supportive services, or service centers assisted under this part. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

(b) Relocation assistance for displaced persons. A displaced person must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(c) Certification. The recipient must certify that it will comply with the URA, and must ensure such compliance notwithstanding any third party’s contractual obligation to the recipient to comply with these provisions.

(d) Cost of relocation assistance. The cost of required relocation assistance is not an eligible project cost, in that such costs are operational costs. Such costs must be paid for with local public funds or funds available from other sources.

(e) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term “initiation of negotiations” means the execution of the agreement between the recipient and VA, or selection of the project site, if later.

§ 17.731 Site control.

(a) Site control. (1) Where grant funds will be used for acquisition, rehabilitation, or new construction to provide supportive housing or supportive services, or to establish service centers, except where an applicant will provide services at sites not operated by the applicant, an applicant must demonstrate site control (e.g., through a deed, capital lease, executed contract of sale) before VA will execute a grant agreement. A lease other than a capital lease does not demonstrate site control except for a VA lease as described in §17.700(a) of this part.

(2) If such site control is not demonstrated within one year after initial notification of the award of assistance under this part, the grant will be deobligated as provided in paragraph (c) of this section.

(b) Site change. (1) A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site’s meeting all requirements for suitable sites under this part.
(2) If the acquisition, rehabilitation, acquisition and rehabilitation, or new construction costs of the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to VA that it is able to provide for the difference in costs, VA may deobligate the award of assistance.

(c) Failure to obtain site control within one year. VA will deobligate any award for assistance under this part or pursue other remedies described in §17.729(c) of this part if the recipient is not in control of a suitable site before the expiration of one year after initial notification of an award.

[59 FR 28265, June 1, 1994, as amended at 60 FR 10504, Feb. 27, 1995]

TRANSITIONAL HOUSING LOAN PROGRAM

SOURCE: 59 FR 49579, Sept. 29, 1994, unless otherwise noted.

§17.800 Purpose.

The purpose of the Transitional Housing Loan Program regulations is to establish application provisions and selection criteria for loans to non-profit organizations for use in initial start-up costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

§17.801 Definitions.

(a) Applicant: A non-profit organization making application for a loan under this program.

(b) Non-profit organization: A secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must include a voluntary board and must either maintain or designate an entity to maintain an accounting system which is operated in accordance with generally accepted accounting principles. If not named in, or approved under Title 38 U.S.C. (United States Code), Section 5902, a non-profit organization must provide VA with documentation which demonstrates approval as a non-profit organization under Internal Revenue Code, Section 501.c(3).

(c) Recipient: A non-profit organization which has received a loan from VA under this program.

(d) Veteran: A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.


§17.802 Application provisions.

(a) To obtain a loan under these Transitional Housing Loan Program regulations, an application must be submitted by the applicant in the form prescribed by VA in the application package. The completed application package must be submitted to the Deputy Associate Director for Psychiatric Rehabilitation Services, (302/111C), VA Medical Center, 100 Emancipation Drive, Hampton, VA 23667. An application package may be obtained by writing to the proceeding address or telephoning (804) 722±9961 x3628. (This is not a toll-free number)

(b) The application package includes exhibits to be prepared and submitted, including:

(1) Information concerning the applicant’s income, assets, liabilities and credit history,

(2) Information for VA to verify the applicant’s financial information,

(3) Identification of the official(s) authorized to make financial transactions on behalf of the applicant,

(4) Information concerning:

(i) The history, purpose and composition of the applicant,

(ii) The applicant’s involvement with recovering substance abusers, including:

(A) Type of services provided,

(B) Number of persons served,

(C) Dates during which each type of service was provided,

(D) Names of at least two references of government or community groups whom the organization has worked with in assisting substance abusers,
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(iii) The applicant’s plan for the provision of transitional housing to veterans including:
   (A) Means of identifying and screening potential residents,
   (B) Number of occupants intended to live in the residence for which the loan assistance is requested,
   (C) Residence operating policies addressing structure for democratic self-government, expulsion policies for non-payment, alcohol or illegal drug use or disruptive behavior,
   (D) Type of technical assistance available to residents in the event of house management problems,
   (E) Anticipated cost of maintaining the residence, including rent and utilities,
   (F) Anticipated charge, per veteran, for residing in the residence,
   (G) Anticipated means of collecting rent and utilities payments from residents,
   (H) A description of the housing unit for which the loan is sought to support, including location, type of neighborhood, brief floor plan description, etc., and why this residence was selected for this endeavor.

(iv) The applicant’s plans for use of the loan proceeds:

§ 17.803  Order of consideration.

Loan applications will be considered on a first-come-first-serve basis, subject to availability of funds for loans and awards will be made on a first-come-first-serve basis to applicants who meet the criteria for receiving a loan. If no funds are available for loans, applications will be retained in the order of receipt for consideration as funds become available.

§ 17.804  Loan approval criteria.

Upon consideration of the application package, loan approval will be based on the following:
   (a) Favorable financial history and status,
      (1) A minimum of a two-year credit history,
      (2) No open liens, judgments, and no unpaid collection accounts,
      (3) No more than two instances where payments were ever delinquent beyond 60 days,
      (4) Net ratio: (monthly expenses divided by monthly cash flow) that does not exceed 40%,
      (5) Gross ratio: (total indebtedness divided by gross annual cash flow) that does not exceed 35%,
   (b) Demonstrated ability to successfully address the needs of substance abusers as determined by a minimum of one year of successful experience in providing services, such as, provision of housing, vocational training, structured job seeking assistance, organized relapse prevention services, or similar activity. Such experience would involve at least twenty-five substance abusers, and would be experience which could be verified by VA inquiries of government or community groups with whom the applicant has worked in providing these services.
   (c) An acceptable plan for operating a residence designed to meet the conditions of a loan under this program, which will include:
      (1) Measures to ensure that residents are eligible for residency, i.e., are veterans, are in (or have recently been in) a program for the treatment of substance abuse, are financially able to pay their share of costs of maintaining the residence, and agree to abide by house rules and rent/utilities payment provisions,
      (2) Adequate rent/utilities collections to cover cost of maintaining the residence,
      (3) Policies that ensure democratic self-run government, including expulsion policies, and
      (4) Available technical assistance to residents in the event of house management problems.
   (d) Selection of a suitable housing unit for use as a transitional residence in a neighborhood with no known illegal drug activity, and with adequate living space for number of veterans planned for residence (at least one large bedroom for every three veterans, at least one bathroom for every four veterans, adequate common space for entire household).
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(e) Agreements, signed by an official authorized to bind the recipient, which include:

(1) The loan payment schedule in accordance with the requirements of Pub. L. 102-54, with the interest rate being the same as the rate the VA is charged to borrow these funds from the U.S. Department of Treasury and with a penalty of 4% of the amount due for each failure to pay an installment by the date specified in the loan agreement involved, and

(2) The applicant’s intent to use proceeds of loan only to cover initial startup costs associated with the residence, such as security deposit, furnishings, household supplies, and any other initial startup costs.


§ 17.900 Spina bifida—provision of health care.

(a) VA shall provide a Vietnam veteran’s child who has been determined under §3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801-1806)

NOTE TO §17.900: VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services paid under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition (accordingly, in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spinal bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage).

§ 17.901 Definitions.

For purposes of §§17.900 through 17.905—

An approved health care provider means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certification. An entity or individual shall be deemed to be an approved health care provider only when acting within
§ 17.902 Preauthorization.

(a) Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services, or travel (other than mileage at the General Services Administration rate for privately owned automobiles). This care will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either be made by telephone at (800) 733-8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The application shall contain the following:

(1) Name of child,
(2) Child's social security number,
(3) Name of veteran,
(4) Veteran's social security number,
(5) Type of service requested,
(6) Medical justification,
(7) Estimated cost, and
(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization shall not be required...
for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone at (800) 733-8387 to the Health Administration Center, Denver, CO within 72 hours of the emergency.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0577.)

(Authority: 38 U.S.C. 101(2), 1801-1806)

§ 17.903 Payment.

(a)(1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.84).

(2) As a condition of payment, the services must have occurred on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under §3.814 of this title. Also, as a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025, no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider’s professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient’s hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution’s Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) Drug Code for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,
§ 17.904 Review and appeal process.

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses or modifies the previous decision. An appeal under this section would be considered as filed the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

NOTE TO §17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0577.)

(Authority: 38 U.S.C. 101(2), 1801-1806)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801-1806)
FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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(Revised as of July 1, 1998)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

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VETERANS ADMINISTRATION

National Fire Protection Association

1 Batterymarch Park, Quincy, Mass. 02269-9101, FAX (617) 770-3500

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17.800 Added 49579
17.801 Added 49580
17.802 Added 49580
17.803 Added 49580
17.804 Added 49580
17.805 Added 49581

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1 Authority citation revised. 48387, 53276, 63929

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**Regulation at 60 FR 5852 confirmed:** 55996

**2.101 Added; interim:** 5852
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### 1996

- **Nomenclature change**: 7216
  - 0 Nomenclature change

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### 1998

(Regulations published from January 1, 1998 through July 1, 1998)

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