Workers’ Compensation Programs based upon civilian employment and is also entitled to compensation or dependency and indemnity compensation under laws administered by the Department of Veterans Affairs for the same disability or death, the claimant will elect which benefit he or she will receive. On or after September 13, 1960, an award cannot be approved for payment of compensation or dependency and indemnity compensation concurrently with compensation from the Office of Workers’ Compensation Programs in such instances and an election to receive benefits from either agency is final. See §3.958. There is no right of reelection. (5 U.S.C. 8116(b)) A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse’s entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse. (Authority: Sec. 306(a)(1) of Pub. L. 95–588, 92 Stat. 2497)

§ 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 1544, 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)

§ 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.
§ 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:

(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.