needs of POWs in the areas of disability compensation, health care and rehabilitation.

Affected Public: Individuals or households.

Estimated Annual Burden: 750 hours.

Estimated Average Burden Per Respondent: 1 hour

Frequency of Response: Non-recurring.

Estimated Number of Respondents: 750 respondents.

ADDRESSES: Copies of these submissions may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–7407.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: August 10, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–20568 Filed 8–17–95; 8:45 am]

BILLING CODE 8320–01–P

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 9–95

Question Presented: Must the value of a life estate in real property acquired by inheritance be included in determining annual income and net worth for improved-pension purposes?

Held: The value of a life estate in real property acquired by inheritance generally would not constitute income for improved-pension purposes. The value of a life estate acquired by inheritance would be considered in evaluating a claimant's estate for improved-pension purposes, except to the extent that the property serves as the claimant's dwelling. In determining whether a claimant's estate is a bar to entitlement to improved pension, a determination must be made on all the facts of the individual case as to whether it would be reasonable that a part of the claimant's estate be consumed for his or her maintenance.

Effective Date: March 30, 1995

VAOPGCPREC 10–95

Question Presented: To what extent must the Board of Veterans' Appeals employ the nomenclature, diagnostic criteria, and adaptive-functioning scale of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition, in determining appeals involving issues of service connection and rating of mental disorders?

Held: Sections 4.126 and 4.132 of title 38, Code of Federal Regulations, which require that diagnoses of mental disorders conform to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (APA Manual), Third Edition (DSM–III) and establish the criteria for rating disabilities attributable to mental disorders based upon the psychiatric nomenclature and diagnostic criteria used in DSM–III, require that the Board of Veterans' Appeals (BVA) use the DSM–III nomenclature and diagnostic criteria until such time as the regulations are amended. The BVA is not precluded from making reference to medical reports which employ the adaptive-functioning assessment scales of either DSM–III or the fourth edition of the APA Manual (DSM–IV). However, the utility of such reports may be limited by differences between the terminology and disability levels used in those scales and those employed in 38 CFR § 4.132, the schedule for rating mental disorders.

Effective Date: March 31, 1995.

VAOPGCADV 11–95

Question Presented: May the Department employ a ''fair market value'' standard when setting rates for government quarters, in light of the Chief Financial Officers Act, which contemplates that agencies structure pricing in order to recoup all costs to the Government for providing the goods or services?

Held: OMB Circular A–45, which provides that the costs of quarters be set according to the rule of equivalence, or the fair market value, is based upon 5 U.S.C. § 5911; this section is an exception to the CFO Act requirement that charges for goods and services should reflect costs incurred by the Government.

Effective Date: May 23, 1995.

VAOPGCPREC 12–95

Questions Presented: a. Under the constructive-notice rule of *Bell v. Derwinski*, 2 Vet. App. 611 (1992), may the failure of an agency of original jurisdiction (AOJ) to consider pertinent Department of Veterans Affairs (VA) medical records in existence at the time of its prior final decision constitute clear and unmistakable error, even though such evidence was not actually in the record before the AOJ?

b. Would those circumstances constitute clear and unmistakable error only when the prior final decision of the agency of original jurisdiction was rendered after July 21, 1992, the date of the *Bell* decision?

c. If those circumstances would not constitute clear and unmistakable error as to prior final AOJ decisions rendered before July 21, 1992, would the effective date of an award of benefits in a later

reopened claim after July 21, 1992, based on preexisting VA medical records be the date the reopened claim is filed?

Held: a. With respect to final agency of original jurisdiction (AOJ) decisions rendered on or after July 21, 1992, an AOJ's failure to consider records which were in VA's possession at the time of the decision, although not actually in the record before the AOJ, may constitute clear and unmistakable error, if such failure affected the outcome of the claim.

b. With respect to final AOJ decisions rendered prior to July 21, 1992, an AOJ's failure to consider evidence which was in VA's possession at the time of the decision, although not actually in the record before the AOJ, may not provide a basis for a finding of clear and unmistakable error.

c. When, subsequent to a final AOJ denial prior to July 21, 1992, a claim is reopened after July 21, 1992, and benefits are awarded on the basis of evidence in VA's possession but not actually in the record at the time of the AOJ denial, the effective date of that award will generally be the date on which the reopened claim was filed, as provided by 38 U.S.C. § 5110(a).

Effective Date: May 10, 1995.

VAOPGCADV 13–95

Questions Presented: A. Are VA medical facilities required to follow Michigan state law that establishes the duty of state physicians to either warn known sex and needle-sharing partners of patients infected with the human immunodeficiency virus (HIV), or, in the alternative, to provide the State with the names and addresses of the patient and known partners?

B. Does the analysis in VAOPGCADV 9–90, O.G.C. Advisory Opinion 9–90, which sets out that VA physicians are under no specific duty to follow State law in reporting child and elderly abuse, apply to the Michigan partner notification law?

C. To what extent does VA's HIV confidentiality statute, 38 U.S.C. § 7332, permit VA physicians to cooperate with the State law and should VA physicians cooperate with the State law to that extent?

Held: A. VA medical facilities are under no legal obligation to follow Michigan state law requiring partner notification, or in the alternative, disclosure of confidential information, in HIV cases to a state public health authority.

B. The Supremacy Clause analysis set forth in VAOPGCADV 9–90, O.G.C. Advisory Opinion 9–90 is applicable in the instant case. Nonetheless, VA has the discretionary authority to comply with state law to the extent that 38 U.S.C. §§ 7332 and 5701, as well as the Privacy Act of 1974, allows. These provisions would allow the VA medical center to disclose the requisite information to the state public health authority if the information is submitted pursuant to an adequate written request from that entity.

C. Under the aforementioned provisions, VA physicians (in accordance with any policy or guidance that may be established by the VA medical center) may disclose HIV test results, but not the patient's name, to the spouse or sexual partner (''sexual partner'' as disclosed by the patient during examination or counseling) if the physician determines, after discussion with the patient, that the patient will not be providing the information and the disclosure is necessary to protect the health of the spouse or sexual partner. If these legal prerequisites have been satisfied, we anticipate a VA physician, in the exercise of sound medical and ethical practice, would utilize that provision. VA physicians do not have the authority to notify needle-sharing partners of possible exposure to HIV.

Effective Date: June 12, 1995

VAOPGCPREC 14–95

Questions Presented: a. Whether a final, unappealed Department of Veterans Affairs (VA) regional office decision is subject to review for clear and unmistakable error (CUE) under 38 C.F.R. § 3.105(a), where, upon subsequent reopening, the Board of Veterans' Appeals (BVA or Board) denied the claim.

b. Whether a final, unappealed VA regional office decision is subject to review for CUE, where the Board subsequently denied reopening of the claim.

Held: a. A claim of clear and unmistakable error under 38 C.F.R. § 3.105(a) concerning a final, unappealed regional office decision may not be considered where the Board of Veterans' Appeals has reviewed the entire record of the claim following subsequent reopening and has denied the benefits previously denied in the unappealed decision.

b. If the Board of Veterans' Appeals concludes that new and material evidence sufficient to reopen a prior, unappealed regional office decision has not been submitted, and denies reopening, the Board's decision does not serve as a bar to a claim of CUE in the prior regional office decision.

Effective Date: May 12, 1995.

VAOPGCPREC 15–95

Questions Presented: a. Under the provisions of the Final Stipulation and Order entered in the case of *Nehmer* v. *United States Veterans' Administration:*

(1) should the effective date of an award of dependence and indemnity compensation to a veteran's surviving spouse be based on the date of an original claim filed in 1987 and finally denied in 1988, where, though the veteran served in the Republic of Vietnam during the Vietnam era, the surviving spouse did not allege in the original claim that the veteran's death was caused by exposure to Agent Orange or other herbicides; or

(2) should the effective date of the award be based on the date of a reopened claim, filed in 1993, in which the claimant alleged that the veteran's death may have resulted from exposure to Agent Orange?

b. Do the provisions of the *Nehmer* Final Stipulation and Order governing readjudication of claims apply to claims for burial allowance for service-connected death?

c. If so, may burial allowance based on service-connected death be awarded in the case of a veteran buried prior to the effective date of the regulation establishing a presumption of service connection for the cause of the veteran's death?

d. If service-connected burial allowance may be paid for a veteran buried prior to the effective date of the regulation, would the amount payable be determined under the burial allowance statute as in effect at the time of burial or that in effect at the time of the change in law under which service connection was established?

Held: a. If you conclude that the original dependence and indemnity compensation claim of a veteran's surviving spouse did not allege that the veteran's death resulted from a disease which may have been caused by exposure to herbicides containing dioxin during the veteran's Vietnam-era service in the Republic of Vietnam, and was not denied under former 38 C.F.R. § 3.311a(d) (1986), which governed claims based on herbicide exposure, the claim does not fall within the scope of the Final Stipulation and Order entered in *Nehmer* v. *United States Veterans' Administration*. In that case, the effective date of a subsequent award of dependency and indemnity compensation to the surviving spouse following reopening of the claim may not be based on the date of the original claim. However, if such a surviving spouse's reopened claim involved allegations that the veteran's death from

lung cancer may have resulted from exposure to Agent Orange, it would be governed by the provisions of the Stipulation pertaining to claims filed after the district's court's May 3, 1989, order in *Nehmer* invalidating a portion of the referenced regulations. Under paragraph 5 of the Final Stipulation and Order, the effective date of the award in such a claim must be based on the later of the date of filing of the reopened claim or the date of the veteran's death.

b. The portion of the Final Stipulation and Order in the *Nehmer* case pertaining to readjudication of claim denials voided by the district court's May 3, 1989, order in that case applies to claims for burial allowance for service-connected death under 38 U.S.C. § 2307, if such claims were denied under former 38 U.S.C. § 3.311a(d). However, under the circumstances of a particular claim, you may be justified in concluding that a burial allowance claim was not denied under former section 3.311a(d). In that case, the Final Stipulation and Order would not be applicable.

c. If a claim for service-connected burial allowance under what is now 38 U.S.C. § 2307 was denied under former 38 U.S.C. § 3.311a(d) and therefore fell within the group of claim denials voided by the district court's May 3, 1989, order in the *Nehmer* case, or if entitlement to the nonservice-connected burial benefit was previously established, if service connection for the cause of the veteran's death is later established on the basis of regulations issued pursuant to the Agent Orange Act of 1991, the post-burial effective date of those regulations would not be an impediment to payment of a burial allowance under section 2307.

d. The maximum amount of burial allowance payable under section 2307 is determined based on the maximum rate authorized at the time the burial took place. Where nonservice-connected burial benefits have already been paid, and it is later determined that entitlement to service-connected burial allowance exists, only the difference between the amount previously paid and the amount payable under section 2307 may be paid.

Effective Date: June 2, 1995.

VAOPGCPREC 16–95

Question Presented: May the recipient of a VA work-study allowance under 38 U.S.C. § 3485, who is assigned by VA to perform work-study services at a university, be paid by the university the difference between the amount payable by VA and the amount which the university otherwise pays to work-study students performing similar services?

Held: 1. The statutes governing the VA work-study program do not expressly bar the student from receiving work-study payments from both VA and other sources, public or private, for performance of the same work. However, the availability of such other payments has a direct bearing on the individual's need for the additional educational assistance afforded under the VA work-study program. The Department has determined that assistance from another source for performing the same work-study activities vitiates the student's need for the supplemental educational assistance provided by VA's work-study program. Accordingly, VA, in the judicious administration of limited Federal resources, has included terms in its standard student work-study agreement prohibiting receipt or acceptance of such ''other source'' payments.

2. Nevertheless, that contractual preclusion represents a rebuttable presumption of lack of need for the benefit. Thus, the standard work-study agreement terms restricting ''other source'' payments may be modified, should VA find it meritorious to do so in the individual case. This may be an option in the case cited if you conclude that receipt of the differential amount does not materially affect the individual's need for a VA work-study allowance.

Effective Date: June 7, 1995.

VAOGCPREC 17–95

Questions Presented: a. What is the scope of any obligation imposed on the Secretary of Veterans Affairs under 38 U.S.C. § 7722, or any other legal authority, to inform individuals concerning benefits to which they may be entitled? [1]

b. Does the assumption that the Department of Veterans Affairs (VA) knew or reasonably should have known of an individual's eligibility for VA benefits have any bearing on the Secretary's notification obligation?

c. Are the provisions of any applicable notification law or regulation, including section 7722, applicable from the date of their enactment or retroactively?

d. May a failure to provide required notification to a claimant be the basis of a grant of an earlier effective date of an award of VA benefits and, if so, what is the legal authority to deviate from the criteria pertaining to effective dates of awards?

Held: a. The provisions of 38 U.S.C. § 7722, as interpreted by the Court of Veterans Appeals, require VA to inform individuals of their potential entitlement to Department of Veterans Affairs benefits when (1) such individuals meet the statutory definition of ''eligible veteran'' or ''eligible dependent,'' and (2) VA is aware or reasonably should be aware that such individuals are potentially entitled to VA benefits. VA's duty to provide information and assistance to such individuals requires only such actions as are reasonable under the circumstances.

b. The notification requirements currently in 38 U.S.C. § 7722 and previously in 38 U.S.C. § 241 have been in effect since March 26, 1970, and do not apply retroactively to any period prior to that date.

c. A failure by VA to provide the notice required by 38 U.S.C. § 7722 may not provide a basis for awarding retroactive benefits in a manner inconsistent with express statutory requirements, except insofar as a court may order such benefits pursuant to it general equitable authority or the Secretary of Veterans Affairs may award such benefits pursuant to his equitable-relief authority under 38 U.S.C. § 503(a).

Effective Date: June 21, 1995.

VAOGCPREC 18–95

Question Presented: Is the Department of Veterans Affairs' (VA) definition of ''past-due benefits'' in 38 C.F.R. § 20.609(h)(3) inconsistent with the governing statutory provisions in 38 U.S.C. § 5904(d)(3)?

Held: The definition of ''past-due benefits'' in 38 C.F.R. § 20.609(h)(3) is consistent with the provisions of 38 U.S.C. § 5904(d)(3). Further, because the language of section 5904(d)(3) may reasonably be construed to prohibit counting as past-due benefits any amounts payable after the date of the decision making, or ordering the making of, the award, we believe that the regulatory amendment sought by petitioner would be inconsistent with the statute.

Effective Date: June 22, 1995.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 95–20490 Filed 8–17–95; 8:45 am]

BILLING CODE 8320–01–M

[1] You have requested our views regarding the scope of VA's notification obligation under section 7722 ''or any other legal authority,'' and we note that a duty to provide notice or information to claimants may sometimes arise under statutory provisions other than section 7722. *See*, e.g., 38 U.S.C. §§ 3563, 5107(a). However, because we believe that section 7722 provides the sole notification obligation pertinent to the specific facts described in your opinion request, we have limited our analysis to the scope of the duty under that provision. The scope of VA's obligation may differ under other statutory provisions.