

§ 270.6

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of the sensitive nature of the information that may require review in determining eligibility of claimants.

(b) The Secretary will ensure that the Commission has all administrative support, including space, office and automated equipment and translation services, needed for the efficient and expeditious review and payment of claims. The Secretary may task appropriate Department of Defense elements to provide such support, either through assignment of personnel or the hiring of independent contractors.

Subpart C—Standards and Verification of Eligibility

§ 270.6 Standards of eligibility.

(a) A person is eligible for payments under this part if such person:

(1) Was captured and incarcerated by North Vietnam as a result of his participation in operations conducted under OPLAN 34A or its predecessor operation; or

(2) Served as a Vietnamese operative under OP 35, and was captured and incarcerated by North Vietnamese forces as a result of the participation by the person in operations in Laos or along the Lao-Vietnamese border pursuant to OP 35, and

(i) Was captured and incarcerated by the North Vietnamese, and remained in captivity after 1973 (or died in captivity) after participation in OP 35, and

(ii) Has not previously received payment for the United States Government after 1972 from the period spent in captivity.

(b) In the case of a decedent who would have been eligible for a payment under this part if alive, payment will be made to the survivors of the decedent in the following order:

(1) To the surviving spouse of an eligible person; or

(2) If there is no surviving spouse of an eligible person, to the surviving children of an eligible person, in equal shares; or

(3) If there is no surviving spouse of an eligible person and no surviving children of an eligible person, to the surviving parents of an eligible person, in equal shares (step parents take equal shares the same as natural parents); or

(4) If there is no surviving spouse of an eligible person, no surviving children of an eligible person, and no surviving parents of an eligible person, to the surviving siblings of an eligible person, in equal shares. (Half siblings take equal shares in the same manner as full siblings.)

(c) A payment may not be made under this part to, or with respect to, a person who the Commission determines, based on the available evidence, served in the People's Army of North Vietnam or provided active assistance to the Government of North Vietnam or forces opposed to the Government of South Vietnam or the United States during any period from 1958 through 1975.

(d) The Commission will make reasonable efforts to publicize the availability of payments involved in this procedure, using existing public affairs channels.

[63 FR 3472, Jan. 23, 1998, as amended at 63 FR 68195, Dec. 10, 1998]

§ 270.7 Verification of eligibility.

(a) All persons applying for payment under this part shall first submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos as set out in appendix A to this part, along with all corroborating documents and information required, to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301-4000. Submission of an Application for Compensation of Vietnamese Commandos without properly signed and notarized declarations will automatically render the application ineligible for consideration by the Commission for payment. All applicants must sign and have notarized the declarations in Part C of the Application for Compensation of Vietnamese Commandos. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the Application for Compensation of Vietnamese Commandos. If portions of the Application for Compensation of Vietnamese Commandos are not completed, the Commission may draw adverse inferences from the portions left incomplete.

(b) Staff Functions in the Verification of Eligibility Process. The Staff Director shall:

(1) Establish a database for logging and tracking Applications for Compensation of Vietnamese Commandos throughout the claims process, including appellate actions and final payment or denial of claims.

(2) Maintain a liaison with on-site personnel at the National Archives Center, College Park, Maryland, to organize and translate finance records for review.

(3) Upon receipt of each Application for Compensation of Vietnamese Commandos, research cases to verify eligibility of claimant to include reviewing and analyzing existing records.

(4) Forward applications (including support documentation) to other U.S. Government agencies as required (e.g., CIA, INS) for review of their records, as needed to acquire documentation that may aid in determining the eligibility of claimants to receive payments.

(5) Present any information or comments resulting from the research and review of cases, plus any reasonably available and probative information, to the Commission with a recommendation on the eligibility of applicants.

(6) If eligibility is favorably approved by the Commission, forward written requests to DFAS to effectuate payments.

(7) Prepare notification letters, on behalf of the Commission, for forwarding to claimants notifying them of the final determination concerning approval or disapproval of their applications.

(8) In coordination with the Army Budget Office and OSD, determine appropriate fund cite that will be used for payments.

(9) Assist in the preparation of required Reports to Congress.

(10) Determine administrative budgetary support requirements and submit funding request to OSD.

(11) Provide clerical and administrative support to the Commission.

(12) Create and maintain a system of records to manage all information generated by the processing of Applications for Compensation of Vietnamese Commandos under this part and to create an administrative record of actions

by the Commission. All information received or originated from other Departments and agencies of the U.S. government will be retained, stored, and further disseminated only in accordance with pertinent law (e.g., 5 U.S.C. section 552(FOIA) and 5 U.S.C. section 552a (Privacy Act)) and conditions set by those originating Departments and agencies.

(c) Claims will be processed expeditiously. Within 18 months of actual receipt by the Commission of an Application for Compensation of Vietnamese Commandos, the Commission will determine the eligibility of the applicant. The standard for finding eligibility is whether the information reasonably available to the Commission indicates that the applicant is more likely than not to be eligible for a payment under this part. The burden of making a showing of eligibility shall be on the applicant. Upon determination of eligibility, the payment should be promptly accomplished.

(d) Applicants may request to appear in person before the Commission, which will retain discretion whether to grant such requests. The Commission may request the personal appearance or interview of any applicant as a condition of further consideration of his or her application if such appearance would significantly aid the Commission in its determination. All appearances shall be at the expense of the applicant.

Subpart D—Payment

§ 270.8 Authorization of payment.

Subject to the availability of appropriated funds, upon determination by the Commission of the eligibility of a person for payment, the Commission will authorize the Defense Finance and Accounting Service (DFAS) to make payments out of the funds appropriated for this purpose. Any payment authorized to a person under a legal disability, may, in the discretion of the Commission, be paid for the use of the person, to the natural or legal guardian, committee, conservator, or curator, or, if there is no such natural or legal guardian, committee, conservator, or curator, to any other person, including the spouse, children, parents,