

addition, during the course of the investigation or operation, the investigator or operative may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of law other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provides valuable leads for other law enforcement or intelligence agencies.

(d) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system of records is being exempt from subsection (d) of the Act concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(e) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources of information, to protect the privacy and physical safety of participants and their families, confidential sources, and witnesses and to avoid the disclosure of specialized techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad generic terms.

* * * * *

Dated: September 28, 1995.

L. M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 95-24664 Filed 10-3-95; 8:45 am]
BILLING CODE 5000-04-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AH18

Eligibility Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations regarding eligibility verification reports (EVRs) for income-based benefits. This amendment implements legislation which eliminated the mandatory requirement for submission of EVRs on an annual basis from recipients of pension or parents' dependency and indemnity compensation (DIC) and gives VA discretionary authority to require such reports where necessary to determine eligibility. This amendment sets forth the guidelines that the Secretary will use in exercising this discretionary authority.

EFFECTIVE DATE: This amendment is effective October 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: The term "eligibility verification report" means a VA form which requests information needed to determine or verify eligibility for VA's income-based benefit programs (pension and parents' DIC). Until recently VA was required by law (38 U.S.C. 1315(e) and 38 U.S.C. 1506(2)) to secure a completed EVR at least once a year from every pension beneficiary and every parents' DIC beneficiary under the age of 72. Public Law 103-271, the Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994, amended 38 U.S.C. 1315 and 1506 to give the Secretary of Veterans Affairs discretionary authority to require submission of income and resource reports by recipients of income-based benefits.

On May 15, 1995, we published a document in the Federal Register (60 FR 25877) proposing criteria for determining which claimants and beneficiaries must complete an EVR. Interested parties were invited to submit written comments on or before July 14, 1995, and we appreciate the one comment that was received.

The commenter, noting that in the past workload backlogs developed when

all EVRs fell due at the same time, expressed concern over the possibility of similar backlogs developing if all EVRs are sent at the same time.

While we appreciate the commenter's concern, any potential negative impact from concentrating the EVR workload at one time will be ameliorated by the vast reduction in the total number of EVRs we request. We project that with implementation of this final rule the number of annual EVRs will drop from approximately 850,000 to around 350,000.

The commenter also expressed concern that some beneficiaries who are not required to complete an annual EVR will not advise VA of unreimbursed medical expenses that could reduce countable income for VA purposes, and thereby lose potential entitlement to increased benefits.

Each year VA will remind beneficiaries who are not required to submit EVRs that they might be due an adjustment because of unreimbursed medical expenses paid from their own funds during the previous calendar year. Beneficiaries will therefore be reminded of the opportunity to advise VA of medical expenses as they have been in the past, but the ultimate responsibility for doing so lies with the beneficiary.

Based on the rationale set forth in this document and in the proposed rule, the provisions of the proposed rule are adopted as a final rule without change.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This amendment will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: September 7, 1995.
Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 510(a), unless otherwise noted.

2. Section 3.256 is revised to read as follows:

§ 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 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.

(b) *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 (if applicable), dependency status, and any other information necessary to determine or verify entitlement to pension or parents' dependency and indemnity compensation.

(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, if the spouse's income could affect entitlement, his or her spouse may have received income other than Social Security during the current or previous calendar year; or
- (iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension or parents' dependency and indemnity compensation as defined in §§ 3.3 or 3.5 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(c) 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. 1315(e) and 1506)

3. Section 3.277 is amended by revising the heading and paragraphs (b) and (c); and by adding paragraph (d) as follows:

§ 3.277 Eligibility reporting requirements.

* * * * *

(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.

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

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

* * * * *

[FR Doc. 95-24673 Filed 10-3-95; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 20**RIN 2900-AH57****Rules of Practice—Advancement on the Docket**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (the Board) to provide that an appeal may be advanced on the Board's docket where administrative error results in significant delay in docketing the appeal. The Board's current Rules of Practice do not address the problem of administrative error with respect to advancement on the docket. The Rules of Practice are also amended to provide that the Board may advance a case on the docket on its own motion, the motion of the appellant, or the motion of the appellant's representative.

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (the Board) decides appeals of claims for veterans' benefits. At the close of Fiscal Year 1994, more than 47,000 appeals were pending at the Board.

Generally, the law requires that the Board consider each case in regular order according to the case's place on the Board's docket. 38 U.S.C. 7107(a)(1). The Board assigns docket numbers. Prior to 1994, docket numbers were assigned when the claims file was physically transferred from the agency of original jurisdiction (typically one of the Department's 58 regional offices) to the Board's offices in Washington, D.C. Beginning in 1994, the Board instituted a new procedure under which docket numbers are assigned as soon as the agency of original jurisdiction forwards a photocopy of the notice of appeal (VA Form 9) to the Board.

The law permits a case to be "advanced on the docket" upon motion only if it involves interpretation of law of general application affecting other claims or for other sufficient cause shown. 38 U.S.C. 7107(a)(2). Because of the large numbers of appeals—on average, the Board receives from 35,000 to 40,000 per year—the Board has taken a restrictive view of its authority to advance cases on the docket. The current regulation, 38 CFR 20.900(c), provides just two examples of "other