

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A147

Dependency and Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to exclude payments of accrued pension benefits from countable income in determining entitlement to VA improved death pension benefits. This change is needed to implement a decision of the United States Court of Veterans Appeals. The intended effect of this change is to bring the regulations into conformance with the decision of the Court.

EFFECTIVE DATE: This amendment is effective November 29, 1994.

FOR FURTHER INFORMATION CONTACT: Bradley Flohr, Consultant, Program Management, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7241.

SUPPLEMENTARY INFORMATION: Under Title 38 United States Code, Chapter 15, eligible veterans may be entitled to nonservice-connected disability pension benefits and eligible surviving spouses and/or children may be entitled to payment of nonservice-connected death pension benefits subject to statutory annual income limitations. In determining annual income under Chapter 15, all payments of any kind or from any source are countable unless specifically excluded by statute. 38 U.S.C. 1503(a)(2) specifically excludes "payments under this chapter," i.e., Chapter 15, from countable income.

Under the provisions of 38 U.S.C. 5121, certain periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions, or based on evidence in file at date of death, that are due and unpaid for a period not to exceed two years shall, upon the death of such individual, be paid to certain individuals as set forth in 5121(a).

The United States Court of Veterans Appeals has held that, since accrued benefits paid to a veteran's surviving spouse and/or child based on pension benefits owed to a veteran at the time of his or her death are derivative in nature, they are no more than payments of pension under 38 U.S.C. Chapter 15 that VA owed a veteran at the time of death and are, therefore, excluded from

countable annual income for VA improved death pension purposes. See *Martin v. Brown*, 7 Vet. App. 196, 199-200 (1994). The department is amending 38 CFR 3.272(c) to incorporate this holding of the Court.

VA is issuing a final rule to implement this decision of the Court. Because this amendment is an interpretive rule that reflects a decision of the Court, publication as a proposal for public notice and comment under Title 5 U.S.C. 553, the Administrative Procedures Act, is unnecessary.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby 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.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Approved: January 23, 1997.

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. 501(a), unless otherwise noted.

§ 3.272 [Amended]

2. In § 3.272, paragraph (c) is amended by removing "Code." and adding, in its place, "Code, including accrued pension benefits payable under 38 U.S.C. 5121."

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38 CFR Part 3

RIN 2900-A136

Spouse and Surviving Spouse

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to replace gender-specific language with gender-neutral language. The amendments are necessary to conform the adjudication regulations with the VA policy that all of its publications will be stated in a manner that does not seem to preclude benefits for female veterans, dependents or beneficiaries.

EFFECTIVE DATE: This amendment is effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7218.

SUPPLEMENTARY INFORMATION: It is our policy that in any VA publication and in any communications, words and statements denoting gender shall avoid any appearance of seeming to preclude benefits for female veterans, dependents, or beneficiaries. We believe that the best way to do so is to use gender-neutral terms such as "spouse" or "surviving spouse" rather than gender-specific terms such as "husband," "wife," "widow," or "widower."

This document deletes references throughout 38 CFR part 3 to "wife," "husband," "widow," or "widower," and replaces them with the terms "spouse" and "surviving spouse." In 38 CFR 3.205(a)(6), "held themselves out as married" has been substituted for "held themselves out as husband and wife." 38 CFR 3.50 is revised to provide a new definition of "spouse" and "surviving spouse" to reflect statutory requirements. Because of this change, it is no longer necessary to define "wife" and "widow." These terms are therefore removed. 38 CFR 3.51 previously provided that the term "wife" includes the husband of a female veteran and the term "widow" includes the widower of a female veteran. Because we have substituted gender-neutral terms such as "spouse" and "surviving spouse" for terms such as "wife," "husband," "widow," or "widower" throughout the adjudication regulations, 38 CFR 3.51 is no longer necessary and we have removed it.

Since these amendments make no substantive change to the regulations, the Secretary finds that notice and public procedure thereon are unnecessary. Accordingly, these amendments are promulgated without