

**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."

[FR Doc. 97-2901 Filed 2-5-97; 8:45 am]

**BILLING CODE 8320-01-P**

**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

regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553. 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 64.104, 64.105, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: January 27, 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.

2. Section 3.50 is revised to read as follows:

**§ 3.50 Spouse and surviving spouse.**

(a) *Spouse*. “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse*. Except as provided in § 3.52, “surviving spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran’s death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran’s death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

**§ 3.51 [Removed]**

3. Section 3.51 is removed.

**§ 3.106 [Amended]**

4. In § 3.106, paragraph (e) is amended by removing “widow” and adding, in its place, “surviving spouse”.

**§ 3.205 [Amended]**

5. In § 3.205, the last sentence of paragraph (a)(6) is amended by removing “husband and wife” and adding, in their place, “married”.

**§ 3.214 [Amended]**

6. In § 3.214, the section heading is amended by removing “widows” and adding, in its place, “surviving spouses”.

**§ 3.252 [Amended]**

7. In § 3.252, paragraph (b) is amended by removing “widow or widower” each time they appear and adding, in their place, “surviving spouse”; and paragraph (e) is revised to read as follows:

**§ 3.252 Annual income; pension; Mexican border period and later war periods.**

\* \* \* \* \*

(e) *Surviving spouse with a child—(1) Child*. The term “child” means a child as defined in § 3.57. Where a veteran’s child is born after the veteran dies, the surviving spouse will not be considered a surviving spouse with a child prior to the child’s date of birth.

(2) *Veteran’s child not in surviving spouse’s custody*. Where the veteran was survived by a surviving spouse and by a child, the income increments for a surviving spouse and child apply even though the child is not the child of the surviving spouse and not in his or her custody.

(3) *Income of child*. The separate income received by a child or children, regardless of custody, will not be considered in computing the surviving spouse’s income. Where the separate income of the child is turned over to the surviving spouse, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the surviving spouse’s income.

(4) *Alternative rate*. Whenever the monthly pension rate payable to the surviving spouse under the formula in 38 U.S.C. 1541(c) is less than the rate payable for one child under section 1542 if the surviving spouse were not entitled, the surviving spouse will be paid the child’s rate.

\* \* \* \* \*

8. Section 3.257 is revised to read as follows:

**§ 3.257 Children; no surviving spouse entitled.**

Where pension is not payable to a surviving spouse because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for the child or children as if there were no surviving spouse.

**§ 3.262 [Amended]**

9. In § 3.262, paragraph (k)(6) is amended by removing “widow” and adding, in its place, “surviving spouse”.

**§ 3.400 [Amended]**

10. In § 3.400, paragraph (e)(2) is amended by removing “widow’s or widower’s” each time they appear and adding, in their place, “surviving spouse’s” and by removing “widow or widower” and adding, in their place, “surviving spouse”.

**§ 3.401 [Amended]**

11. In § 3.401, paragraph (c), the heading is amended by removing “wife (husband)” and adding, in their place, “spouse”.

**§ 3.666 [Amended]**

12. In § 3.666, paragraph (b)(1) is amended by removing “widow or widower” and adding, in their place, “surviving spouse”.

**§ 3.702 [Amended]**

13. In § 3.702, paragraph (e), the heading is amended by removing “Widow (widower)” and adding, in their place, “Surviving spouse”.

**§ 3.805 [Amended]**

14. In § 3.805, paragraphs (d) and (e) are amended by removing “widow (widower)” each time they appear and adding, in their place, “surviving spouse”; and paragraph (f) is amended by removing “herself (himself)”.

**§ 3.857 [Amended]**

15. In § 3.857, the heading and text are amended by removing “widow or widower” each time they appear and adding, in their place, “surviving spouse”.

**§ 3.1000 [Amended]**

16. In § 3.1000, paragraph (a)(2) is amended by removing “widow or remarried widow” and adding, in their place, “surviving spouse or remarried surviving spouse”; paragraph (b)(3) is amended by removing “widow’s” and adding, in its place, “surviving spouse’s”; the introductory text of paragraph (c) is amended by removing “widow” and adding, in its place, “surviving spouse”; paragraph (d)(1) is amended by removing “widow or

widower" and adding, in their place, "surviving spouse"; and paragraph (f) is amended by removing "widow or widower" and adding, in their place, "surviving spouse" and by removing "wife or husband" and adding, in their place, "spouse".

[FR Doc. 97-2903 Filed 2-5-97; 8:45 am]

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### 38 CFR Part 36

RIN 2900-AH63

#### Loan Guaranty: Flood Insurance Requirements

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its loan guaranty regulations regarding loans in areas having special flood hazards. This action is required by statute to implement the provisions of the National Flood Insurance Reform Act of 1994, Title V of Public Law 103-325. VA is amending its regulations to strengthen requirements for procuring and maintaining flood insurance on properties in areas having special flood hazards which secure loans guaranteed by VA, and to include new requirements for VA as a "Federal agency lender." The new requirements include escrow requirements for flood insurance premiums, the requirement to "force place" flood insurance under certain circumstances, enhanced flood hazard notice requirements, new authority for VA to charge fees for determining whether a property is located in a special flood hazard area, and various other provisions necessary to implement the National Flood Insurance Reform Act of 1994.

**EFFECTIVE DATE:** This final rule is effective February 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273-7368.

**SUPPLEMENTARY INFORMATION:** Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised existing Federal flood insurance statutes. The Reform Act was intended to increase compliance with flood insurance requirements and participation in the

National Flood Insurance Program in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims. The Reform Act requires the Federal entities for lending regulation to issue regulations fulfilling its statutory requirements, and Federal agency lenders to issue regulations consistent with and substantially identical to the regulations issued by the Federal entities for lending regulation. The Federal entities for lending regulation published a joint final rule on August 29, 1996.

VA is amending its regulations in order to set forth the requirement of flood insurance coverage on properties located in special flood hazard areas which secure loans made or guaranteed by VA, and to fulfill the statutory requirement that VA issue regulations consistent with and substantially identical to the regulations issued by the Federal entities for lending regulation.

Existing VA regulations regarding flood insurance requirements are based on several provisions of Title 42 U.S.C., Chapter 50, which were in place prior to the enactment of the Reform Act. 42 U.S.C. 4106(a) provides that no Federal agency shall approve any financial assistance (guarantee or make a loan) for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director of the Federal Emergency Management Agency (FEMA) as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. 42 U.S.C. 4012a(a) provides that no Federal agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director of FEMA as having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Act of 1968 unless the building or manufactured home and any personal property to which such financial assistance relates is covered by flood insurance.

The Reform Act added 42 U.S.C. 4012a(b) which provides that regulated lending institutions and Federal agency lenders cannot make, increase, extend, or renew any loan secured by improved real estate or a manufactured home located or to be located in an area that has been identified by the Director of FEMA as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968,

unless the building or manufactured home and any personal property securing such loan is covered by flood insurance. Further, lenders selling loans to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation must ensure that any loan secured by improved real estate or a manufactured home identified as being in a special flood hazard area at the time of origination or any time during the term of the loan is covered by flood insurance.

One significant impact of the new provisions on VA is a greater emphasis on ensuring flood insurance coverage during the entire term of loans guaranteed or made by VA which require such insurance, taking into account any remapping of special flood hazard areas by FEMA. VA is amending 38 CFR 36.4222 regarding hazard insurance coverage for manufactured home loans guaranteed by VA, 38 CFR 36.4326 regarding hazard insurance coverage for other loans guaranteed by VA, and 38 CFR 36.4600(c)(3) regarding hazard insurance coverage for loans sold by VA subject to guaranty, by adding language to emphasize that the flood insurance requirement applies any time during the term of the loan that the security is located in a special flood hazard area, not just when the loan is made. VA is adding language to 38 CFR 36.4512(b) which provides that it cannot make, increase, extend, or renew any loan secured by improved real estate or a manufactured home located or to be located in a special flood hazard area unless the security is covered by flood insurance for the term of the loan.

Under 42 U.S.C. 4106(a), Federal agencies are prohibited from providing financial assistance for acquisition or construction purposes for use in any area that has been identified by FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Although this is not a new provision of the law, VA is using this opportunity to ensure program participants are aware of the prohibition. VA is incorporating the prohibition into 38 CFR 36.4222, 36.4326, 36.4402 and 36.4512.

In 38 CFR 36.4326 and 36.4402(a)(6), the reference to the Secretary of Housing and Urban Development is replaced by a reference to the FEMA.

38 CFR 36.4500(b) is amended to make the provisions of 38 CFR 36.4512 applicable to Native American veteran direct loans. Editorial changes are also made to 38 CFR 36.4512.

The Reform Act requires that VA issue regulations consistent with and substantially identical to those issued