

**DEPARTMENT OF VETERANS  
AFFAIRS**
**38 CFR Part 3**
**RIN 2900-A157**
**Retroactive Payments Due to a  
Liberalizing Law or VA Issue**
**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulation regarding retroactive payments of compensation, pension and dependency and indemnity compensation due to a liberalizing law or VA issue. The change is necessary to bring the regulation into conformance with a U.S. Court of Veterans Appeals' decision.

**EFFECTIVE DATE:** This amendment is effective June 12, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7252.

**SUPPLEMENTARY INFORMATION:** Under the provisions of 38 U.S.C. 5110(a) and 38 CFR 3.400, awards of compensation, pension and dependency and indemnity compensation benefits are generally effective on the date VA receives the claim or the date entitlement arose, whichever is later. However, 38 U.S.C. 5110(g) provides an exception: Where benefits are awarded or increased based on a change in law or an administrative issue, benefits are awarded based on facts found but not earlier than the effective date of the law or issue and not more than one year prior to the earlier of the date of application or administrative determination of entitlement. The purpose of section 5110(g) was to provide a one-year grace period, such as that allowed after service discharge or death, for potential beneficiaries who would otherwise be penalized by not filing promptly.

The implementing regulation for section 5110(g) is 38 CFR 3.114. Section 3.114(a) states that the effective date of an award or increase made pursuant to a liberalizing law or VA issue will be made in accordance with facts found but not earlier than the effective date of the law or administrative issue. It goes on to state that, in order for a claimant to be eligible for a retroactive award, the evidence must show that he or she met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or issue and that the

eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

In *McCay v. Brown*, 9 Vet. App. 183 (1996), the U.S. Court of Veterans Appeals (the Court) noted that both section 5110(g) and § 3.114(a) are silent as to a liberalizing law or issue with a retroactive effective date. The Court stated that the requirement that the claimant must have met all eligibility criteria on the effective date of the law or issue fulfills the intent of section 5110(g) when the liberalizing law is prospective. However, the Court held that, where the liberalizing law has a retroactive effective date, it is not a permissible construction of section 5110(g) and would result in unequal treatment of claimants. This document amends § 3.114(a) to make it clear that that requirement applies only when liberalizing laws or issues take effect on or after the date of enactment or issuance.

The effective date of this amendment is June 12, 1996, the date of the Court's decision in *McCay v. Brown*, 9 Vet. App. 183 (1996).

Since this amendment merely implements a Court decision, the Secretary finds under 5 U.S.C. 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

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 these regulatory amendments 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. These amendments are not substantive and do not affect any small entities.

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, Vietnam.

Approved: February 12, 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. In § 3.114(a) the second sentence is amended by removing "In order" and adding, in its place, "Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant".

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**DEPARTMENT OF VETERANS  
AFFAIRS**
**38 CFR Part 21**
**RIN 2900-A129**
**Vocational Rehabilitation;  
Miscellaneous Changes**
**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs vocational rehabilitation regulations. Changes are made to reflect current organizational structure; to decentralize decisionmaking; to update authority citations; to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on a work-study contract; and to clarify provisions.

**DATES:** This final rule is effective April 11, 1997. However, the restatement of statute contained in this final rule will be applied retroactively from the effective date of the statutory provision.

**FOR FURTHER INFORMATION CONTACT:** Jeff Goetz, Chief of Operations, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 273-7425.

**SUPPLEMENTARY INFORMATION:** This final rule consists of delegations of authority and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

As noted in the **SUMMARY** portion of this document, a change is made to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on