

analysis showed that the investment alternatives were of equal value.

Examples:

A plan owns an interest in a limited partnership that is considering investing in a company that competes with the plan sponsor. The fiduciaries may not replace the limited partnership investment with another investment based on this fact unless they prudently determine that a replacement investment is economically equal or superior to the limited partnership investment and would not adversely affect the plan's investment portfolio, taking into account factors including diversification, liquidity, risk and expected return. The competition of the limited partnership with the plan sponsor is a factor outside the economic interests of the plan, and thus cannot be considered unless an alternative investment is equal or superior to the limited partnership.

A multiemployer plan covering employees in a metropolitan area's construction industry wants to invest in a large loan for a construction project located in the same area because it will create local jobs. The plan has taken steps to ensure that the loan poses no prohibited transaction issues. The loan carries a return fully commensurate with the risk of nonpayment. Moreover, the loan's expected return is equal to or greater than construction loans of similar quality that are available to the plan. However, the plan has already made several other loans for construction projects in the same metropolitan area, and this loan could create a risk of large losses to the plan's portfolio due to lack of diversification. The fiduciaries may not choose this investment on the basis of the local job creation factor because, due to lack of diversification, the investment is not of equal economic value to the plan.

A plan is considering an investment in a bond to finance affordable housing for people in the local community. The bond provides a return at least as favorable to the plan as other bonds with the same risk rating. However, the bond's size and lengthy duration raises a potential risk regarding the plan's ability to meet its predicted liquidity needs. Other available bonds under consideration by the plan do not pose this same risk. The return on the bond, although equal to or greater than the alternatives, would not be sufficient to offset the additional risk for the plan created by the role that this bond would play in the plan's portfolio. The plan's fiduciaries may not make this investment based on factors outside the economic interest of the plan because it

is not of equal or greater economic value to other investment alternatives.

A plan sponsor adopts an investment policy that favors plan investment in companies meeting certain environmental criteria (so-called "green" companies). In carrying out the policy, the plan's fiduciaries may not simply consider investments only in green companies. They must consider all investments that meet the plan's prudent financial criteria. The fiduciaries may apply the investment policy to eliminate a company from consideration only if they appropriately determine that other available investments provide equal or better returns at the same or lower risks, and would play the same role in the plan's portfolio.

A collective investment fund, which holds assets of several plans, is designed to invest in commercial real estate constructed or renovated with union labor. Fiduciaries of plans that invest in the fund must determine that the fund's overall risk and return characteristics are as favorable, or more favorable, to the plans as other available investment alternatives that would play a similar role in their plans' portfolios. The fund's managers may select investments constructed or improved with union labor, after an economic analysis indicates that these investment options are equal or superior to their alternatives. The managers will best be able to justify their investment choice by recording their analysis in writing. However, if real estate investments that satisfy both ERISA's fiduciary requirements and the union labor criterion are unavailable, the fund managers may have to select investments without regard to the union labor criterion.

Signed at Washington, DC, this 9th day of October 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AM28

Accrued Benefits; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document contains a minor correction to the final regulations

that the Department of Veterans Affairs (VA) published in 71 FR 78368 on December 29, 2006. The regulation relates to the Payment of Benefits to Survivors of Estates of Deceased Beneficiaries. No substantive change to the content of the regulation is being made by correcting this amendment.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Kemp-Nichols, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9724.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on December 29, 2006 (See 71 FR 78368) revising its final rule eliminating the 2-year limitation on accrued benefits. In that document, VA failed to amend 38 CFR 3.816(f)(2). This document corrects that error by removing the entire first sentence of 38 CFR 3.816(f)(2) and in the second sentence, by removing the word "also" after words "accrued benefits."

List of Subjects in 38 CFR Part 3

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

Approved: October 10, 2008.

William F. Russo,

Director of Regulations Management.

■ For the reason set out in the preamble, VA is correcting 38 CFR part 3 as follows.

PART 3—ADJUDICATION

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.816 [Corrected]

■ 2. In § 3.816, paragraph (f)(2) is amended by removing the entire first sentence and in the second sentence removing the word "also".

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