

(4) Upon being hailed by U.S. Navy or U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: June 15, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9-18760 Filed 8-6-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AN14

Deceased Indebted Servicemembers and Veterans: Authority Concerning Certain Indebtedness

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) regulations to implement certain provisions of the Combat Veterans Debt Elimination Act of 2008 and of the Veterans' Benefits Improvement Act of 2008. The proposed rule would implement the first statute's provisions granting limited authority to the Secretary of Veterans Affairs (Secretary) to terminate collection action on certain debts arising from a VA benefit program when the indebted individual is a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, and to refund amounts collected after the individual's death. The proposed rule would also implement the second statute's provisions that similarly grants the Secretary discretionary authority to suspend or terminate collection of debts owed to VA by individuals who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy, and to refund amounts collected after the individual's death.

DATES: Comments must be received on or before October 6, 2009.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN14 Deceased Indebted Servicemembers and Veterans." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461-6487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Prior to the enactment of section 1303 of the Combat Veterans Debt Elimination Act of 2008 (Pub. L. 110-252) and section 801 of the Veterans' Benefits Improvement Act of 2008 (Pub. L. 110-389), VA could terminate collection of an indebtedness owed by a deceased servicemember or veteran only after determining that the servicemember or veteran left no estate or an insufficient estate from which to collect the debt. VA would contact the decedent's family or next-of-kin regarding collection of the debt to obtain information needed to make a decision on terminating collection. No matter how compassionate the language of the demand for repayment, VA's attempt to collect a debt at such time and under such circumstances has a huge emotional impact on the decedent's family. The Government's attempt to collect such a debt in these cases is often viewed as a callous action, which demonstrates a complete disregard and lack of gratitude for the servicemember's sacrifice, and insensitivity to the family's loss of their loved one.

Section 1303 of Public Law 110-252 amends chapter 53 of title 38, United States Code, to add a new section (38 U.S.C. 5302A) granting limited authority to the Secretary to terminate collection action on certain debts arising from an individual's indebtedness from a VA

benefit program. The individual must be a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations, as determined by the Secretary in consultation with the Secretary of Defense, in a war or in combat against a hostile force during a period of hostilities after September 11, 2001. This authority may be exercised in the Secretary's discretion when determined to be in the best interest of the United States. This authority does not apply to any amounts owed the United States under any program carried out under the authority of 38 U.S.C. chapter 37 relating to housing and small business loans. This legislation eliminates the need to contact family members and avoids further hardship on them. Instead, it demonstrates appreciation for the decedent's sacrifice on behalf of a grateful Nation.

Section 1303 of Public Law 110-252 also states that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected after September 11, 2001, but before the date of Public Law 110-252, enacted on June 30, 2008, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time and the individual is equitably entitled to such a refund.

Noting the problems associated with contacting grieving survivors for purposes of collecting the debts owed to VA described above, *see* S. Rep. No. 110-449, at 43-44 (2008) (discussing the predecessor bill), Congress enacted section 801 of Public Law 110-389, which amended 31 U.S.C. 3711(f) and granted limited authority to the Secretary to suspend or terminate action to collect a claim against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy. The Secretary must determine that, under circumstances applicable with respect to the deceased person, it is appropriate to do so. Section 801 of Public Law 110-389 also grants the Secretary the authority to refund to the estate of the deceased member any amount collected by the Secretary from a member who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so, whether

collected before, on, or after October 10, 2008.

In preparing this proposed rule, we determined that the refund of any monies would be made to the estate of the decedent or, if there is no estate, to the decedent's next-of-kin. Public Law 110-252 does not specify how the refunded monies are to be distributed. Public Law 110-389 only describes a refund to the estate of the decedent. However, in many instances the servicemember or veteran may not have left an estate or, if he or she did leave an estate, it has been closed by the time a refund may be distributed. Without a rule to fill this gap left by Congress, there is a strong possibility that the family of a deceased servicemember or veteran may suffer further by having, for example, to reopen a closed estate to accommodate Congress' instruction to pay refunds to decedents' estates. Therefore, to implement the legislation consistent with our interpretation of its purpose, it is necessary to address the distribution of a refund when an estate does not exist.

We note that the refunds are for the express purpose of providing relief to the families of certain indebted servicemembers or veterans. See S. Rep. No. 110-449, at 43-44. Further, VA's authority under title 38, United States Code, is generally limited to providing benefits for veterans and their survivors. Accordingly, we interpret Congress' intent to be that VA should, in appropriate cases, refund previously collected funds to the decedent's estate or, if there is no estate, to the decedent's surviving family members in the order that VA would pay accrued benefits to survivors under 38 U.S.C. 5121(a)(2). Although refunds under this proposed rule would not be accrued benefits for purposes of section 5121, they would be VA funds owed to deceased individuals and paid to surviving family members in lieu of the decedent. Accordingly, section 5121(a)(2) is sufficiently analogous to be useful for implementing our interpretation of Congress' intent with respect to the refunds. We propose to refund previous debt collections to the decedent's estate or, absent an estate, to the decedent's next-of-kin in the following order: The decedent's spouse, the decedent's children (in equal shares), or the decedent's parents (in equal shares). We are specifically interested in comments concerning our proposed distribution of refunds in the absence of an estate.

In drafting this proposed rule, we have attempted to incorporate the provisions of both Public Laws 110-252 and 110-389 into a single, consistent rule. One obstacle is the fact that the

termination and refund provisions of Public Law 110-252 apply to a servicemember or a veteran who dies as a result of injury incurred or aggravated in the line of duty after September 11, 2001. Public Law 110-389 applies to a person who died while serving on active duty and states only that money collected before, on, or after the date of enactment of that law may be refunded. In S. Rep. No. 110-449, at 44, the Senate Committee on Veterans' Affairs noted that the predecessor bill, S. 3023, includes a freestanding provision that would permit VA to provide an equitable refund to any estate from which it collected a debt that it would have otherwise waived had the provision been in effect at the time. The report goes on to state that VA would have discretion to determine in which cases, if any, the use of the discretionary authority would be appropriate. Based upon our interpretation of the authority granted by Congress, we propose to limit refunds to the estate or next-of-kin of servicemembers or veterans who served on active duty after September 11, 2001. This would ensure consistency in the refund of money under the proposed rule.

We also propose to add a new section, 38 CFR 1.945, in order to implement 38 U.S.C. 5302A and 31 U.S.C. 3711(f). The new section would provide that the authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts previously collected on certain indebtedness will not be delegated. It would provide that requests for suspension, termination of collection action and/or for refund of amounts previously collected would be submitted by certain VA officials to the Office of the Secretary through the VA Office of the General Counsel.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action" requiring review by the Office of Management and Budget (OMB) as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy

of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule would 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. Only individual survivors and estates of certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance program number applicable to this proposed rule.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

Approved: June 29, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans

Affairs proposes to amend 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

2. The authority citation preceding § 1.900 is revised to read as follows:

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, 5302, 5302A, 5314 and as noted in specific sections.

3. Amend § 1.940 by adding introductory text, to read as follows:

§ 1.940 Scope and application.

Except as otherwise provided in § 1.945:

* * * * *

4. Add § 1.945 to read as follows:

§ 1.945 Authority to suspend or terminate collection action on certain benefit indebtedness; authority for refunds.

(a) The Secretary of Veterans Affairs (Secretary) may suspend or terminate collection action on all or any part of an indebtedness owed to VA by a member of the Armed Forces who dies while on active duty, if the Secretary determines that such suspension or termination of collection is appropriate and in the best interest of the United States.

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary, other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an *individual* is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001.

(c) For purposes of this section:

(1) *Theater of combat operations* means the geographic area of operations where the Secretary in consultation with the Secretary of Defense determines that combat occurred.

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat

with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

(d) The Secretary may refund amounts collected after the death of a member of the Armed Forces or veteran in accordance with this paragraph and paragraph (e) of this section.

(1) In any case where all or any part of a debt of a member of the Armed Forces, as described under paragraph (a) of this section, was collected, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been suspended or terminated under authority of 31 U.S.C. 3711(f). The member of the Armed Services must have been serving on active duty after September 11, 2001. In any case where all or any part of a debt of a covered member of the Armed Forces was collected, the Secretary may refund the amount collected, but only if the Secretary determines that, under the circumstances applicable with respect to the deceased member of the Armed Forces, it is appropriate to do so.

(2) In any case where all or any part of a debt of a covered member of the Armed Forces or veteran, as described under paragraph (b) of this section, was collected after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been terminated under authority of 38 U.S.C. 5302A. In addition, the Secretary may refund the amount only if he or she determines that the deceased individual is equitably entitled to the refund.

(e) Refunds under paragraph (d) of this section will be made to the estate of the decedent or, in its absence, to the decedent's next-of-kin first listed below.

(1) The decedent's spouse.

(2) The decedent's children (in equal shares).

(3) The decedent's parents (in equal shares).

(f) The authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts collected on certain indebtedness is reserved to the Secretary and will not be delegated.

(g) Requests for a determination to suspend or terminate collection action and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave

rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

(h) The provisions of this section concerning suspension or termination of collection actions and the refunding of moneys previously collected do not apply to any amounts owed the United States under any program carried out under 38 U.S.C. chapter 37.

(Authority: 38 U.S.C. 501, 5302A; 31 U.S.C. 3711(f))

[FR Doc. E9-18939 Filed 8-6-09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AM70

Grants to States for Construction or Acquisition of State Home Facilities—Update of Authorized Beds; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; Correction.

SUMMARY: The Department of Veterans Affairs (VA) published a proposed rule in the **Federal Register** July 10, 2009, to amend its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State and to amend the definition of "State" for purposes of these grants to include Guam, the Northern Mariana Islands, and American Samoa. In the preamble, the table showing the changes in the maximum number of beds for each State contained an error for the number of beds for Vermont. This document corrects that error.

DATES: Comments must be received on or before September 8, 2009.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or e-mail at <http://www.regulations.gov>. For further information concerning submission